



LODI CITY COUNCIL

Carnegie Forum
305 West Pine Street, Lodi

**** A G E N D A ****

REGULAR / SPECIAL JOINT MEETING
Lodi City Council
Lodi Public Financing Authority

Date: August 1, 2012
Time: Closed Session 6:40 p.m.
Regular Meeting 7:00 p.m.

For information contact: **City Clerk (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.

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

C-1 Call to Order / Roll Call

C-2 Announcement of Closed Session

- a) Prospective Acquisition of Real Property Located at 16 and 40 South Cherokee Lane, Lodi, California (APN #043-230-13 and #043-230-12, Respectively); the Negotiating Parties are City of Lodi and Geweke Land Development and Marketing, L.P.; Government Code §54956.8

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 National Night Out Proclamation (PD)

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

- C-1 Receive Register of Claims in the Amount of \$19,648,786.57 (FIN)

C-2 Approve Minutes (CLK)

- a) June 12 and 26 and July 3, 10, 17, and 24, 2012 (Shirtsleeve Sessions)
- b) June 19, 2012 (Special Shirtsleeve Session)
- c) June 20 and July 4 and 18, 2012 (Regular Meetings)
- d) July 10 and 17, 2012 (Special Meetings)

- C-3 Approve Plans and Specifications and Authorize Advertisement for Bids for Phase 3 Grape Bowl Improvement Project (PW)

Res. C-4 Adopt Resolution Authorizing the City Manager to Execute Contract for Security Services at Hutchins Street Square Community Center with Lyons Security Service, Inc., of Orange (\$40,000) (PRCS)

Res. C-5 Adopt Resolution Authorizing the City Manager to Execute Agreements with San Joaquin County for Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1 (PW)

- Res. C-6 Adopt Resolution Authorizing the City Manager to Execute Task Order No. 33 with West Yost Associates for Fiscal Year 2012/13 to Provide Regulatory Assistance and Prepare Various Studies Required by the City's Wastewater Discharge Permit (\$199,900) (PW)
- Res. C-7 Adopt Resolution Authorizing the City Manager to Execute Task Order No. 24 with Treadwell & Rollo, of Oakland (\$37,780), and Professional Services Agreement with EcoGreen Hydro Solutions, of Sunnyvale (\$45,340), for Citywide Groundwater Modeling and Analysis and Appropriating Funds (\$100,000) (PW)
- Res. C-8 Adopt Resolution Authorizing the City Manager to Execute Amendment No. 1 to Task Order No. 4 of Master Professional Services Agreement (\$163,712) for RMC Water and Environment, of Walnut Creek, for Water Meter Program Phase 2 Construction Administration and Appropriating Funds (\$164,000) (PW)
- Res. C-9 Adopt Resolution Authorizing the City Manager to Execute Change Order with West Coast Arborists, Inc., of Anaheim, for Tree Survey Services (\$7,000) and Appropriating Funds (\$7,000) (PW)
- Res. C-10 Adopt Resolution Approving the Amended and Restated Northern California Power Agency Market Purchase Program Agreement and Authorizing Execution by the City Manager (EUD)
- Res. C-11 Adopt Resolution Establishing Guidelines for a First-Time Home Buyer Program and Authorizing an Application to the State Department of Housing and Community Development for \$500,000 of HOME Funding (CD)
- Res. C-12 Adopt Resolution Authorizing the City Manager to Submit an Application with Eden Housing Inc. to the State of California Department of Housing and Community Development for HOME Investment Partnerships Program Funding; and if Selected, the Execution of a Standard Agreement, any Amendments Thereto, and any Related Documents Necessary to Participate in the HOME Investment Partnerships Program (CD)
- Res. C-13 Adopt Resolution Approving the Side Letter Amending the 2012/13 Memorandum of Understanding Between the City of Lodi and the Maintenance and Operators Bargaining Unit (CM)
- Res. C-14 Adopt Resolution Approving Art Advisory Board Recommendation for Bicycle Rack Placement and Appropriate Art in Public Places Funds (\$11,550) (PRCS)
- C-15 Approve Arts Grants for Fiscal Year 2012/13 (\$34,000) (PRCS)

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.

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

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

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

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

G. Public Hearings

- G-1 Continue Public Hearing to August 15, 2012, to Consider the Following Actions: (PW)
- a) Adopt Resolution Certifying the Negative Declaration as Adequate Environmental Documentation for the Master Plans for the Water, Wastewater, Storm Drainage, and Bicycle;
 - b) Adopt Resolution Approving Master Plans for Water, Wastewater, Storm Drainage, and Bicycle; Approving Impact Mitigation Fee Program Report and Schedule of Fees; and Approving Impact Mitigation Fee Program Schedule of Reduced Fees
- G-2 Continue Public Hearing to August 15, 2012, Regarding Termination of Southwest Gateway and Westside Project Development Agreements with Frontier Community Builders, Inc. (CM)

H. Communications

- H-1 Appointments to the Greater Lodi Area Youth Commission, Library Board of Trustees, Lodi Animal Advisory Commission, Lodi Arts Commission, Planning Commission, and the San Joaquin County Commission on Aging and Re-Post for the Remaining Vacancies on the Lodi Arts Commission (CLK)

I. Regular Calendar

- I-1 Designate the Overhead Grade Separation and Embankment Design as the Exclusive Alternative for the Harney Lane Grade Separation Project (PW)
- I-2 Adopt Resolutions and Approve Documents and Actions Regarding Refinancing 2002 Certificates of Participation (COPS) and 2004 COPS: (CM)

2002 COPS

- Res. a) Adopt Resolution of the City Council Approving Documents and Actions Related to the Refinancing of 2002 COPS and the City's Related General Fund Lease Obligation
- Res. b) Adopt Resolution of the Lodi Public Financing Authority Authorizing the Issuance and Sale of 2012 Refunding Lease Revenue Bonds to Refinance Outstanding 2002 COPS and the City's Related General Fund Lease Obligation and Approving Related Documents and Official Actions
- 2004 COPS
- Res. c) Adopt Resolution of the City Council Approving Documents and Actions Related to the Refinancing of 2004 Wastewater COPS and the City's Related Wastewater Revenue Installment Payment Obligation
- Res. d) Adopt Resolution of the Lodi Public Financing Authority Authorizing the Issuance and Sale of 2012 Refunding Wastewater Revenue Bonds to Refinance the 2004 Wastewater COPS and the City's Related Wastewater Revenue Installment Payment Obligation and Approving Related Documents and Official Actions

NOTE: Joint action of the Lodi City Council and Lodi Public Financing Authority

J. Ordinances

- Ord. J-1 Adopt Ordinance No. 1860 Entitled, "An Ordinance of the City Council of the City of Lodi (Adopt) Amending Lodi Municipal Code Chapter 12.12 – Parks – by Repealing and Reenacting Article V, 'Skate Parks,' in Its Entirety" (CLK)

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.

Randi Johl
City Clerk



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Presentation of Proclamation Proclaiming Tuesday, August 7, 2012 as “National Night Out”

MEETING DATE: August 1, 2012

PREPARED BY: Chief of Police

RECOMMENDED ACTION: Presentation of proclamation proclaiming Tuesday, August 7, 2012, as “National Night Out.”

BACKGROUND INFORMATION: The City of Lodi Police Department established the Neighborhood Watch Program in 1985. Police officers were specially trained to conduct Neighborhood Watch Meetings to provide crime prevention information and develop partnerships with the community. This year we celebrate 26 years of Lodi Neighborhood Watch with over 250 active and organized neighborhoods.

In 1988 Lodi joined the National Association of Town Watch and began taking part in National Night Out. Thousands of communities and hundreds of thousands of citizens participate in National Night Out each year. Neighborhood Watch is a critical component in our ability to succeed in addressing crime issues. It is essential that all citizens of Lodi be aware of the importance of, and the impact their individual and group participation can have on reducing crime in Lodi. Staff, recognizing the importance of National Night Out, is volunteering time and resources to ensure we have a successful event.

This year funds for handout, sticker badges and giveaways for each group is made possible through the support of our Lodi Area Crime Stoppers and our National Night Out corporate sponsor, Target. Staff members will be volunteering their time to visit Neighborhood Watch groups to reinforce the importance of Neighborhood Watch and demonstrate our commitment to the partnerships in our community. In 2011 there were 87 groups that participated in National Night Out. We anticipate close to 100 Neighborhood Watch groups will take part in the 2012 National Night Out against crime.

FISCAL IMPACT: None.

FUNDING AVAILABLE: Not applicable.

Mark Helms
Chief of Police

APPROVED: _____
Konradt Bartlam, City Manager



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Receive Register of Claims through July 12, 2012 in the Total Amount of \$19,648,786.57.

MEETING DATE: August 1, 2012

PREPARED BY: Financial Services Manager

RECOMMENDED ACTION: Receive the attached Register of Claims for \$19,648,786.57.

BACKGROUND INFORMATION: Attached is the Register of Claims in the amount of \$19,648,786.57 through 7/12/12. Also attached is Payroll in the amount of \$2,343,763.82.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: As per attached report.

Ruby R. Paiste, Financial Services Manager

RRP/rp

Attachments

APPROVED: _____
Konradt Bartlam, City Manager

Accounts Payable
Council Report

Page - 1
Date - 06/26/12

As of Thursday	Fund	Name	Amount
06/14/12	00100	General Fund	1,117,212.48
	00123	Info Systems Replacement Fund	130.00
	00160	Electric Utility Fund	25,475.25
	00164	Public Benefits Fund	104,232.61
	00166	Solar Surcharge Fund	7,000.00
	00170	Waste Water Utility Fund	61,629.37
	00171	Waste Wtr Util-Capital Outlay	19,387.18
	00180	Water Utility Fund	1,554,228.67
	00181	Water Utility-Capital Outlay	122,222.31
	00210	Library Fund	35,098.14
	00234	Local Law Enforce Block Grant	2,623.45
	00235	LPD-Public Safety Prog AB 1913	61.21
	00260	Internal Service/Equip Maint	33,594.38
	00270	Employee Benefits	454,476.51
	00300	General Liabilities	843.41
	00310	Worker's Comp Insurance	24,335.76
	00321	Gas Tax-2105,2106,2107	9,091.65
	00340	Comm Dev Special Rev Fund	1,629.34
	00347	Parks, Rec & Cultural Services	32,900.75
	00459	H U D	757.93
	01211	Capital Outlay/General Fund	17,017.12
	01212	Parks & Rec Capital	12,232.40
	01250	Dial-a-Ride/Transportation	10,391.87
	01251	Transit Capital	119,828.47
	01410	Expendable Trust	5,991.42

Sum			3,772,391.68
	00184	Water PCE-TCE-Settlements	84.00
	00185	PCE/TCE Rate Abatement Fund	13,872.13
	00190	Central Plume	30,326.27

Sum			44,282.40

Total Sum			3,816,674.08

Accounts Payable
Council Report

Page - 1
Date - 07/23/12

As of Thursday	Fund	Name	Amount
07/12/12	00100	General Fund	2,332,685.04
	00120	Vehicle Replacement Fund	137,483.07
	00160	Electric Utility Fund	2,222,408.64
	00161	Utility Outlay Reserve Fund	6,545,270.37
	00164	Public Benefits Fund	16,202.61
	00166	Solar Surcharge Fund	20,437.20
	00170	Waste Water Utility Fund	47,256.82
	00171	Waste Wtr Util-Capital Outlay	171,919.03
	00172	Waste Water Capital Reserve	2,250.00
	00180	Water Utility Fund	342,565.92
	00181	Water Utility-Capital Outlay	2,728,600.61
	00210	Library Fund	23,279.63
	00230	Asset Seizure Fund	150.00
	00234	Local Law Enforce Block Grant	181.41
	00235	LPD-Public Safety Prog AB 1913	122.11
	00260	Internal Service/Equip Maint	66,996.66
	00270	Employee Benefits	497,216.89
	00300	General Liabilities	78.00
	00310	Worker's Comp Insurance	72,816.25
	00320	Street Fund	1,655.00
	00321	Gas Tax-2105,2106,2107	20,476.18
	00325	Measure K Funds	24,859.30
	00340	Comm Dev Special Rev Fund	1,009.33
	00347	Parks, Rec & Cultural Services	51,181.90
	00444	HUD-Federal Sustainable Comm	2,130.45
	00447	First Time Homebuyers-FTHB	51.65
	00459	H U D	13,670.06
	00502	L&L Dist Z1-Almond Estates	395.03
	00503	L&L Dist Z2-Century Meadows I	249.50
	00506	L&L Dist Z5-Legacy I,II,Kirst	665.32
	00507	L&L Dist Z6-The Villas	561.37
	00509	L&L Dist Z8-Vintage Oaks	207.91
	01211	Capital Outlay/General Fund	109,185.34
	01212	Parks & Rec Capital	68,572.90
	01250	Dial-a-Ride/Transportation	238,455.16
	01251	Transit Capital	2,279.59
	01410	Expendable Trust	31,928.99
Sum			15,795,455.24
	00184	Water PCE-TCE-Settlements	42.00
	00190	Central Plume	10,943.59
	00192	Busy Bee Plume	25,671.66
Sum			36,657.25
Total Sum			15,832,112.49

Council Report for Payroll

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Date - 06/26/12

Payroll	Pay Per Date	Co	Name	Gross Pay
Regular	06/10/12	00100	General Fund	670,331.14
		00160	Electric Utility Fund	139,477.54
		00161	Utility Outlay Reserve Fund	6,683.26
		00164	Public Benefits Fund	3,783.78
		00170	Waste Water Utility Fund	97,806.68
		00180	Water Utility Fund	3,510.15
		00210	Library Fund	28,321.82
		00235	LPD-Public Safety Prog AB 1913	1,422.79
		00260	Internal Service/Equip Maint	16,863.30
		00321	Gas Tax-2105,2106,2107	27,456.91
		00340	Comm Dev Special Rev Fund	20,212.12
		00346	Recreation Fund	374.00
		00347	Parks, Rec & Cultural Services	108,226.75
		01250	Dial-a-Ride/Transportation	7,393.36
Pay Period Total:				
Sum				1,131,863.60

Council Report for Payroll

Page - 1
Date - 07/18/12

Payroll	Pay Per Date	Co	Name	Gross Pay
Regular	07/08/12	00100	General Fund	668,622.28
		00160	Electric Utility Fund	132,248.05
		00161	Utility Outlay Reserve Fund	8,754.29
		00164	Public Benefits Fund	3,783.77
		00170	Waste Water Utility Fund	102,159.70
		00180	Water Utility Fund	3,677.20
		00210	Library Fund	27,825.05
		00235	LPD-Public Safety Prog AB 1913	915.03
		00260	Internal Service/Equip Maint	16,926.76
		00321	Gas Tax-2105,2106,2107	29,474.59
		00340	Comm Dev Special Rev Fund	22,018.81
		00346	Recreation Fund	204.00
		00347	Parks, Rec & Cultural Services	116,563.32
		01250	Dial-a-Ride/Transportation	7,393.36
Pay Period Total:				
Sum				1,140,566.21



CITY OF LODI COUNCIL COMMUNICATION

- AGENDA TITLE:** Approve Minutes
- a) June 12, 2012 (Shirtsleeve Session)
 - b) June 19, 2012 (Special Shirtsleeve Session)
 - c) June 20, 2012 (Regular Meeting)
 - d) June 26, 2012 (Shirtsleeve Session)
 - e) July 3, 2012 (Shirtsleeve Session)
 - f) July 4, 2012 (Regular Meeting)
 - g) July 10, 2012 (Shirtsleeve Session)
 - h) July 10, 2012 (Special Meeting)
 - i) July 17, 2012 (Shirtsleeve Session)
 - j) July 17, 2012 (Special Meeting)
 - k) July 18, 2012 (Regular Meeting)
 - l) July 24, 2012 (Shirtsleeve Session)

MEETING DATE: August 1, 2012

PREPARED BY: City Clerk

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- RECOMMENDED ACTION:** Approve the following minutes as prepared:
- a) June 12, 2012 (Shirtsleeve Session)
 - b) June 19, 2012 (Special Shirtsleeve Session)
 - c) June 20, 2012 (Regular Meeting)
 - d) June 26, 2012 (Shirtsleeve Session)
 - e) July 3, 2012 (Shirtsleeve Session)
 - f) July 4, 2012 (Regular Meeting)
 - g) July 10, 2012 (Shirtsleeve Session)
 - h) July 10, 2012 (Special Meeting)
 - i) July 17, 2012 (Shirtsleeve Session)
 - j) July 17, 2012 (Special Meeting)
 - k) July 18, 2012 (Regular Meeting)
 - l) July 24, 2012 (Shirtsleeve Session)

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

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

Attachments

APPROVED: _____
Konradt Bartlam, City Manager

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JUNE 12, 2012**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, June 12, 2012, commencing at 7:00 a.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Development Impact Mitigation Fee Program Update (PW)

Public Works Director Wally Sandelin provided a PowerPoint presentation regarding the impact mitigation fee update. Specific topics of discussion included Shirtsleeve Session history, developer meeting history, changes to the fee program, residential low density and commercial office considerations, new developer costs, incentive fee zones, water, wastewater, and storm drainage costs and fees, transportation, electric utility costs, park costs, south sewer trunk line costs, fee summaries and comparisons, and next steps for the August 1 meeting.

In response to Council Member Hansen, Mr. Sandelin stated that, although Lower Sacramento Road was pulled out of the fee program to be handled by the City directly, generally streets in new developments are put in by the developer.

In response to Mayor Mounce, Mr. Sandelin stated in the future developers will also need to pay prevailing wage and the workers on new development projects are often from the localized area.

In response to Mayor Mounce, Mr. Sandelin stated the South Hutchins and Reynolds Ranch projects were subject to the electric capacity charge based on panel size.

In response to Mayor Mounce, Mr. Sandelin stated Public Works and Parks and Recreation will be working with the developers in overseeing neighborhood parks construction to ensure quality and standards compliance.

In response to Mayor Mounce, Mr. Sandelin stated the amount of the residential fee based on the number units is consistent with other surrounding communities.

In response to Council Member Hansen, Mr. Sandelin stated transportation costs reflect street and traffic signal projects and there are not many that need to be constructed to serve new development.

In response to Council Member Katzakian, Mr. Sandelin stated the last impact fee update occurred in 2002.

In response to Mayor Pro Tempore Nakanishi, Mr. Sandelin and Mr. Bartlam confirmed that the art in public places fee is \$80 per unit, less than the original 2% amount, and there must be a nexus between the benefit and fee charged.

In response to Mayor Mounce, Mr. Sandelin stated staff will contact the Arts Commission to notify them of the change in fee for the art in public places program.

In response to Council Member Hansen, Mr. Sandelin stated with respect to incentive fee zones, if there are changes to a pipe size, the developer would only need to pay for the difference in the upgrade and will get full credit for the pipe that already exists.

In response to Council Member Hansen, Mr. Sandelin and Mr. Bartlam confirmed that the impact fee program is for bricks and mortar types of projects and not for operations that would be addressed through the planning and use permit side.

In response to Council Member Hansen, Mr. Sandelin stated it generally costs \$1 million to construct a single well and the wells are still needed despite the new treatment plant for fire flow and protection purposes.

In response to Council Member Katzakian, Mr. Sandelin stated approximately five or six new homes in the City have installed in-home sprinklers and staff is still working with the community on the new requirement.

In response to Mayor Pro Tempore Nakanishi, Mr. Sandelin confirmed that well construction is necessary to have enough water pressure to ensure fire protection throughout the City.

In response to Council Member Hansen, Mr. Sandelin stated every property that builds in the gray area shown on the wastewater map will pay for construction of the new trunk line, which is estimated to cost \$6 million.

In response to Council Member Johnson, Mr. Sandelin stated the park project south of Harney Lane near the Woodbridge Irrigation District canal was eliminated from the program because it will not be developing within the next five years.

In response to Mayor Mounce, Mr. Sandelin and Mr. Bartlam confirmed that the fee is going to be high for Pixley Park if it is transferred to industrial users versus residential users and the actual benefit to the user of the park and basin would need to be looked at.

In response to Council Member Johnson, Mr. Sandelin stated the \$3 million figure for Lodi Lake Park is to develop the remainder of the 13 acres on the north side into a covered group area with various facilities.

In response to Mayor Mounce, Mr. Sandelin stated the new treatment plant will not be open to the public due to homeland security concerns for these types of facilities.

In response to Mayor Mounce, Mr. Sandelin stated the City of Lodi is comparatively low in fees based on the chart of neighboring cities although each community is different with respect to its needs and priorities so it is not an apples to apples comparison.

In response to Mayor Mounce, Mr. Bartlam confirmed that the unused portion of the 2% annual growth amount is banked and could theoretically be used at one time in the future.

The following individuals spoke in opposition to any increases in the impact fee program based on concerns regarding the current economic and market conditions, direct and indirect cost transfers to developers, preferred economic incentives to restart development, development costs of outside agencies, local job and property tax creation, and a preference for the overall fee amount to be in the \$20,000 range:

Pat Patrick
Tom Doucette
Jeffrey Kirst
Dennis Bennett
John Beckman
Mike Carouba

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 9:00 a.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JUNE 19, 2012**

The June 19, 2012, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, JUNE 20, 2012**

C-1 Call to Order / Roll Call

The City Council Closed Session meeting of June 20, 2012, was called to order by Mayor Mounce at 6:50 p.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, and Mayor Mounce

Absent: Mayor Pro Tempore Nakanishi

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

C-2 Announcement of Closed Session

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

b) Conference with Steve Schwabauer, City Attorney (Labor Negotiator), Regarding Police Mid-Managers, Lodi Police Officers Association, and Lodi Police Dispatchers Association Pursuant to Government Code §54957.6

C-3 Adjourn to Closed Session

At 6:50 p.m., Mayor Mounce adjourned the meeting to a Closed Session to discuss the above matters. The Closed Session adjourned at 6:55 p.m.

C-4 Return to Open Session / Disclosure of Action

At 7:00 p.m., Mayor Mounce reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

Items C-2 (a) and C-2 (b) were discussion only with no reportable action.

A. Call to Order / Roll Call

The Regular City Council meeting of June 20, 2012, was called to order by Mayor Mounce at 7:00 p.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, and Mayor Mounce

Absent: Mayor Pro Tempore Nakanishi

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Presentations

B-1 Presentation to Captain Dan Williams with the Lodi Salvation Army

Mayor Mounce presented a Resolution of Appreciation to Captains Dan and Kim Williams with the Lodi Salvation Army in gratitude for their service to the Lodi community.

B-2 2012 National Dump the Pump Day Proclamation (PW)

Mayor Mounce presented a proclamation to Paula Fernandez, Transportation Manager, and Jeff Kohlhepp, General Manager with MV Transportation, proclaiming June 21, 2012, as "2012 National Dump the Pump Day" in the City of Lodi.

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

Council Member Johnson made a motion, second by Council Member Katzakian, 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 Hansen, Council Member Johnson, Council Member Katzakian, and Mayor Mounce

Noes: None

Absent: Mayor Pro Tempore Nakanishi

C-1 Receive Register of Claims in the Amount of \$5,256,171.41 (FIN)

Claims were approved in the amount of \$5,256,171.41.

C-2 Approve Minutes (CLK)

The minutes of June 5, 2012 (Shirtsleeve Session) and June 6, 2012 (Regular Meeting) were approved as written.

C-3 Approve Plans and Specifications and Authorize Advertisement for Bids for the City Hall Parking Lot Reconstruction Project (PW)

Approved the plans and specifications and authorized advertisement for bids for the City Hall Parking Lot Reconstruction Project.

C-4 Approve Specifications and Authorize Advertisement for Bids for Surface Water Treatment and Well Facilities Chemical Supply Contracts (PW)

Approved the specifications and authorized advertisement for bids for surface water treatment and well facilities chemical supply contracts.

C-5 Adopt Resolution Rejecting All Bids, Approving Plans and Specifications and Authorizing Re-Advertisement for Bids for Well 6R Granular Activated Carbon Treatment System (PW)

Adopted Resolution No. 2012-90 rejecting all bids, approving the plans and specifications and authorizing re-advertisement for bids for Well 6R granular activated carbon treatment system.

C-6 Adopt Resolution Authorizing the City Manager to Execute Purchase Order with Econolite Group, Inc., of San Leandro, for Three Traffic Signal Controllers/Cabinets (\$37,122) (PW)

Adopted Resolution No. 2012-91 authorizing the City Manager to execute purchase order with Econolite Group, Inc., of San Leandro, for three traffic signal controllers/cabinets in the amount of

\$37,122.

- C-7 Adopt Resolution Authorizing the City Manager to Execute Contract with Chrisp Company, of Fremont, for Extruded Thermoplastic Lane Line Marking for Various City Streets for Fiscal Year 2012/13 (\$73,185.90) (PW)

Adopted Resolution No. 2012-92 authorizing the City Manager to execute contract with Chrisp Company, of Fremont, for extruded thermoplastic lane line marking for various City streets for fiscal year 2012/13 in the amount of \$73,185.90.

- C-8 Adopt Resolution Authorizing the City Manager to Execute Contract for 2012 Streets Crack Sealing with Graham Contractors, Inc., of San Jose (\$79,216.02) (PW)

Adopted Resolution No. 2012-93 authorizing the City Manager to execute contract for 2012 Streets Crack Sealing with Graham Contractors, Inc., of San Jose, in the amount of \$79,216.02.

- C-9 Adopt Resolution Authorizing the City Manager to Execute Contracts for Fiscal Year 2012/13 with United Cerebral Palsy of San Joaquin, Amador, and Calaveras Counties, of Stockton, for Downtown Cleaning (\$46,686.00), Transit Facility Cleaning (\$38,456.50), and Hutchins Street Square Landscape Maintenance (\$27,625.13) (PW)

Adopted Resolution No. 2012-94 authorizing the City Manager to execute contracts for fiscal year 2012/13 with United Cerebral Palsy of San Joaquin, Amador, and Calaveras Counties, of Stockton, for downtown cleaning in the amount of \$46,686.00, transit facility cleaning in the amount of \$38,456.50, and Hutchins Street Square landscape maintenance in the amount of \$27,625.13.

- C-10 Adopt Resolution Authorizing the City Manager to Execute Two-Year Professional Services Agreement (\$39,840) and to Execute Agreement Extensions with Crop Production Services, of Stockton, for White Slough Water Pollution Control Facility Land Application Area Monitoring (PW)

Adopted Resolution No. 2012-95 authorizing the City Manager to execute a two-year professional services agreement in the amount of \$39,840 and to execute agreement extensions with Crop Production Services, of Stockton, for White Slough Water Pollution Control Facility land application area monitoring.

- C-11 Adopt Resolution Authorizing the City Manager to Execute One-Year Extension of Contract with Republic ITS, of Novato, for Traffic Signal Preventive Maintenance and Repair Program for Fiscal Year 2012/13 (\$17,819) (PW)

Adopted Resolution No. 2012-96 authorizing the City Manager to execute a one-year extension of contract with Republic ITS, of Novato, for Traffic Signal Preventive Maintenance and Repair Program for fiscal year 2012/13 in the amount of \$17,819.

- C-12 Adopt Resolution Authorizing the City Manager to Execute One-Year Extension of Contract with TruGreen LandCare, of Rancho Cordova, for Maintenance of Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1 for Fiscal Year 2012/13 (\$24,949.60) (PW)

Adopted Resolution No. 2012-97 authorizing the City Manager to execute a one-year extension of contract with TruGreen LandCare, of Rancho Cordova, for maintenance of Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1 for fiscal year 2012/13 in the amount of \$24,949.60.

- C-13 Adopt Resolution Authorizing the City Manager to Execute One-Year Extension of Contract with Jeff Case Construction, of Galt, for Curb, Gutter, and Sidewalk Replacement (\$150,000) (PW)

Adopted Resolution No. 2012-98 authorizing the City Manager to execute a one-year extension of contract with Jeff Case Construction, of Galt, for curb, gutter, and sidewalk replacement in the amount of \$150,000.

- C-14 Adopt Resolution Authorizing the City Manager to Execute One-Year Extension of Contract with Holt of California, of West Sacramento, for Standby Generator Maintenance and Repair (\$38,316) (PW)

Adopted Resolution No. 2012-99 authorizing the City Manager to execute a one-year extension of contract with Holt of California, of West Sacramento, for standby generator maintenance and repair in the amount of \$38,316.

- C-15 Adopt Resolution Authorizing the City Manager to Execute Professional Services Agreement with Neil O. Anderson & Associates, of Lodi, for Construction Testing and Inspection Services (\$100,000) (PW)

Adopted Resolution No. 2012-100 authorizing the City Manager to execute a professional services agreement with Neil O. Anderson & Associates, of Lodi, for construction testing and inspection services in the amount of \$100,000.

- C-16 Adopt Resolution Authorizing the City Manager to Execute Professional Services Agreement with Y & C Transportation Consultants, Inc., of Sacramento, for Design of the Ham Lane and Harney Lane Traffic Signal and Lighting Project (\$36,260) and Appropriating Funds (\$55,000) (PW)

This item was pulled for further discussion by Council Member Hansen.

In response to Council Member Hansen, Public Works Director Wally Sandelin confirmed the accelerated time period for the project, which will allow construction to commence in October or November of this year.

Council Member Hansen made a motion, second by Council Member Johnson, to adopt Resolution No. 2012-105 authorizing the City Manager to execute a professional services agreement with Y & C Transportation Consultants, Inc., of Sacramento, for design of the Ham Lane and Harney Lane Traffic Signal and Lighting Project in the amount of \$36,260 and appropriating funds in the amount of \$55,000.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katzakian, and Mayor Mounce

Noes: None

Absent: Mayor Pro Tempore Nakanishi

- C-17 Adopt Resolution Authorizing the City Manager to Execute Contract and to Execute Contract Extensions with West Coast Arborist, of Anaheim, for Tree Maintenance for Fiscal Year 2012/13 (\$72,900) (PW)

Adopted Resolution No. 2012-101 authorizing the City Manager to execute contract and to

execute contract extensions with West Coast Arborist, of Anaheim, for tree maintenance for fiscal year 2012/13 in the amount of \$72,900.

C-18 Adopt Resolution Authorizing the City Manager to Execute Contract with George Reed, Inc., of Modesto, for 800 Tons of Asphalt Materials for Fiscal Year 2012/13 (\$57,701) (PW)

Adopted Resolution No. 2012-102 authorizing the City Manager to execute contract with George Reed, Inc., of Modesto, for 800 tons of asphalt materials for fiscal year 2012/13 in the amount of \$57,701.

C-19 Adopt Resolution Authorizing the City Manager to Execute Contract for 2012 Utility Frame and Cover Adjustment Project, Various Locations, with Teichert Construction, of Roseville (\$183,690), and Appropriating Funds (\$20,000) (PW)

Adopted Resolution No. 2012-103 authorizing the City Manager to execute contract for 2012 Utility Frame and Cover Adjustment Project, Various Locations, with Teichert Construction, of Roseville, in the amount of \$183,690 and appropriating funds in the amount of \$20,000.

C-20 Adopt Resolution Authorizing the Hiring of Firefighters from the Displaced Firefighter List Pursuant to Government Code Section 53270 (HR)

Adopted Resolution No. 2012-104 authorizing the hiring of firefighters from the Displaced Firefighter List pursuant to Government Code Section 53270.

C-21 Adopt Resolution Approving Contract with Lodi Unified School District to Provide After School Staff Support for the Bridge Program at 13 Locations During Fiscal Year 2012/13 (\$573,980) and Appropriating Funds (\$156,612) (PRCS)

This item was pulled for further discussion by Council Member Hansen.

In response to Council Member Hansen, City Manager Rad Bartlam confirmed that the Bridge Program is funded by State grants and the City recovers 100% of its costs to administer the program. Mr. Bartlam stated the School District does not charge rent for facilities with this program.

Council Member Hansen made a motion, second by Council Member Katzakian, to adopt Resolution No. 2012-106 approving contract with Lodi Unified School District to provide after school staff support for the Bridge Program at 13 locations during fiscal year 2012/13 in the amount of \$573,980 and appropriating funds in the amount of \$156,612.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katzakian, and Mayor Mounce

Noes: None

Absent: Mayor Pro Tempore Nakanishi

C-22 Authorize Acceptance of Memorial Bench, Tree, and Plaque Donations at Lodi Lake Park (PRCS)

Authorized acceptance of memorial bench, tree, and plaque donations at Lodi Lake Park.

C-23 Set Public Hearing for August 1, 2012, to: a) Consider Resolution Approving Master Plans for Water, Wastewater, Storm Drainage, and Bicycle; b) Certify the Negative Declaration

as Adequate Environmental Documentation for the Master Plans for the Water, Wastewater, Storm Drainage, and Bicycle; c) Consider Resolution Approving Impact Mitigation Fee Program Report; and d) Consider Resolution Approving Impact Mitigation Fee Program Schedule of Fees (PW)

Set public hearing for August 1, 2012, to: a) Consider resolution approving Master Plans for Water, Wastewater, Storm Drainage, and Bicycle; b) certify the Negative Declaration as adequate environmental documentation for the Master Plans for the Water, Wastewater, Storm Drainage, and Bicycle; c) Consider resolution approving Impact Mitigation Fee Program Report; and d) Consider resolution approving Impact Mitigation Fee Program Schedule of Fees.

C-24 Set Public Hearing for August 1, 2012, Regarding Termination of Southwest Gateway and Westside Project Development Agreements with Frontier Community Builders, Inc. (CM)

Set public hearing for August 1, 2012, regarding termination of Southwest Gateway and Westside Project Development Agreements with Frontier Community Builders, Inc.

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

None.

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

Council Member Hansen reported on his attendance at the American Public Power Association conference and San Joaquin Council of Governments meeting and specifically discussed a potential negative affect on public marketing agencies' ability to control costs and the status of Phase II improvements to Highway 12.

Mayor Mounce reported on her attendance at the ribbon cutting event for the Salvation Army's Hope Harbor project and invited the public to attend the Vintage Sports Grill grand opening on June 21, 2012, and Taco Truck Cook Off on June 30, 2012.

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

G. Public Hearings

G-1 Public Hearing to Consider Resolution Adopting Final Engineer's Annual Levy Report for Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1, Fiscal Year 2012/13, and Ordering the Levy and Collection of Assessments (PW)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Mounce called for the public hearing to consider resolution adopting Final Engineer's Annual Levy Report for Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1, Fiscal Year 2012/13, and ordering the levy and collection of assessments.

Junior Engineer Chris Boyer provided a brief presentation regarding the proposed assessment for the landscape and maintenance district as set forth in the staff report.

In response to Council Members Johnson and Hansen, Mr. Boyer stated the assessment has decreased because the reserve amount is sufficient in comparison to the actual assessment amount and there is no escalator because the service is bid every two years.

Council Member Hansen made a motion, second by Council Member Katzakian, to adopt Resolution No. 2012-107 adopting the Final Engineer's Annual Levy Report for Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1, Fiscal Year 2012/13, and ordering the levy and collection of assessments.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katzakian, and Mayor Mounce

Noes: None

Absent: Mayor Pro Tempore Nakanishi

H. Communications

H-1 Appointment to the Lodi Senior Citizens Commission (CLK)

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

Lodi Senior Citizens Commission

Sandy Beglau, term to expire December 31, 2013

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katzakian, and Mayor Mounce

Noes: None

Absent: Mayor Pro Tempore Nakanishi

H-2 Monthly Protocol Account Report (CLK)

Mayor Mounce made a motion, second by Council Member Hansen, to approve the cumulative Monthly Protocol Account Report through May 31, 2012.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katzakian, and Mayor Mounce

Noes: None

Absent: Mayor Pro Tempore Nakanishi

I. Regular Calendar

I-1 Introduce Ordinance Amending Lodi Municipal Code Chapter 12.12 - Parks - by Repealing and Reenacting Article V, "Skate Parks," In Its Entirety (CA)

City Attorney Schwabauer provided a brief presentation of the proposed amendments to the

ordinance as set forth in the staff report and specifically discussed previous insurance requirements and the history of the skate park.

In response to Mayor Mounce, Interim Parks, Recreation and Cultural Services Director Jeff Hood stated the materials and equipment at the skate park are more durable and will be sufficient for skate board and bicycle use.

In response to Council Member Johnson, Mr. Schwabauer stated he has not received any citizen complaints.

In response to Council Member Johnson, Mr. Hood stated the vandalism concerns still exist but are general in nature and not specific to the use or apparatus at the skate park.

In response to Council Member Hansen, Mr. Hood stated the webcam at the downtown theater still exists but is not operating currently due to some technological changes. Mr. Hood also provided an overview of new cameras obtained by Parks and Recreation that can be installed and used at various locations in the City, including the skate park. Council Member Johnson and Mayor Mounce suggested the use of the new cameras be based on the greatest priority locations such as Hale Park.

Council Member Katakian made a motion, second by Council Member Johnson, to introduce Ordinance No. 1860 amending Lodi Municipal Code Chapter 12.12 - Parks - by repealing and reenacting Article V, "Skate Parks," in its entirety.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katakian, and Mayor Mounce

Noes: None

Absent: Mayor Pro Tempore Nakanishi

J. Ordinances - None

K. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 7:50 p.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JUNE 26, 2012**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, June 26, 2012, commencing at 7:00 a.m.

Present: Council Member Johnson, Council Member Katzakian, and Mayor Mounce
Absent: Council Member Hansen, and Mayor Pro Tempore Nakanishi
Also Present: Deputy City Manager Ayers, Deputy City Attorney Magdich, and City Clerk Johl

B. Topic(s)

B-1 Renewable Portfolio Standard Update (EUD)

Electric Utility Director Elizabeth Kirkley provided a PowerPoint presentation regarding the Renewable Portfolio Standards (RPS) update. Specific topics of discussion included legislative background, new legislative requirements, revised goals, portfolio content, oversight by California Energy Commission (CEC), steps taken by Lodi to date, Lodi's current portfolio, RPS implementation, and next steps.

In response to Mayor Mounce, Consultant Matthew Foskett and Ms. Kirkley confirmed that there are approximately five other balancing authorities throughout the State of California and in the western area.

In response to Council Member Johnson, Mr. Foskett stated the Air Resources Board is involved because green house gases are considered airborne.

In response to Mayor Mounce, Mr. Foskett stated credits are sold based on developing market prices using mega watt hours and can be sold in smaller blocks. He stated the bucket one price is approximately \$50 per mega watt hour and bucket three averages at \$15 per mega watt hour.

In response to Council Member Katzakian, Mr. Foskett stated legislation has been introduced in favor and against hydro electric and the City will not be affected greatly if it is eliminated because the City's portfolio is diverse.

In response to Mayor Mounce, Ms. Kirkley stated the City is continuing to look at options for diversifying its portfolio into the future and is considering biomethane. Ms. Kirkley stated staff is also continuing to review options for a future solar project near the I-5 property, which is currently being used for Lodi Energy Center purposes.

In response to Council Member Johnson, Ms. Kirkley stated geothermal is affected by declining steam fields and Northern California Power Agency has made additional improvements to its plant to mitigate the impact.

In response to Council Member Hansen, Ms. Kirkley stated the City should not be affected in the next five years with the RPS because it can sell bucket ones and purchase bucket threes and the biggest unknown continues to be enforcement and penalties for the future.

In response to Myrna Wetzel, Ms. Kirkley stated there are no penalties for the CEC's inability to clearly define the requirements and penalties by a certain date.

In response to Ed Miller, Mr. Foskett stated there is no financial impact for the consumer up to 2019 because the costs stay below \$1 million and impacts thereafter will be reviewed in the next steps as outlined in the presentation.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 7:25 a.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JULY 3, 2012**

The July 3, 2012, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, JULY 4, 2012**

The July 4, 2012, Regular Meeting of the Lodi City Council was canceled.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JULY 10, 2012**

The July 10, 2012, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JULY 10, 2012**

A. Call to Order / Roll Call

The Special City Council meeting of July 10, 2012, was called to order by Mayor Mounce at 7:00 a.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Closed Session

At 7:00 a.m., Mayor Mounce adjourned the meeting to a Closed Session to discuss the following matters.

B-1 Conference with Steve Schwabauer, City Attorney, and Dean Gualco, Human Resources Manager (Labor Negotiators), Regarding Unrepresented Executive Management, Lodi City Mid-Management Association, Unrepresented Confidential Employees, AFSCME General Services and Maintenance & Operators, International Brotherhood of Electrical Workers, Fire Mid-Managers, and Lodi Professional Firefighters Pursuant to Government Code §54957.6

B-2 Conference with Steve Schwabauer, City Attorney (Labor Negotiator), Regarding Police Mid-Managers, Lodi Police Officers Association, and Lodi Police Dispatchers Association Pursuant to Government Code §54957.6

The Closed Session adjourned at 7:10 a.m.

C. Return to Open Session / Disclosure of Action

At 7:10 a.m., Mayor Mounce reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

Items B-1 and B-2 were discussion only with no reportable action.

D. Regular Calendar

D-1 Adopt Resolution Authorizing the City Manager to Enter into a Reimbursement Agreement Between the City of Lodi and Holz Rubber Company for Utility Service and Transformer Upgrade Project and Approve Specifications and Authorize Advertisement of Bids to Procure Padmount Transformer (\$98,100) (EUD)

Electric Utility Director Elizabeth Kirkley provided a brief presentation regarding the proposed reimbursement agreement with Holz Rubber Company as outlined in the Council Communication.

In response to Council Member Hansen, Ms. Kirkley stated a similar agreement has not been previously done, the City will be purchasing and installing the transformer, and Holz Rubber will pay for labor and materials. She stated the upgrades may add new jobs for Holz Rubber.

In response to Mayor Mounce, Ms. Kirkley confirmed Holz Rubber is in the enterprise zone and eligible for job-related credits and that she does not anticipate similar situations happening too often in the future.

Council Member Hansen made a motion, second by Council Member Johnson, to adopt Resolution No. 2012-108 authorizing the City Manager to enter into a Reimbursement Agreement between the City of Lodi and Holz Rubber Company for utility service and transformer upgrade project in the amount of \$98,100 and to approve specifications and authorize advertisement of bids to procure padmount transformer.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes: None

Absent: None

D-2 Adopt Resolution Approving Police Officers Association of Lodi Memorandum of Understanding for the Period January 1, 2012 through December 31, 2013 (CM)

City Attorney Schwabauer provided a brief overview of the proposed memorandum of understanding as outlined in the Council Communication.

In response to Council Member Hansen, Mr. Schwabauer stated the savings to the City over the term of the agreement is approximately \$400,000.

In response to Council Member Johnson, Mr. Schwabauer stated certain contract changes cannot be implemented until a specified time period pursuant to CalPERS' rules.

In response to Mayor Pro Tempore Nakanishi, Mr. Schwabauer stated the medical costs are capped at \$610, \$1,220, and \$1,560 respectively. Mr. Schwabauer stated the second tier retirement formula for safety is 3% at 55 and for miscellaneous is 2% at 60.

Kevin Bell spoke in regard to the mid-management group having concerns about equality in the various memorandums of understanding.

Council Member Hansen made a motion, second by Council Member Katzakian, to adopt Resolution No. 2012-109 approving Police Officers Association of Lodi Memorandum of Understanding for the period January 1, 2012 through December 31, 2013.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes: Council Member Johnson

Absent: None

D-3 Adopt Resolution Approving CalPERS Employer Paid Member Contributions (CM)

City Manager Bartlam provided a brief overview of the proposed resolution as outlined in the Council Communication.

Council Member Johnson made a motion, second by Council Member Katzakian, to adopt Resolution No. 2012-110 approving CalPERS employer paid member contributions.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes: None

Absent: None

D-4 Receive Report Regarding Boards, Committees, and Commissions, Approve Staff Recommendations as Submitted and Provide Additional Direction as Needed (CLK)

City Clerk Randi Johl provided a brief overview of the 2012 update for boards, committees, and commissions and related recommendations as outlined in the Council Communication.

Council Member Hansen made a motion, second by Council Member Katzakian, to approve staff recommendation to: 1) adopt Resolution No. 2012-111 reducing the Lodi Animal Advisory Commission membership from seven to five members; 2) notify Visit Lodi regarding implementing membership status in its Annual Report and confirming Deputy City Manager attendance at related meetings; and 3) approve previous recommendation for meeting attendance and involvement with the Lodi Sister City Committee for special events, visits, etc.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes: None

Absent: None

E. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 7:45 a.m. in memory of Walter Reiss.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JULY 17, 2012**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, July 17, 2012, commencing at 7:05 a.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Receive Presentation on Climate Action Plan (CM)

City Manager Bartlam provided a brief introduction to the subject matter of the Climate Action Plan.

Jeff Henderson, representing AECOM, provided a PowerPoint presentation regarding the Climate Action Plan. Specific topics of discussion included the reasons for preparing a Climate Action Plan, regulatory basis, experience with Climate Action Plans, progress in Lodi, key issues, project objectives and approach, engaging Studio 30, emissions inventory, community engagement, stakeholder meetings and outreach, incentives and benefits, and next steps.

In response to Council Member Hansen, Mr. Henderson stated an example of something that may be mandatory for the City but not for the community is mandated energy efficiency for City facilities with volunteer audit programs for the residential community.

Mayor Pro Tempore Nakanishi commented that he objected to the Climate Action Plan in its entirety because the elected legislative body should have the ability to achieve energy efficiency and other similar practices without being mandated to do so by an outside group.

In response to Council Member Johnson, Mr. Henderson stated the data regarding landfills and solid waste corresponds to actual waste generated in Lodi based on the numbers provided on a statewide database.

In response to Council Member Hansen, Mr. Henderson stated the response at the Farmers' Market is varied in that approximately a quarter to half of the people are aware of climate changes and the program. The approach includes asking knowledge-based questions regarding AB 32 and the City's General Plan and focuses on the day-to-day activities of residents. Mr. Henderson stated the responses are tracked and will be available in a single document at the end of summer.

In response to Mayor Pro Tempore Nakanishi, Mr. Henderson confirmed that biofuel is considered for energy generation purposes.

In response to Mayor Mounce, Mr. Henderson and Mr. Bartlam stated the success measurement of mobility on the east side of town includes the momentum of addressing mobility needs in that area and projects such as the Lodi Avenue reconstruction project.

In response to Council Member Johnson, Mr. Henderson stated economic benefit is not considered in the first phase of the Climate Action Plan process as it is an idea gathering phase. Mr. Henderson stated subsequent phases will include prioritization of ideas and cost-benefit analysis.

In response to Council Member Johnson, Mr. Henderson stated usage of bike lanes has not come up directly in surveys or responses. Jeff Goldman of AECOM stated the National Highway Traffic Safety Administration is an excellent resource for bike lane statistics and facts. A brief Council discussion ensued regarding the validity of bike lanes, locations, and usage.

In response to Ed Miller, Mr. Bartlam stated the Climate Action Plan is a self-imposed mechanism in the General Plan to address the requirement of reducing greenhouse gas emissions.

In response to Myrna Wetzel, Mr. Bartlam suggested that she contact Paula Fernandez in Public Works regarding her concerns about traffic signal timing. Ms. Wetzel also spoke in regard to her concerns about overall bike usage in the City, scooter usage by the elderly and disabled, and installing left-turn lanes on wider streets.

In response to Mayor Pro Tempore Nakanishi, Mr. Bartlam stated the next steps are the completion of the emissions inventory, continued public outreach, another status Shirtsleeve Session in the late fall, and a recommendation on the adoption of the plan from the Planning Commission around the first of the year.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 8:00 a.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JULY 17, 2012**

A. Call to Order / Roll Call

The Special Council meeting of July 17, 2012, was called to order by Mayor Mounce at 7:00 a.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Absent: None

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Consent Calendar

B-1 Adopt Resolution Approving Lodi Police Dispatchers Association Memorandum of Understanding for the Period May 1, 2012 through December 31, 2013 (CM)

In response to Council Member Hansen, Mr. Bartlam stated the dispatch unit will step into paying the full 7% of the employee's share for CalPERS consistent with other groups for a savings of approximately \$40,500.

Council Member Hansen made a motion, second by Council Member Katzakian, to adopt Resolution No. 2012-112 approving Lodi Police Dispatchers Association Memorandum of Understanding for the period May 1, 2012 through December 31, 2013.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes: Council Member Johnson

Absent: None

B-2 Adopt Resolution Approving CalPERS Employer Paid Member Contributions (CM)

Council Member Hansen made a motion, second by Council Member Katzakian, to adopt Resolution No. 2012-113 approving CalPERS employer paid member contributions.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Hansen, Council Member Johnson, Council Member Katzakian, Mayor Pro Tempore Nakanishi, and Mayor Mounce

Noes: None

Absent: None

C. Adjournment - There being no further business, the meeting was adjourned at 7:05 a.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, JULY 18, 2012**

The July 18, 2012, Regular Meeting of the Lodi City Council was canceled.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JULY 24, 2012**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, July 24, 2012, commencing at 7:00 a.m.

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

Absent: Council Member Katzakian

Also Present: City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Receive Update Regarding Harney Lane Grade Separation (PW)

City Manager Bartlam and Public Works Director Wally Sandelin provided a brief introduction to the subject matter of the Harney Lane Grade Separation project.

Rob Himes of the Mark Thomas Company provided a PowerPoint presentation regarding the Harney Lane Grade Separation project. Topics of discussion included the project development process, existing conditions, proposed project considerations, project constraints, overhead and underpass grade separations, alternatives considered, sample overhead and underpass alternatives, expert standards, noise impacts, visual impacts, and remaining project schedule.

In response to Council Member Johnson, Mr. Himes stated the three minute per train delay is a realistic number per discussions with the railroad.

In response to Council Member Hansen, Mr. Himes stated the train will not need to blow the whistle once the grade separation is complete.

In response to Mayor Mounce, Mr. Himes stated any alternative that does not stay within the project costs would be considered more expensive.

In response to Council Member Hansen, Mr. Himes stated both overpasses on Eight Mile Road in Stockton are embankment projects. Mr. Bartlam stated from a scale perspective the Eight Mile Road grade separations are approximately twice the size of the Harney Lane grade separation project because of the number of lanes.

In response to Mayor Mounce, Mr. Himes stated the overhead with an embankment alternative is preferred by Union Pacific and the State of California because it is less expensive overall. Mr. Himes stated the project could go to the south instead of the north but will cost more because there will be additional rights-of-way needed and the corner walls will cost approximately \$4 million at \$1 million per corner.

In response to Mayor Mounce, Mr. Himes and Mr. Bartlam stated a sound wall is proposed for the residential side only and any future developer would need to add an additional sound wall on the other side as a part of the noise mitigation.

In response to Council Member Hansen, Mr. Himes stated the best deterrent for graffiti seems to be a combination of low and thorny shrubs, specific block material, and vines along the wall.

In response to Council Member Hansen, Mr. Himes stated construction is going to take approximately 18 months for the overpass alternative.

In response to Mayor Mounce, Mr. Sandelin stated detailed information, including public comments to date, will be included in the August 1 Council Communication. Mr. Himes stated the primary public concerns were related to wanting the road pushed away from the homes as far as possible, backyard privacy, and wall/embankment landscaping.

In response to Council Member Hansen, Mr. Bartlam and Mr. Sandelin confirmed that the City will be responsible for maintaining and landscaping the proposed grade separation unlike the Kettleman Lane and Harney Lane grade separations, which are the responsibility of the State of California and CalTrans.

In response to Council Member Hansen, Mr. Himes confirmed the grade separation will have sidewalks and bicycle lanes, there is approximately 150 to 200 feet of area before Stockton Street comes down, and Banyon Street will be right in and right out only.

In response to Mayor Mounce, Mr. Himes confirmed they will consider the left-turn lane onto Stockton Street going east on Harney Lane in their recommendation.

In response to Council Member Hansen, Mr. Himes and Mr. Bartlam confirmed when the project is complete there will be four lanes, two in each direction, from Hutchins Street to Highway 99 and the Reynolds Ranch intersection will be finished.

In response to Mayor Pro Tempore Nakanishi, Mr. Sandelin and Mr. Bartlam stated they have \$20 million for the project and will provide the approximate maintenance costs of the proposed overpass along with the recommendation at the August 1 meeting. Mr. Sandelin confirmed that the first alternative is the only one that is affordable at the current time.

Ed Miller and Myrna Wetzel spoke in regard to concerns about the value of bike lanes in the proposed grade separation project. In response to Ms. Wetzel, Mr. Sandelin confirmed that the Harney Lane and Stockton Street intersection will be widened as a result of the proposed project.

In response to Mayor Pro Tempore Nakanishi, Mr. Bartlam and Mr. Sandelin stated the shoulder space must be present although the bicycle lane itself does not need to be striped in that space.

Jerry Fry spoke in regard to his concerns about adequate landscaping for visual aesthetics and homeless individuals gathering near the pass.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 7:45 a.m.

ATTEST:

Randi Johl
City Clerk



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Approve Plans and Specifications and Authorize Advertisement for Bids for the Phase 3 Grape Bowl Improvement Project

MEETING DATE: August 1, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Approve plans and specifications and authorize advertisement for bids for the Phase 3 Grape Bowl improvement project.

BACKGROUND INFORMATION: On March 21, 2012, Council authorized the City Manager to execute a contract with Siegfried Engineering to prepare design documents for the Phase 3 improvements, purchase the Grape Bowl scoreboard and approve plans and specifications for installation of the scoreboard. The contract for the scoreboard installation was awarded by Council on June 6, 2012, and is scheduled to be complete before the fall football season.

The Phase 3 Grape Bowl improvements consist of constructing an Americans with Disabilities Act (ADA) accessible ramp to the south-side upper concourse, ADA seating at the south-side upper concourse, restrooms, concession, ticket booth, landscape, irrigation and related facilities.

The bid opening is scheduled for September 12, 2012. Following Council award of the project, construction is anticipated to begin immediately following the 2012 football season.

It is recommended Council approve plans and specifications and authorize advertisement for bids for the Phase 3 Grape Bowl improvement project.

FISCAL IMPACT: Construction of the Phase 3 improvements will provide additional naming opportunity and advertising revenues that could be used toward the construction of additional improvements at the Grape Bowl.

FUNDING AVAILABLE: Funding will be identified at the time of project award.

F. Wally Sandelin
Public Works Director

Prepared by Charles E. Swimley, Jr., City Engineer/Deputy Public Works Director
FWS/CES/pmf

APPROVED: _____
Konradt Bartlam, City Manager



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Contract for Security Services at Hutchins Street Square Community Center with Lyons Security Service, Inc., of Orange (\$40,000)

MEETING DATE: August 1, 2012

PREPARED BY: Parks, Recreation and Cultural Services Interim Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute contract for security services at Hutchins Street Square Community Center with Lyons Security Service, Inc., of Orange, in the amount of \$40,000.

BACKGROUND INFORMATION: The City needs a contracted security company to monitor events at the Hutchins Street Square Community Center. The City's 2007 agreement with the current security company does not meet the City's revised contract standards.

The City issued a request for proposals for security services in May, and in June received proposals from three companies. Lyons Security Service submitted the best proposal, meeting the City requirements for insurance and offering a highly competitive price of \$17 per guard per hour. In addition, Lyons Security Service's public agency customers in Sacramento County were highly complimentary of its services. Lyons Security Service is a privately held California corporation with more than 30 years of experience. The other proposals submitted were from Windwalker Security Patrol, Inc. at \$15.90 per hour (did not meet the insurance requirements) and American Custom Private Security, Inc. at \$19.50 per hour (higher than selected company).

Security guards protect the premises and patrons, and report suspicious activity to the City's event attendants and/or police. They are used only during events at Hutchins Street Square, and the large majority of their costs are passed through to renters, with the City paying for City-sponsored events.

Guards will monitor the grounds and parking lot, as well as the interior, of Hutchins Street Square during events. The contract with Lyons is for three years, beginning upon execution by the City Manager and expiring July 31, 2015. The contract caps annual fees at \$40,000.

FISCAL IMPACT: The Lyons Security Service proposal reduces the City's security charge by \$1 per hour over the existing service provider. Net impact is nominal, as most guard costs are passed through to facility renters.

APPROVED: _____
Konradt Bartlam, City Manager

FUNDING AVAILABLE: 347112.7323 (Rentals & Events) and 347113.7323 (Theater).

Jordan Ayers, Deputy City Manager/Internal Services Director

Jeff Hood
Parks, Recreation and Cultural Services Interim Director

JH/dkb; attachments

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on August 2, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and Lyons Security Service, Inc. (hereinafter "CONTRACTOR").

Section 1.2 Purpose

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

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

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

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

Section 2.2 Time For Commencement and Completion of Work

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

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

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be

counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

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

Section 2.4 Staffing

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

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

Section 2.5 Subcontracts

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

Section 2.6 Term

The term of this Agreement commences on August 2, 2012 and terminates upon the completion of the Scope of Services or on August 2, 2015, whichever occurs first.

ARTICLE 3 COMPENSATION

Section 3.1 Compensation

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

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

Section 3.2 Method of Payment

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

Section 3.3 Costs

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

Section 3.4 Auditing

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

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

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

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

Section 4.2 ADA Compliance

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

Section 4.3 Indemnification and Responsibility for Damage

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

Section 4.4 No Personal Liability

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

Section 4.5 Responsibility of CITY

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

Section 4.6 Insurance Requirements for CONTRACTOR

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

Section 4.7 Successors and Assigns

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

Section 4.8 Notices

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

To CITY: City of Lodi
 221 West Pine Street
 P.O. Box 3006
 Lodi, CA 95241-1910
 Attn: Jeff Hood

To CONTRACTOR: Lyons Security Service, Inc.
 2582 N. Santiago Blvd.
 Orange, CA 92687

Section 4.9 Cooperation of CITY

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

Section 4.10 CONTRACTOR is Not an Employee of CITY

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

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated

within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

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

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

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

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

Section 4.15 Captions

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

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.17 Contract Terms Prevail

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

Section 4.18 Severability

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

Section 4.19 Ownership of Documents

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

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

Section 4.20 Authority

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

Section 4.21 Federal Transit Funding Conditions

If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit apply to this contract. In the event of a conflict between the terms of this

contract or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

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

CITY OF LODI, a municipal corporation

ATTEST:

RANDI JOHL
City Clerk

KONRADT BARTLAM, City Manager

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

CONTRACTOR:

By: _____


By: Kathleen Guidice
Name: Kathleen Guidice
Title: President

Attachments:
Exhibit A – Scope of Services
Exhibit B – Fee Proposal
Exhibit C – Insurance Requirements

Funding Source: _____
(Business Unit & Account No.)

Doc ID:

CA:rev.01.2012

A. Scope of Services for Hutchins Street Square Community Center

Contractor's security guards, as required by the City of Lodi at Hutchins Street Square shall act in the best interests of the City as listed below:

1. Guard arrival times are ½ hour before events, except for theatre events which arrival time is 1 hour before event. Guards are expected to display a professional image and manner at all times while on duty. Consistent with this is the expectation that guards will be alert to their surroundings at all times while on duty and will not be engaged in any activities that distract them (i.e. reading, eating, smoking, etc.) from the performance of their assigned duties. The guards are expected to remain onsite during meal breaks or be relieved by another guard during his or her meal break. Breaks shall be reported to HSS event attendant prior to onset. Eating and smoking shall occur in designated areas only.
2. Security guards, as required by the CITY, are to act in the best interests of the CITY to protect its patrons, contract employees, facilities, vehicles and guests. The security guards shall be present to monitor persons and activities in and around the designated facilities to ensure a safe environment for all individuals. The guard(s) will be required to act on behalf of the City of Lodi in an efficient, courteous, and professional manner at all times, to monitor and notify the event attendant on duty of improper or destructive behavior, and to insist that appropriate behavior prevail. Security personnel powers of arrest are no greater than that of a private citizen. The security company shall assume full liability for any of their employees in the exercising of any police authority. When necessary, the proper police authority shall be summoned. Security personnel, shall use no force unless absolutely necessary for self-defense. Security personnel shall always be cooperative with authorized emergency personnel, by providing assistance, while not interfering in the performance of their duties.
3. Hutchins Street Square will be patrolled on foot. The guard(s) will be required to perform security sweeps of the parking lots and perimeters of Hutchins Street Square Community Center as directed for the event. In addition to the security sweeps, upon arrival to Hutchins Street Square Community Center, the guard(s) will report for check in with the event attendant for site placement, depending on events requirements.
4. Guards shall make available, at any time while on duty, their security guard cards. Guards shall be expected to present cards to members of the Lodi Police Department or designated City of Lodi employees on

demand. Failure to produce a valid security guard card shall be grounds for termination of the contract.

5. All guards must be neat, clean and properly uniformed and have a clear command of the English language. The security guards must possess and exercise strong personal interactive skills in dealing with the HSS Event Staff and the public. Uniforms shall not be similar to those of the Lodi Police Department. All shirts shall be tucked in. Head covers, if worn, shall be a part of the uniform. Service provider will provide photo identification badges for all security guards assigned to work at HSS facilities.
6. All guards will be equipped with City issued radios or phones capable of communicating with other guards and their dispatch site. In addition to the radios, guards must have a cellular phone for communication with Lodi Police or other departments/individuals provided by the service provider. No personal media players will be allowed to be used by any security personnel while on duty.
7. Security guards shall arrive at Hutchins Street Square Community Center properly uniformed, with all necessary equipment to perform job satisfactorily. Additionally, guards shall refrain from socializing with any one group for any period of time unless necessitated as part of their patrol duties. Guards shall refrain from onsite visitors at all times while on duty.
8. Area of security service shall include back of sidewalk encompassed by 4 streets surrounding Hutchins Street Square: Hutchins, Rose, Walnut, and Oak Streets. See Addendum B – Map.
9. Security guards will serve as a visual deterrent to criminal and disruptive behavior for inside and outside the HSS facility.
10. Security guard(s) will patrol all parking lots as required by onsite manager or event attendant.
11. Service provider will contact onsite manager or event attendant immediately on issues that arise during supervision.
12. Security personnel are to follow specific direction of Hutchins Street Square/City of Lodi Staff at all times while on duty at the HSS facility.
13. Security guard(s) will patrol areas as specified by on site manager or event attendant via radio issued by HSS facility staff.
- 14 B. Addendum – Map of HSS facilities.

Rose Street

Auto Shop Building

Basketball Courts

Adult Day Care LMH

Senior Center

Patio

Pool (2nd Floor)

Kirst Hall

Patio

Rolunda

Alumni Plaza
(name bricks and class discs)

Vomitory

Performing Arts Theatre
Amphitheatre

Gallery

RR

Storage

Crete Hall

Lobby

Lobby

Cottage

Pisano

RR

Camp Hutchins

Kitchen

Office

Vomitory

Thomas Theatre
Lodi Arts Commission Office
(2nd Floor)

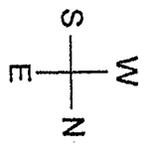
Green Room

Receiving/Storage

Oak Street

Walnut Street

South Hutchins Street



Park and Playground

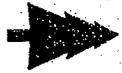


Exhibit B
City of Lodi
Standard Professional Services Agreement
Hutchins Street Square Security Guard Services

Security Officer: \$17.00 per hour
\$27.00 per hour for Holidays

The annual fee is not to exceed \$40,000.00.



Exhibit C

Insurance Requirements for Contractor The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract 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 contract, 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. <u>COMPREHENSIVE GENERAL LIABILITY</u> | 2. <u>COMPREHENSIVE AUTOMOBILE LIABILITY</u> |
| \$2,000,000 Ea. Occurrence | \$1,000,000 - Ea. Occurrence |
| \$4,000,000 Aggregate | |

NOTE: 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.).

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, 95241-1910; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

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

- (a) Additional Named Insured Endorsement
Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional named insureds.
(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)
- (b) Primary Insurance Endorsement
Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.
- (c) Completed Operations Endorsement
A certificate of insurance with a Completed Operations Endorsement, CG 20 37 07 04, will be provided to the City of Lodi during construction and for three years after acceptance.
- (d) Severability of Interest Clause
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (e) Notice of Cancellation or Change in Coverage Endorsement
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

Compensation Insurance The Contractor shall take out and maintain during the life of this contract, 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 contract 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 by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

NOTE: No contract agreement will be signed nor will any work begin on a project until the proper insurance certificate is received by the City.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/19/2012

PRODUCER Venture Pacific Insurance Services, Inc.
27201 Puerta Real, Suite #270
Mission Viejo, CA 92691

www.venturepacificinsurance.com

INSURED Lyons Security Service
2582 N. Santiago Blvd. "B"
Orange CA 92867-1862

APPROVED Risk Management
JUL 19 2012
By: *[Signature]*

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Steadfast Insurance Co	
INSURER B: The Hartford Insurance Company	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	EOL464583801	2/2/2012	2/2/2013	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ Incl GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC AGG \$
	EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under SPECIAL PROVISIONS below	16WBQY5463	10/1/2011	10/1/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

If required by contract, Additional Insured & Primary Wording is included as respects General Liability per attached Endorsements
 Additional Insured : City of Lodi
 Workers' Compensation Waiver of Subrogation is included per attached Endorsement

CERTIFICATE HOLDER

City of Lodi
221 W Pine St
Lodi CA 95240

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ~~NOTIFY~~ MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~BY FIRST CLASS MAIL~~ ~~BY REGISTERED MAIL~~ ~~BY CERTIFIED MAIL~~ ~~BY AIR MAIL~~ ~~BY COURIER~~ ~~BY FAX~~ ~~BY TELEPHONE~~ ~~BY VIDEO~~ ~~BY WEBSITE~~ ~~BY ANY OTHER MEANS~~ ~~BY THE INSURER, ITS AGENT, OR REPRESENTATIVE~~ * 10 Days for Non-Payment of Premium.

AUTHORIZED REPRESENTATIVE

James Barton

James Barton

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – AUTOMATIC – OWNERS, LESSEES OR
CONTRACTORS – BROAD FORM**

This endorsement modifies insurance provided under the:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement.**
- B. The insurance provided to additional insureds applies only to "bodily injury", "property damage" or "personal and advertising injury" covered under Section I, Coverage A, BODILY INJURY AND PROPERTY DAMAGE LIABILITY and Coverage B, PERSONAL AND ADVERTISING INJURY LIABILITY, but only if:**
1. The "bodily injury" or "property damage" results from your negligence; and
 2. The "bodily injury", "property damage" or "personal and advertising injury" results directly from:
 - a. Your ongoing operations; or
 - b. "Your work" completed as included in the "products-completed operations hazard", performed for the additional insured, which is the subject of the written contract or written agreement.
- C. However, regardless of the provisions of paragraphs A. and B. above:**
1. We will not extend any insurance coverage to any additional insured person or organization:
 - a. That is not provided to you in this policy; or
 - b. That is any broader coverage than you are required to provide to the additional insured person or organization in the written contract or written agreement; and
 2. We will not provide Limits of Insurance to any additional insured person or organization that exceed the lower of:
 - a. The Limits of Insurance provided to you in this policy; or
 - b. The Limits of Insurance you are required to provide in the written contract or written agreement.
- D. The insurance provided to the additional insured person or organization does not apply to:**
1. "Bodily injury", "property damage" or "personal and advertising injury" that results solely from negligence of the additional insured; or
 2. Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render any professional architectural, engineering or surveying services including:
 - a. The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - b. Supervisory, inspection, architectural or engineering activities.
- E. The additional insured must see to it that:**
1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim:
 2. We receive written notice of a claim or "suit" as soon as practicable; and

3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured also has rights as an insured or additional insured.

~~F. The insurance provided by this endorsement is primary insurance~~ and we will not seek contribution from any other insurance available to any additional insured person or organization unless the other insurance is provided by a contractor other than you for the same operations and job location. Then we will share with that other insurance by the method described in paragraph 4.c. of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS.**

Any provisions in this Coverage Part not changed by the terms and conditions of this endorsement continue to apply as written.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - CALIFORNIA

*1500216QY54500101 04256

Policy Number: 16WBQY5463

Endorsement Number:

Effective Date: Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address: Lyons Security Service

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2% of the California workers' compensation premium otherwise due on such remuneration.

SCHEDULE

Person or Organization

Job Description

ANY PERSON OR ORGANIZATION FROM WHOM YOU ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT TO OBTAIN THIS WAIVER OF RIGHT FROM US.

ANY PERSON OR ORGANIZATION FROM WHOM YOU ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT TO OBTAIN THIS WAIVER OF RIGHT FROM US.

Countersigned by

ON FILE WITH CARRIER

Authorized Representative

Form WC 04 03 06 Process Date:

(1) Printed in U.S.A.

Policy Expiration Date:



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/19/2012

PRODUCER
 RICH GOEDL - STATE FARM INSURANCE
 904 E IMPERIAL HWY
 BREA, CA 92821

THIS CERTIFICATE IS ISSUED AS MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.



INSURED
 LYONS SECURITY SERVICE
 2582 N SANTIAGO BLVD
 ORANGE, CA 92867-1830

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: State Farm Mutual Auto Insurance Company 25178

25178

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	\$
		<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
		<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				MED EXP (Any one person)	\$
						PERSONAL & ADV INJURY	\$
						GENERAL AGGREGATE	\$
		GENL AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	\$
		<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
		<input type="checkbox"/> ANY AUTO	024 3723-D10-75	04-10-2012	10-10-2012		
		<input type="checkbox"/> ALL OWNED AUTOS	066 9489-B15-75	02-15-2012	08-15-2012		
		<input type="checkbox"/> SCHEDULED AUTOS	066 9492-B15-75	02-15-2012	08-15-2012	BODILY INJURY (Per person)	\$
		<input checked="" type="checkbox"/> HIRED AUTOS	075 9494-B15-75	02-15-2012	08-15-2012		
		<input checked="" type="checkbox"/> NON-OWNED AUTOS	090 0593-C04-75	03-04-2012	09-04-2012	BODILY INJURY (Per accident)	\$
			304 1199-C09-75	03-09-2012	09-09-2012		
			331 3804-D26-75	04-26-2012	10-26-2012	PROPERTY DAMAGE (Per accident)	\$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
						AUTO ONLY: AGG	\$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	\$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
							\$
		<input type="checkbox"/> DEDUCTIBLE					\$
		<input type="checkbox"/> RETENTION \$					\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS	OTH-ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$
						E.L. DISEASE - POLICY LIMIT	\$
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CITY OF LODI
 221 W PIN ST
 LODI, CA 95240

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
 Rich Goedl 7993

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES
AGREEMENT FOR SECURITY SERVICES AT HUTCHINS
STREET SQUARE COMMUNITY CENTER

WHEREAS, the City contracts for security services to monitor events at Hutchins Street Square; and

WHEREAS, the areas monitored include the grounds of Hutchins Street Square, bordered by Rose, Walnut, Hutchins and Oak Streets, the parking lots and the interior of the buildings while scheduled events are taking place; and

WHEREAS, Requests for Proposals were mailed out in May for security services and proposals were received from the following three companies:

Lyons Security Service	\$17.00 per hour (approx. \$40,000 annually)
Windwalker Security Patrol, Inc.	\$15.90 per hour (approx. \$37,000+ annually)*
American Custom Private Security, Inc.	\$19.50 per hour (approx. \$45,000+ annually)

(* Proposal does not meet the insurance requirements)

WHEREAS, City staff requested qualifications from several security firms, and based on qualifications and fees, Lyons Security Service, Inc., of Orange, CA was selected.

NOW, THEREFORE, BE IT RESOLVED, that the Lodi City Council does hereby authorize the City Manager to execute a Professional Services Agreement between the City of Lodi and Lyons Security Services, Inc., of Orange, California to provide security services for Hutchins Street Square Community Center events, in an amount not to exceed \$40,000 annually; and

BE IT FURTHER RESOLVED that the Professional Services Agreement shall be for a period of three years commencing August 1, 2012 through July 31, 2015.

Dated: August 1, 2012

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 1, 2012, by the following vote:

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

RANDI JOHL
City Clerk



TM

CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Agreements with San Joaquin County for Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1

MEETING DATE: August 1, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute agreements with San Joaquin County for Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1.

BACKGROUND INFORMATION: San Joaquin County requires that two agreements be signed by the City and submitted with the annual assessment levy for the Lodi Consolidated Landscape Assessment District No. 2003-1. The Certificate of Assessment Agreement establishes the City's certification that the assessments comply with the requirements of Proposition 218. The Special Assessment Charge Agreement formalizes the County's charge structure for processing the assessments that has been in place for many years. There are no changes to the County's charges.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.

F. Wally Sandelin
Public Works Director

Prepared by Chris Boyer, Assistant Engineer
FWS/CB/pmf
Attachments

APPROVED: _____
Konradt Bartlam, City Manager

CERTIFICATION OF ASSESSMENT

The City of Lodi (the "City") hereby certifies that the special assessment(s), fee(s) or charge(s) listed below to be placed on the 2012-2013 Secured Property Tax bill by the City meets the requirements of Proposition 218 that added Articles XIIC and XIID to the California State Constitution.

The City agrees to defend, indemnify and hold harmless the County of San Joaquin, the Board of Supervisors, the Auditor-Controller, its officers and employees, from litigation over whether the requirements of Proposition 218 were met with respect to such assessment(s), fee(s), or charge(s).

X _____
Konradt Bartlam, City Manager City of Lodi

X  _____
D. Stephen Schwabauer, City Attorney City of Lodi

2012-2013 Special Assessments and/or Fixed Charges

District Name	SJ County Tax Code
Lodi Consolidated LMD No. 2003-1 - Zone 1	73295
Lodi Consolidated LMD No. 2003-1 - Zone 2	73300
Lodi Consolidated LMD No. 2003-1 - Zone 3	73305
Lodi Consolidated LMD No. 2003-1 - Zone 4	73310
Lodi Consolidated LMD No. 2003-1 - Zone 5	73315
Lodi Consolidated LMD No. 2003-1 - Zone 6	73320
Lodi Consolidated LMD No. 2003-1 - Zone 7	73325
Lodi Consolidated LMD No. 2003-1 - Zone 8	73326
Lodi Consolidated LMD No. 2003-1 - Zone 9	73327
Lodi Consolidated LMD No. 2003-1 - Zone 10	73328

District Name	SJ County Tax Code
Lodi Consolidated LMD No. 2003-1 - Zone 11	73329
Lodi Consolidated LMD No. 2003-1 - Zone 12	73330
Lodi Consolidated LMD No. 2003-1 - Zone 13	73302
Lodi Consolidated LMD No. 2003-1 - Zone 14	73306
Lodi Consolidated LMD No. 2003-1 - Zone 15	73307
Lodi Consolidated LMD No. 2003-1 - Zone 16	73308

SAN JOAQUIN COUNTY SPECIAL ASSESSMENT CHARGE AGREEMENT WITH
CITY OF LODI

DATE:

PARTIES: COUNTY: COUNTY OF SAN JOAQUIN
Auditor-Controller
44 North San Joaquin Street
Suite 550
Stockton, CA 95202

AGENCY:
Name: City of Lodi
Address: 221 W. Pine Street
Lodi, CA 95240

AGREEMENT:

The County and the City of Lodi (the "City") agree as follows:

Pursuant to Government Code Section 29304, the City agrees to pay the County one percent (1%) of the assessment amount levied or three dollars (\$3.00) per each assessment on a parcel, whichever is less, for the collection of special assessments or special assessment taxes.

IN WITNESS WHEREOF the parties have executed this agreement the year and date first written above.

COUNTY OF SAN JOAQUIN

CITY OF LODI

By _____
Adrian J. Van Houten
Auditor-Controller

By _____
Konradt Bartlam
City Manager

"COUNTY"

"CITY"

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING CITY MANAGER TO EXECUTE
AGREEMENTS WITH SAN JOAQUIN COUNTY FOR
LODI CONSOLIDATED LANDSCAPE MAINTENANCE
ASSESSMENT DISTRICT NO. 2003-1

=====

WHEREAS, San Joaquin County requires that two agreements be signed by the City and submitted with the annual assessment levy for the Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1; and

WHEREAS, the Certificate of Assessment Agreement establishes the City's certification that the assessments comply with the requirements of Proposition 218, and the Special Assessment Charge Agreement formalizes the County's charge structure for processing the assessments that has been in place for many years, with no changes being made to the County's charges for processing the assessments; and

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute the Certificate of Assessment Agreement and the Special Assessment Charge Agreement with San Joaquin County for the Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1.

Dated: August 1, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 1, 2012, by the following vote:

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

RANDI JOHL
City Clerk



TM

CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Task Order No. 33 with West Yost Associates for Fiscal Year 2012/13 to Provide Regulatory Assistance and Prepare Various Studies Required by the City's Wastewater Discharge Permit (\$199,900)

MEETING DATE: August 1, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute Task Order No. 33 with West Yost Associates for Fiscal Year 2012/13 to provide regulatory assistance and prepare various studies required by the City's wastewater discharge permit in the amount of \$199,900.

BACKGROUND INFORMATION: Within the next few months, the California Central Valley Regional Water Quality Control Board (Board) will issue a new discharge permit for the White Slough Water Pollution Control Facility (WSWPCF). West Yost Associates (WYA) has provided similar regulatory assistance on the last permit and developed the new permit application. On November 16, 2011, Council authorized WYA to prepare the City's Report of Waste Discharge. In a change from previous years, the City has requested the Board issue three separate permits due to significant differences in legal and technical issues associated with the City's operations at the WSWPCF. These three permits are: a National Pollution Discharge Elimination System permit for the City's surface water discharge; a Waste Discharge Requirements and Master Reclamation Permit for the City's reuse activities and land application of industrial collection system flows; and the Waste Discharge Requirements for the City's biosolids land application activities.

With the new permits expected to be issued for public review and comment late in 2012, additional ongoing regulatory assistance is needed. The FY 2012/13 work scope and fee reflected in the attached proposal (Exhibit A) includes the following tasks:

- Project Management
- Permit Adoption Support
- Regulatory Program Management
- Land Application Monitoring and Coordination
- Background Groundwater Analysis
- Toxicity Reduction Evaluation

WYA has furnished the City with a proposal to respond to the permit negotiations and regulatory needs projected for FY 2012/13 for the adoption and implementation of all three of these permits, including assisting City staff in regulatory program management.

The following includes a brief description of the permit-required tasks for this fiscal year; a more detailed description is included in the attached proposal.

APPROVED: _____
Konradt Bartlam, City Manager

Adopt Resolution Authorizing City Manager to Execute Task Order No. 33 with West Yost Associates for Fiscal Year 2012/13 to Provide Permit Assistance and Prepare Various Studies Required by the City's Wastewater Discharge Permit (\$199,900)

August 1, 2012

Page 2

Task 1: Project Management – This task includes ongoing project management-related activities, including general project coordination (\$7,300).

Task 2: Permit Adoption Support – This task provides support to the City in negotiating all three separate permits expected to be adopted. This task includes meetings and coordination efforts with the Board regarding the various permitting issues (\$56,100).

Task 3: Regulatory Program Management – This task includes meetings and coordination efforts with the Board regarding permitting issues. This task also involves guidance related to new regulatory requirements associated with the issuance of the new permits (\$42,700).

Task 4: Land Application Monitoring Coordination – This task includes coordinating development of the City's monthly land application reports and the costs associated with the permit-required agronomist's review and certification (\$46,900).

Task 5: Background Groundwater Quality and Degradation Assessment Study – This permit-required study was completed and submitted to the Board in January 2011. This task, as well as requirements from the Best Practicable Treatment and Control Work Plan, is expected to carry over into the new permit(s), as is ongoing quarterly evaluation of monitoring well data (\$13,500).

Task 6: Toxicity Reduction Evaluation (TRE) – Though not expected, this task is to respond to a Board-required TRE in the event of a toxicity exceedence. TREs are very time sensitive and require an intricate series of steps that are dependent on the outcome of initial findings. If a TRE is not needed, the budget for this item will not be expended (\$33,400).

The estimated cost for the work described above is \$199,900.

FISCAL IMPACT: The studies' monitoring efforts are required in the City's permit and nonperformance would subject the City to significant fines. The costs associated with this work have been included in the wastewater financial model.

FUNDING AVAILABLE: Wastewater Operating Fund (170403) \$199,900

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director



July 13, 2012

Mr. Larry Parlin
Deputy Public Works Director - Utilities
City of Lodi
1331 South Ham Lane
Lodi CA 95242

SUBJECT: Proposal for Engineering Services – Regulatory Services for FY 2012-2013

Dear Mr. Parlin:

West Yost Associates (West Yost) appreciates the opportunity to present to you this letter proposal for engineering services related to ongoing assistance to the City of Lodi (City) in meeting NPDES permitting requirements for the City's White Slough Water Pollution Control Facility (WPCF). The scope of services described in this letter proposal are intended to cover all of the regulatory-related support efforts that are anticipated to be necessary during Fiscal Year 2012-2013 (FY 12/13), which is defined for purposes of this proposal as August 1, 2012 through July 31, 2013.

In FY 12/13, the City will be receiving a new permit from the Central Valley Regional Water Quality Control Board (Regional Board); and, based on recent communications with Regional Board staff, the new permit is expected to be adopted in December 2012. Therefore, in addition to addressing the ongoing regulatory issues, this proposal is intended to cover services related to adoption and implementation of a new permit for the WPCF.

Moreover, City has requested that the Regional Board develop the three separate permits for the WPCF: one as an NPDES permit for the City's surface water discharge, a second as the Waste Discharge Requirements and Master Reclamation Permit for the City's reuse activities and land application of industrial collection system flows, and a third as the Waste Discharge Requirements for the City's biosolids land application activities. This request was made because there are significant differences in the legal and technical issues associated with each of these three different aspects of the City's operations. Therefore, separating the permits in this manner is expected to significantly reduce permitting-related costs in the future. Thus, it is assumed for purposes of this proposal that the West Yost will provide assistance to the City during the adoption process of all three of these permits.

Mr. Larry Parlin

July 13, 2012

Page 2

As with our previous regulatory support services contracts with the City, West Yost will continue to rely on the support from Robertson-Bryan Inc. (RBI), our aquatic resources subconsultant, and Somach Simmons and Dunn (SSD), an environmental law firm that specializes in serving California permittees on NPDES permit issues. However, we also assume that the City staff will continue to complete all of the necessary monitoring needed to achieve the objectives of the tasks outlined in the Scope of Work and that the City will contract directly with a certified laboratory for completing any necessary analytical efforts. Under the Regulatory Program Management task described herein, West Yost will provide support for coordinating any necessary monitoring efforts with other regulatory needs.

PROPOSED TASK LABELING CONVENTION

As you are aware, West Yost has provided engineering services to assist the City with meeting Regional Board permitting requirements for many years. Moreover, West Yost is currently providing permitting assistance for FY11/12 under Task Orders 31 and 32, which the City authorized on July 27, 2011 and January 1, 2012, respectively. Task Order 31 covers a variety of permitting services for the entire fiscal year, whereas Task Order 32 is focused on the preparation of a Report of Waste Discharge (ROWD) to apply for the renewal of the City's Permit.

Task Order 31 and task orders for permitting services from previous fiscal years (dating back to FY 07/08) have maintained a task labeling convention that is consistent with the reporting requirements outlined in the City's current permit. The purpose of this labeling approach has been to provide the City and West Yost with the tools needed to monitor costs associated with each permitting requirement separately over a several year period.

Because a new permit is anticipated in FY 12/13, West Yost is proposing to revise the labeling convention starting in the FY 12/13 task order so that it will be consistent with the new permit. The proposed labeling convention changes that are proposed for FY 12/13 are detailed in Table 1.

Based on our current understanding of the City's regulatory needs, the labeling convention proposed for FY12/13 should be adequate to cover the City's regulatory needs over the 12-month period starting on August 1, 2012. Under future fiscal year task orders, we will build upon the labeling convention used in FY 12/13, as needed, to provide for tasks that cover specific permitting needs over the next 5-year permit cycle.

Finally, in accordance with the Regulatory Program Management task described below, West Yost will develop a projected 5-year schedule and budget for the completing all of the compliance tasks required under the next permit (once it is adopted). As we have during this last permit cycle, West Yost will provide the City with annual updates of the projected costs and actual costs (to date) for each task.

Table 1. Proposed Changes to FY 11/12 Task Labeling Convention

Tasks Provided in Task Order 32	Status	Reason for Proposed Task Status Changes
Task 1. Project Management	Keep	This task addresses overall project management and coordination efforts, and will need to continue to be provided under future Task Orders.
Task 2. State Board Support	Keep, But Rename	This task was originally included in the permitting task orders because the current permit was challenged at the State Board level. It is proposed that this task continue to be included in the task structure, but be renamed to "Permit Adoption Support." Efforts completed under this task will include adoption assistance for the new permit at both the Regional Board and State Board levels (as necessary).
Task 3. SJVAPCD Biosolids Rule Compliance	Delete for Now	This task was developed in a response to the adoption of the San Joaquin Valley Air Pollution Control District (SJVAPCD) Biosolids Operation Rule 4565 in March 2007. This rule requires that biosolids land application sites implement controls for Volatile Organic Carbon (VOC) emissions by incorporating the biosolids into the soil within 24 hours of application. Discussions with SJVAPCD staff held in 2007/2008 indicated that the Biosolids Operation Rule 4565 may not be applicable to the City's operations. Nevertheless, the City has maintained a task budget in each fiscal year task order in the event that additional coordination with SJVAPCD is necessary. At this time, it is not expected that significant compliance effort will be required. Therefore, unless future discussions with SJVAPCD indicate that additional compliance actions are required, assistance related to the SJVAPCD Biosolids Operation Rule 4565 will be provided on an as-needed under Task 4 (Regulatory Program Management).
Task 4. Regulatory Program Management	Keep	This task is intended to cover as-needed assistance related to understanding general regulatory compliance issues and implementing the measures needed to achieve compliance. In addition, this task is intended to cover development of annual status reports and other minor (or unforeseen) reporting requirements identified by the City, the Regional Board, or other parties. Finally, this task provides for preparation and participation in meetings with the City staff, the Regional Board and/or other regulatory parties. This task will need to continue to be provided under future efforts.
Task 5. Land Application Monitoring Coordination	Keep	This task is intended to cover support efforts related to the management of the City's land application system. This task will continue to be provided under future efforts.
Task 6: Compliance Studies	Delete for Now	This task was intended to cover the compliance studies related to new surface water discharge limits under the current permit (i.e. treatment feasibility studies, pollution prevention plans, etc.). In accordance with the ROWD, the City is not expecting any new effluent limitations under the next permit. Therefore, compliance studies under this task are also not expected to be necessary, and it is proposed that this task be eliminated from the task structure at this time. Should additional compliance studies be required under the next permit, future Task Orders may include a separate task for these efforts.
Task 7: Toxicity Reduction Evaluation (TRE)	Keep	The City has maintained a task budget in each fiscal year contract in the event that a TRE is triggered and/or related coordination is necessary. Although it is not expected that a TRE will be triggered in coming years, it is recommended the City continue to carry a nominal budget under this task.
Task 8: Title 22 Report	Delete	The City has completed the Title 22 Report. Although minor modifications are currently being developed, it is not expected at this time that modifications will be necessary after the completion of FY 11/12. Moreover, any minor and related support efforts could be covered under the "Regulatory Program Management" task. Therefore, it is proposed that this task be eliminated from the task structure.
Task 9: Wintertime Irrigation Management Plan	Delete	The City has completed the Wintertime Irrigation Management Plan and it is not expected at this time that additional efforts will be necessary. Therefore, it is proposed that this task be eliminated from the task structure.
Task 10: Temperature Study	Delete for Now	The City has completed the Temperature Study Report. In response to a recent letter from US Fish and Wildlife Services, additional evaluations of potential impacts to Delta Smelt are currently being developed by West Yost's subconsultant, Robertson-Bryan Inc. (RBI). Nevertheless, it is not expected at this time that significant efforts will be necessary after the completion of FY 11/12. Therefore, it is proposed that this task be eliminated from the task structure. Technical support related to Temperature Study issues will be provided, as needed, under the "Permit Adoption Support" and/or "Regulatory Program Management" tasks in the FY 12/13 contract. Should additional temperature studies be required under the next permit, future Task Orders may include a separate task for this effort.
Task 11: Industrial Influent Characterization Study	Delete	The City has completed the Industrial Influent Characterization Study and it is not expected at this time that modifications will be necessary. Therefore, it is proposed that this task be eliminated from the task structure.
Task 12: Pond Freeboard Study	Delete	The City has completed the Pond Freeboard Study and it is not expected at this time that modifications will be necessary. Therefore, it is proposed that this task be eliminated from the task structure.
Task 13: Salinity Evaluation and Minimization Plan	Delete for Now	The City has completed a Salinity Evaluation and Minimization Plan and continues to provide annual reports (due August 1) summarizing the salinity control activities completed in accordance with this Plan. Although annual reporting (or other salinity-related measures) may be required under the next permit, the specific tasks cannot be defined at this time. Therefore, it is proposed that this task be eliminated from the task structure in the FY 12/13 Task Order and salinity-related support efforts be provided under the "Regulatory Program Management" tasks. Should salinity-related studies be required under the next permit, future Task Orders may include a separate task for these efforts.
Task 14: Background Groundwater Analysis	Keep	This task is intended to cover support efforts related to the City's groundwater monitoring program. This task will continue to be provided under future efforts.
Task 15: Effluent Characterization Study	Delete for Now	The City has completed a Salinity Evaluation and Minimization Plan and continues to provide annual reports (due August 1) summarizing the salinity control activities completed in accordance with this Plan. Although annual reporting (or other salinity-related measures) may be required under the next permit, the specific tasks cannot be defined at this time. Therefore, it is proposed that this task be eliminated from the task structure in the FY 12/13 Task Order. Should additional salinity studies be required under the next permit, future Task Orders may include a separate task for these efforts.

SCOPE OF WORK

The following scope of work defines the detailed engineering service tasks related to ongoing assistance to the City in meeting the Permit compliance requirements for the WPCF. These tasks reflect efforts that will be necessary throughout the entire permit cycle and include the following:

- Task 1: Project Management
- Task 2. Permit Adoption Support
- Task 3. Regulatory Program Management
- Task 4. Land Application Monitoring and Coordination
- Task 5. Background Groundwater Analysis
- Task 6. Toxicity Reduction Evaluation

Task 1. Project Management

Task 1 includes project management related activities, including general project coordination. In addition, to ensure continued achievement of consistently high quality work products, and in accordance with the West Yost Quality Assurance/Quality Control (QA/QC) policy, a West Yost staff member at the Principal Engineer level or higher will review significant work products. Under this task, brief descriptions of services performed will be included with monthly invoices.

Deliverables: Monthly invoices and descriptions of services performed will be provided in hard copy.

Task 2. Permit Adoption Support

West Yost previously assisted the City with preparing a Report of Waste Discharge (ROWD) for applying to the Regional Board to renew the Permit. As the Regional Board staff reviews of the ROWD, the Regional Board staff may request meetings, information, and/or other analyses to support the information presented in the Permit application documents. In addition, we anticipate that the City will require support in reviewing the Permit draft(s) and developing the City's comments on the Permit draft(s). Work to support this task may include independently reviewing calculations and proposed effluent limits as presented in the Permit draft(s).

As noted previously, the City has requested that the Regional Board develop three separate permits. The level of effort to support negotiation of three separate permits would not be triple the level of effort required to negotiate one permit, but it is expected that the total level of effort would be greater than that required to support negotiation of a single permit.

For purposes of this proposal, it is also assumed that the City (or other parties) will not contest the adopted Permit(s). However, if a significant issue is identified that results in the City (or other parties) contesting the adoption of the new Permit(s), an adjustment to the scope and fee presented herein may be necessary.

We anticipate, and this task includes, West Yost staff participating in up to six (6) meetings with the City and/or Regional Board staff during review and/or negotiation of the reissued Permit(s). West Yost will coordinate scheduling and provide meeting agendas and minutes for these meetings. At this time it is expected that West Yost support at the Regional Board adoption

hearing will be limited. Should the City decide to present testimony at the hearing, an adjustment to the estimated budget for this task may be required.

As part of negotiating the Permit, West Yost staff may also enlist the assistance of SSD on any legal concerns with the Permit draft(s). In addition, services may be required from RBI, should issues related to the Temperature Study arise during the permit adoption process.

It is difficult to predict the level of effort that will be needed to respond to Regional Board requests and review and respond to the draft Permit(s), and the scope of work under Task 2 will be limited to work that can be completed within the available budget. Given that West Yost and the City have coordinated with Regional Board staff ahead of ROWD development, the permit adoption support efforts are expected to be relatively straightforward. All work will be performed on a time and materials basis, and monthly invoices will detail the efforts and costs. Depending on the level of effort required, a scope and budget amendment may be necessary in the future. Finally, if the estimated fee is not expended in the timeframe anticipated for this scope of services, it may be directed toward the completion of other efforts.

Deliverables: Draft comment documents prepared as mark-ups in Word format. Final comment documents prepared as mark-ups in PDF format. Meeting agenda and minutes for meetings in support of this task.

Task 3. Regulatory Program Management

West Yost anticipates that the City will continue to require ongoing assistance related to understanding general regulatory compliance issues and implementing the measures needed to achieve compliance. In addition, the renewed Permit(s) may include special studies and reporting requirements with which the City may want assistance during FY 12/13. Assistance under this task is anticipated to include one or more of the following items:

1. Working with City staff to understand Permit compliance requirements
2. Developing, maintaining, and updating an implementation schedule for Permit compliance requirements
3. Developing, maintaining, and updating a planning-level implementation budget for Permit compliance requirements
4. Developing presentations for City staff, Council, and/or other consultants outlining the regulatory compliance concerns
5. Reviewing permits and other regulatory guidance documents issued by the Regional Board and State Water Resources Control Board that would be applicable to the WPCF
6. Providing assistance to the City, as needed, for developing responses to Regional Board requests
7. Coordinating efforts between all the studies and other WPCF planning/design-related issues
8. Helping the City to develop monitoring programs, as appropriate
9. Maintaining a database of regularly collected monitoring data

Mr. Larry Parlin

July 13, 2012

Page 6

10. Completing reviews of regularly collected monitoring data to identify potential future regulatory concerns
11. Providing support to the City and the PCP Cannery in addressing food processing waste disposal issues
12. Attending and preparing for meetings to discuss the results of regulatory program management activities
13. Providing minor support related to the following:
 - o SJVACD Biosolids Rule
 - o Title 22 Issues
 - o Temperature Study Needs
 - o Salinity Evaluation and Minimization Plan Updates

Some of the above-listed items may require support from our legal subconsultant, SSD, and, RBI; and small budgets have been assumed and included for these efforts.

In addition, West Yost is currently supporting the City to respond to mercury monitoring and reporting requirements required as part of the Regional Board's mercury Total Maximum Daily Load (TMDL) effort. We understand the City is currently planning to participate in the group effort to implement TMDL requirements. However, the City may require WPCF-specific support during FY 12/13 (such as annual reporting requirements or additional monitoring support). Completion with such efforts would also be covered under this task.

Finally, it will be critical that the City's regulatory compliance efforts are completed in coordination with Regional Board staff and other regulatory authorities. It is imperative that these agencies are in agreement with the study approach and the type and amount of information to be obtained from any given study. Therefore, this task also involves the participation of West Yost staff (and our subconsultants, as needed) in meetings with the appropriate regulatory agency staff. For purposes of this proposal, a total of up to three (3) coordination meetings are anticipated to be required.

The specific work efforts and deliverables under this task cannot reasonably be determined at this time, so the associated fee estimate presented in this letter proposal is based on West Yost's knowledge of the City's current permitting concerns and the scope of work under Task 3 will be limited to work that can be completed within the available budget. All work will be performed on a time and materials basis, and monthly invoices will detail the efforts and costs. Depending on the level of effort required, a scope and budget amendment may be necessary in the future. If the estimated fee is not expended in the timeframe anticipated for this scope of services, it may also be directed toward the completion of other efforts.

Deliverables: Deliverables for this task are dependent on the effort required, which cannot be accurately estimated at this time. Therefore, West Yost will coordinate deliverables for this task with the City staff if and when services under this task are required.

Task 4. Land Application Monitoring Coordination

This task involves providing the following items:

- Review the 2012 land application monitoring data and help with development of the anticipated 2013 Annual Cropping and Irrigation Report and the 2012 Annual Biosolids Application Report
- Develop an updated Land Management Spreadsheet Tool that provides for reliable record-keeping of the following information:
 - Monitoring and reporting requirements under the new permit,
 - Dewatered biosolids applications, and
 - Surface water and groundwater irrigations.
- Review of the monthly land application reports
- Coordination with City staff and tenant farmers on a monthly basis regarding collection of required monitoring data during the late 2012 and early 2013 irrigation seasons. Meetings are expected to occur in August, September, October, and November 2012 and March, May, June, and July 2013).

Deliverables: Administrative Draft and Final 2013 Annual Land Management Report and 2012 Annual Biosolids Application Report. Administrative draft reports will be distributed in PDF format for City review. Up to four (4) bound copies of the revised version of the reports will be distributed to the Regional Board and City staff. Notes from monthly Land Management coordination meetings.

Task 5. Background Groundwater Quality and Degradation Assessment Study

West Yost completed the revised Background Monitoring Well Installation Work Plan (Monitoring Well Work Plan) in May 2008. The Regional Board approved this Work Plan on June 4, 2008. In accordance with the Monitoring Well Work Plan, three “background” monitoring wells were installed in December 2008. A Draft Background Groundwater Quality Characterization Report was submitted on August 1, 2010, and a Final Background Groundwater Quality Characterization Report was developed based on Regional Board comments and submitted January 20, 2011. In addition, the City completed a Best Practicable Treatment and Control (BPTC) Work Plan in December 2012. It is expected that the groundwater monitoring and BPTC program requirements will carry over into the next permit and ongoing quarterly monitoring of the monitoring wells is expected.

West Yost’s efforts during FY 12/13 will include continued Quarterly Monitoring Report support. Specifically, West Yost will develop ongoing statistical analyses of the collected quarterly groundwater data to determine if the water quality in the onsite wells exceeds the background concentrations. Constituents found to exceed background levels will be identified. In addition, West Yost will also develop contour maps using the water level data collected by the City.

Deliverables: Tables and/or charts depicting statistical analyses to be included in the Quarterly Reports (as appropriate). Figures depicting the contour information to be included in the Quarterly Reports.

Task 6. Toxicity Reduction Evaluation

RBI, in association with West Yost, completed the City's Toxicity Reduction Evaluation Work Plan (TRE Work Plan) in January 2008, and approval of the TRE Work Plan was provided by the Regional Board in a letter dated June 26, 2008. Implementing the TRE Work Plan will only be required should the WPCF exceed the TRE trigger outlined in the Permit. This requirement applies to all NPDES permittees. As detailed in the TRE Work Plan, the major items that may need to be included under a Toxicity Reduction Evaluation (TRE) are as follows:

- Whole Effluent Toxicity Testing Bioassay Evaluation
- Information and Data Acquisition
- Facility Operations and Performance Evaluation
- Preparation of a Final TRE Action Plan
- Toxicity Identification Evaluation (TIE)
- Toxicity Source Evaluation and Control
- Preparation of a TRE Report.

The level of effort estimated for FY 12/13 assumes that the City will need to implement some portions of the TRE efforts presented in the TRE Work Plan. However, if the City's monitoring does not demonstrate toxicity in the WPCF effluent, a TRE will not be necessary. If the estimated fee is not expended in the timeframe anticipated for this scope of services, it may be directed toward the completion of other efforts at the City's direction. On the other hand, this task may require additional effort since the amount of services needed to complete a TRE cannot be accurately predicted at this time. The amount of effort needed for key steps in the process, and even the sequential steps in the process itself, are largely dictated by the outcome of the bioassays and the TIE.

For example, the TIE may or may not initially be effective in identifying the constituent causing the toxicity that then needs to be controlled, and initial TIE success can have a significant impact on costs. These outcomes cannot be known at this time. The amount of services needed for facility operations and performance evaluation is also dependent upon the amount of this task completed by City staff, which will likely be dependent on the timing and frequency of the toxicity exceedances. Therefore, the scope of work for this task is limited to the budget allocated in this letter proposal. In the event that a TRE requires services beyond that scoped and budgeted herein, West Yost would, upon request, submit a separate proposal for additional services. The budget also assumes that the City will contract directly with the bioassay laboratory for all TRE bioassay and TIE analytical work.

Finally, because TREs are an intricate series of steps and assessments over time, with the exact nature of activities in latter tasks largely dictated by the outcome and findings in the initial tasks, the proper and efficient TRE management requires extensive technical oversight, coordination, and direction. Therefore, this task provides budget for such services, as well as for miscellaneous services provided during the TRE process that are not specifically covered under other specific TRE items listed above.

Given their expertise, RBI would serve as the technical lead for this work. West Yost will provide support and coordination in completing these efforts. Coordination meetings required in FY 12/13 in support of completing this task will be covered under the Regulatory Program Management task (Task 3) described above.

Deliverables: Deliverables for this task are dependent on the level of effort required, which cannot be accurately estimated at this time. Therefore, West Yost will coordinate deliverables for this task with the City if and when services under this task are required.

PROJECT BUDGET

The total fee for the scope of work described above is estimated to be \$199,900. A summary of the project costs by task is shown in Table 2. West Yost will perform all work on an hourly basis at standard company charge rates and will not exceed the estimated cost without written authorization. If additional budget is required to complete work identified herein, West Yost will request City authorization prior to exceeding the budget.

Table 2. Estimated Fee for FY 12/13 Regulatory Support				
Task	West Yost Fee, Dollars	Subconsultant Fee, Dollars		Total Estimated Fee, Dollars
		RBI	SSD	
Task 1. Project Management	7,300	—	—	7,300
Task 2. Permit Adoption Support	48,400	2,200	5,500	56,100
Task 3. Regulatory Program Management	31,700	5,500	5,500	42,700
Task 4. Land Application Monitoring and Coordination	46,900	—	—	46,900
Task 5. Background Groundwater Analysis	13,500	—	—	13,500
Task 6. Toxicity Reduction Evaluation	5,900	27,500	—	33,400
Totals	153,700	35,200	11,000	199,900

SCHEDULE

Work will begin upon notice to proceed from City, and will be completed by July 31, 2013. A detailed schedule showing all of the Permit compliance activities will be developed following adoption of the reissued Permit and will be maintained afterwards by West Yost throughout the duration of this contract. West Yost and our subconsultants will provide additional services related to the studies needed under the renewed Permit, subject to mutually agreeable adjustments to the scope, authorized budget, and schedule.

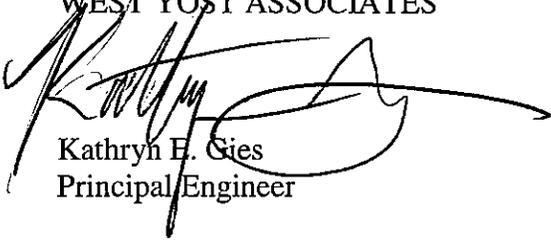
Also related to the schedule, during Permit negotiations, the Regional Board staff may provide only limited time for review of draft permits – typically one week or less for the initial (non-public) draft permit and thirty days for the public draft permit – so availability of West Yost and City staff will need to be coordinated in anticipation of the release of these drafts to ensure adequate time for West Yost’s work and City staff’s input to and review of such work.

Mr. Larry Parlin
July 13, 2012
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West Yost appreciates the opportunity to provide additional permitting services to the City.
Please contact me if you have any questions or need additional information.

Sincerely,

WEST YOST ASSOCIATES

A handwritten signature in black ink, appearing to read 'Kathryn E. Gies', is written over the typed name and title.

Kathryn E. Gies
Principal Engineer

cc: Charlie Swimley, City of Lodi
Kathryn Garcia, City of Lodi

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING CITY MANAGER TO EXECUTE TASK ORDER NO. 33 WITH WEST YOST ASSOCIATES FOR FISCAL YEAR 2012/13 TO PROVIDE REGULATORY ASSISTANCE AND PREPARE VARIOUS STUDIES REQUIRED BY THE CITY'S WASTEWATER DISCHARGE PERMIT

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WHEREAS, within the next few months, the California Central Valley Regional Water Quality Control Board will issue a new discharge permit for the White Slough Water Pollution Control Facility; and

WHEREAS, West Yost Associates (WYA) has provided similar regulatory assistance on the last permit and developed the new permit application; and

WHEREAS, in a change from previous years, the City has requested the Board issue three separate permits due to significant differences in legal and technical issues associated with the City's operations. These three permits are: a National Pollution Discharge Elimination System permit for the City's surface water discharge; a Waste Discharge Requirements and Master Reclamation Permit for the City's reuse activities and land application of industrial collection system flows; and the Waste Discharge Requirements for the City's biosolids land application activities; and

WHEREAS, WYA has furnished the City with a proposal to respond to the permit negotiations and regulatory needs projected for FY 2012/13 for the adoption and implementation of all three of these permits, including assisting City staff in regulatory program management; and

WHEREAS, staff recommends executing a task order with West Yost Associates to provide these services.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute Task Order No. 33 in the amount of \$199,900 with West Yost Associates, of Walnut Creek, California, to provide regulatory assistance and prepare various studies required by the City's wastewater discharge permit.

Dated: August 1, 2012

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I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 1, 2012, by the following vote:

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

RANDI JOHL
City Clerk



TM

CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Task Order No. 24 with Treadwell & Rollo, of Oakland (\$37,780) and Professional Services Agreement with EcoGreen Hydro Solutions, of Sunnyvale (\$45,340) for Citywide Groundwater Modeling and Analysis and Appropriating Funds (\$100,000)

MEETING DATE: August 1, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute Task Order No. 24 with Treadwell & Rollo, of Oakland, in the amount of \$37,780 and professional services agreement with EcoGreen Hydro Solutions, of Sunnyvale, in the amount of \$45,340 for citywide groundwater modeling and analysis and appropriating funds in the amount of \$100,000.

BACKGROUND INFORMATION: Management of the City's groundwater resources has become increasingly complex and important. In September 2012, the City will start up the surface water treatment plant that will reduce groundwater extraction by 7,000 acre feet per year or more than 40 percent below current levels. In addition, the City has been monitoring for many years dibromochloropropane (DBCP), volatile organic carbon compounds (VOC) and tetrachloroethene (PCE) level in the groundwater.

In 2008, Treadwell & Rollo prepared a groundwater flow and contaminant transport model (model) that has been used to predict the movement of VOCs, such as PCE, within the Central Plume Area. In February 2012, the City entered into a professional services agreement with Applied Remedial Technologies to include DBCP water quality data in the model. Results of that work identified three separate DBCP plumes in the northwest, northeast and southern areas of the City. Recently, DBCP was detected above the maximum contaminant level at Wells 6R and 17 indicating migration of DBCP from the northeast and southern plumes, respectively. Work to install GAC treatment at Well 6R is underway; however, Well 17 cannot accommodate GAC treatment due to site constraints and may have to be abandoned.

As the City brings on line the surface water treatment plant, it is appropriate to establish a new strategy for operation of the City's well field that is focused upon optimized coordination with surface water deliveries and the containment and/or treatment of the DBCP and VOC plumes that are present in the groundwater beneath the City.

The services of Treadwell & Rollo and EcoGreen Hydro Solutions (formerly Applied Remedial Technologies) will expand the model to include the Central, Southern, Western and Northern VOC plumes and the three DBCP plumes. The model will be used to simulate the migration of the plumes under various well field pumping scenarios. In addition, the model will be used to optimize locations for proposed monitoring wells in the Northern, Southern, and Western plume areas.

APPROVED: _____
Konradt Bartlam, City Manager

Adopt Resolution Authorizing City Manager to Execute Task Order No. 24 with Treadwell & Rollo, of Oakland (\$37,780) and Professional Services Agreement with EcoGreen Hydro Solutions, of Sunnyvale (\$45,340) for Citywide Groundwater Modeling and Analysis and Appropriating Funds (\$100,000)
August 1, 2012
Page 2

Copies of the Treadwell & Rollo Task Order No. 24 and the professional services agreement with EcoGreen Hydro Solutions are provided in Exhibit 1. Staff recommends approval and the appropriation of \$100,000.

FISCAL IMPACT: Potential long-term reduction in groundwater treatment costs.

FUNDING AVAILABLE: Requested Appropriation: PCE/TCE Rates (185) – \$100,000

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

FWS/pmf

Attachment



5 July 2012

Mr. Wally Sandelin
Director - City of Lodi Public Works Department
P.O. Box 3006
Lodi, CA 95241-1910

Subject: Proposed Scope of Work for Evaluating Monitoring Well Locations
Task Order 24
City of Lodi, California

As requested by the City of Lodi (City) in a meeting on April 17, 2012, Treadwell & Rollo (T&R) has prepared the following Scope of Work (SOW) to simulate the migration of the volatile organic compound (VOC) groundwater plumes and determine the location and screening intervals of the planned monitoring wells for evaluating the extent and depth of the Southern and Western VOC groundwater plumes. We are also recommending adding the Northern plume to this effort as the City has begun to assess the monitoring program for this plume. T&R proposes to use the modified City of Lodi transient groundwater flow and contaminant transport model (Model) to meet the objectives of this SOW.

Five VOC plumes have been identified impacting the groundwater beneath the City limits. The Central Plume is currently undergoing source area remediation. A second plume, referred to as the Busy Bee plume, is being remediated by the responsible party and is reportedly nearing closure. The lateral and vertical extents of the three remaining plumes (the Northern, Western, and Southern plumes) are currently being evaluated. Recent water quality data collected by the City has indicated that City Wells 12 and 18 are being impacted by the migration of the Western and/or Southern VOC plumes.

The steady state groundwater flow model previously developed by T&R simulated groundwater and contaminant flow beneath the City of Lodi, and provided data to evaluate remedial alternatives for the Central Plume and design the Central Plume source area groundwater extraction and treatment system. ART modified the steady state model to a transient state model to help evaluate the impacts of the City supply wells on plume migration and also for optimizing the City water supply well field. As part of attaining the overall groundwater management objective during the optimization of the City supply well field, the migration of the VOC plumes needs to be evaluated under a transient environment. T&R proposes to use the transient model to perform the following tasks:

- Calibrate and simulate the migration of the Central, Southern, and Western Plumes using the modified transient Model;
- Simulate the migration of the Northern Plume using the modified transient Model
- Evaluate the impact of variations in City supply well extraction rates on the migration of the VOC plumes; and,
- Optimize locations for the proposed monitoring wells for the Northern, Southern & Western plumes

The modeling activities will be performed using the graphical interface modeling platform Groundwater Modeling System (GMS™). The groundwater flow simulations will be performed using MODFLOW2000, the latest version of the U.S. Geological Survey modular finite-difference groundwater flow code.

MT3DMS will be used to simulate the migration of the VOC plumes. The modeling activities will include the following:

- Additional lithologic data and water quality datasets will be incorporated into the Model to update current conditions;
- The Central, Southern & Western plumes will be re-calibrated based on the historical VOC data and using the transient Model;
- Migration of the Central, Northern, Southern & Western plumes will be performed using the transient Model; and,
- Various extraction rates from the City supply wells will be simulated to determine their impacts on the migration of the VOC plumes.

Following the completion of the modeling simulation activities, the proposed monitoring points for the Western, Southern, and Northern VOC plumes will be evaluated to reconfirm their locations and depths. A technical memorandum will be prepared summarizing the results, and results of simulations will be presented graphically for presentation purposes. Following completion of all the modeling activities, a meeting will be conducted with the City staff to discuss and present the model and predictive results. A follow-up meeting with the Water Board is also included.

PROPOSED SCHEDULE

We estimate that the scope of work can be completed within approximately 4 to 6 weeks of receiving approval to proceed. A *Technical Memorandum / Presentation* will be submitted to the City following completion of these activities.

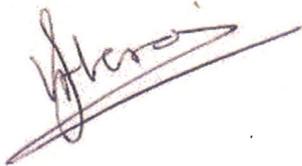
COST SUMMARY

We propose to perform the work on a time-and-expense basis in accordance with terms of the City of Lodi Professional Services Agreement. We have estimated the following costs for Tasks 24a through 24e. The costs of this Scope of Work will not exceed an amount of \$37,780 without your prior authorization.

Tasks	Budget
Task 24a – Transient Simulation of VOC Plumes	\$ 14,140
Task 24b – Sensitivity Analysis	\$ 2,720
Task 24c– Evaluation of Monitoring Point Locations	\$ 2,480
Task 24d – Technical Memorandum / Presentation	\$ 11,240
Task 24e – Meetings (2 meetings)	\$ 7,200
TOTAL ESTIMATED COSTS	\$ 37,780

In summary, the modified transient Model will be used to simulate the migration of the VOC plumes and evaluate the locations and depths of the proposed monitoring points. We appreciate the opportunity to assist the City of Lodi. Please contact Mr. Oberoi at (415) 424-3009 or Mr. Smith at 415-955-5249 if you need any further information.

Sincerely,
Treadwell & Rollo, A Langan Company



Varinder S. Oberoi, PE
Principal Hydrologist



Philip G. Smith, REA II
Executive Vice President

Konradt Bartlam
City Manager

D. Stephen Schwabauer 
City Attorney

Randi Johl
City Clerk

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on _____, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and ECOGREEN HYDRO SOLUTIONS (hereinafter "CONTRACTOR").

Section 1.2 Purpose

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

CITY wishes to enter into an agreement with CONTRACTOR for optimization of the City of Lodi supply well field (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

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

Section 2.2 Time For Commencement and Completion of Work

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

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

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be

counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

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

Section 2.4 Staffing

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

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

Section 2.5 Subcontracts

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

Section 2.6 Term

The term of this Agreement commences on August 1, 2012 and terminates upon the completion of the Scope of Services or on June 30, 2013, whichever occurs first.

ARTICLE 3
COMPENSATION

Section 3.1 Compensation

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

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

Section 3.2 Method of Payment

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

Section 3.3 Costs

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

Section 3.4 Auditing

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

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

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

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

Section 4.2 ADA Compliance

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

Section 4.3 Indemnification and Responsibility for Damage

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

Section 4.4 No Personal Liability

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

Section 4.5 Responsibility of CITY

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

Section 4.6 Insurance Requirements for CONTRACTOR

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

Section 4.7 Successors and Assigns

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

Section 4.8 Notices

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

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

To CONTRACTOR: EcoGreen Hydro Solutions
581 Montego Terrace
Sunnyvale, CA 94089
Attn: Varinder Oberoi

Section 4.9 Cooperation of CITY

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

Section 4.10 CONTRACTOR is Not an Employee of CITY

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

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase.

Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

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

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

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

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

Section 4.15 Captions

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

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.17 Contract Terms Prevail

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

Section 4.18 Severability

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

Section 4.19 Ownership of Documents

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

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

Section 4.20 Authority

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

Section 4.21 Federal Transit Funding Conditions

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

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

CITY OF LODI, a municipal corporation

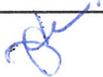
ATTEST:

RANDI JOHL
City Clerk

KONRADT BARTLAM, City Manager

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

CONTRACTOR:

By: _____


By: _____
Name: VARINDER S. OBEROI
Title: Principal Hydrologist

Attachments:
Exhibit A – Scope of Services
Exhibit B – Fee Proposal
Exhibit C – Insurance Requirements

Funding Source: 185124
(Business Unit & Account No.)

EcoGreen Hydro Solutions

Environmental/Hydrology/Civil

June 26, 2012

Charlie Swimley
City of Lodi Public Works Department
P.O. Box 3006
Lodi, CA 95241-1910

Subject: Scope of Work for Optimization of the City of Lodi Supply Well Field, City of Lodi, CA

As requested by the City of Lodi (City), EcoGreen Hydro Solutions, Inc. (EHS) has prepared the following Scope of Work (SOW) to optimize the City of Lodi supply well field as part of the City's efforts to streamline its management of groundwater resources. EHS proposes to use the City groundwater flow and contaminant transport model (Model) originally developed as a steady state model by Treadwell & Rollo (T&R) in 2007 and modified to a transient state model by Applied Remedial Technologies (ART) in 2012 to meet the objectives of the SOW.

BACKGROUND

The City of Lodi Water Utility (Utility) is the sole water purveyor for the City. The Utility's service area is contiguous with the City boundaries, covers approximately 12 square miles, and includes a mix of residential, commercial, and industrial land use. The annual water demand for the City is ~15,000 acre feet per year (AFY) and the projected annual water demands are expected to have increased from current demands by approximately 20 percent to 18,200 AFY in 2035 (*Source - City of Lodi 2010 Urban Water Management Plan*). The City currently uses groundwater as its primary source of supply. In 2003, the City entered into an agreement with Woodbridge Irrigation District (WID) to purchase up to 7,000 AFY of surface water, and a surface water treatment facility (SWTF) is currently under construction to treat the water for distribution. The SWTF is anticipated to be on-line in November 2012.

Water supply from the City's groundwater supply wells is considered to be very consistent. However, the groundwater basin underlying the City is in overdraft, and groundwater levels are decreasing by approximately 0.39 feet per year. Additionally, historical and recent groundwater quality data collected from the City supply wells have indicated the presence of contaminants in the City supply wells.

Dibromochloropropane (DBCP) has historically been identified above the MCL of 0.20 µg/L in City supply wells 8, 12, 16, 18, 19, 20, 22, and 23 that are located in the southern part of the City (south of Kettleman), City supply wells 13 and 14 that are along the western edge of the City, and in City supply wells 1R and 4R along the eastern edge of the City (east of Hwy 99). However, water quality data from 2011 has indicated that DBCP plume has migrated towards City supply wells 6R, 17, and 28. City supply wells 16, 18, 20, 22, and 23 are equipped with well head granular activated carbon (GAC) treatment systems to remove DBCP from groundwater prior to incorporating it to the City groundwater supply. A recent evaluation of the DBCP plume migration using the transient Model indicated the following –

- The DBCP plume could be separated into three separate areas – the Northwest, Northeast, and Southern plume areas, with each area possibly being impacted by residual DBCP sources in Shallow or Intermediate Zones (< 100 ft-bgs)
- The presence of DBCP in City supply well 6R could be attributed to migration of the DBCP plume located Northeast of well 6R at City supply wells 1R and 4R (Northeast DBCP plume)
- The presence of DBCP in City supply well 17 could be attributed to the migration of the southern DBCP plume due to pumping from City supply well 17 and/or migration of a residual DBCP plume that may be prevalent west/northwest of City supply well 17 (Northwest DBCP plume).

This residual Northwest DBCP plume may have also been the source for DBCP concentrations observed previously in City supply wells 13 and 14. However, the extent of the DBCP plume in this area is unknown.

- The current pumping rate in City supply well 17 controls the migration of the northwest and southern DBCP plumes towards it, and also prevents the migration of the DBCP plume towards City supply wells north of it (City supply wells 9 and 13)

Five groundwater contaminant plumes, comprising primarily of volatile organic compounds (VOCs) like tetrachloroethene (PCE) and trichloroethylene (TCE), have also been identified impacting the groundwater beneath the City limits. One of these plumes, the Central Plume, is currently undergoing source area remediation. A second plume, referred to as the Busy Bee plume, is being remediated by the responsible party, and is reportedly nearing closure. Recent water quality data collected by the City has indicated that City supply wells 12 and 18 are being impacted by the migration of the Western and/or Southern VOC plumes. As part of its efforts for evaluating the extents of the three remaining plumes (the Northern, Western, and Southern plumes), the City is currently in the process of applying the transient Model to simulate the migration of the VOC groundwater plumes and determine the location and screening intervals of the planned monitoring wells for evaluating the extents of these VOC plumes.

The City is currently looking to optimize its supply well field following the startup of the SWTF such that it satisfies the City's needs for protection of its groundwater resources by limiting the overdraft of the groundwater basin underlying the City. Additionally, the City wants to optimize the pumping from the supply wells such that it impedes the migration of the contaminant plumes to additional City supply wells (City supply well 13 and City supply wells south of well 12 for the DBCP and VOC plumes, respectively). The following sections outline EHS's technical approach and the Scope of Work for optimizing the City supply well field and attaining the groundwater management objectives of the City.

TECHNICAL APPROACH

Efficient aquifer management strategies involves the prediction of groundwater movement and contaminant transport using numerical simulation models by linking groundwater flow modeling with numerical optimization techniques. A groundwater optimization model can hence be used as a tool to design optimal groundwater management and plume stabilization systems as defined by quantitative performance measures.

The City is currently in the process of providing 7000 AF of treated surface water to its residents from November 1 following the startup of the SWTP. Prior to that, the City has to determine the extraction rates of its water supply wells such that there is no disruption in the supply of water to its residents. Additionally, the City also wants to ensure that any change to the extraction rates of its water supply wells does not impact the migration or hydraulic containment of the DBCP and VOC plumes that are present in the groundwater beneath the City.

As part of our technical approach in attaining the overall groundwater management objective of the City, EHS proposes the following –

1. Apply the existing transient Model to optimize the pumping rates of the City supply wells following the startup of the SWTP. The optimization of the City supply wells extraction rates will also ensure that hydraulic containment and stabilization of the DBCP and VOC plumes is maintained following the startup of the SWTP.
2. Evaluate and recommend the appropriate methodology to estimate the horizontal and vertical extents of the Northwest DBCP plume.

-
3. Perform a feasibility evaluation of groundwater pumping control systems like Variable Frequency Drive (VFD) or level controls that would help determine the most economic method for controlling the extraction of groundwater from the City supply well field.

EHS' will perform the following Tasks as part of our proposed technical approach:

1. **Evaluation of City Supply Well Field**

Prior to the application of the optimization modules, EHS will evaluate the City supply well field to understand the current pumping schedules of the wells and the mechanism that controls the pumping schedule and rates for these supply wells. EHS anticipates a meeting with the City staff to discuss the current day to day working of the City supply well system, including the evaluation of the WaterCAD software used for modeling the City-wide water distribution system and a walk through the City's supply well center. This will be useful for the allocation of pumping rates during the optimization simulations for the City supply wells.

2. **Optimization of the City Supply Well Field**

The Model will be updated and modified for the optimization simulations using the graphical interface modeling platform **Groundwater Vistas (GVTM)**. Though other optimization modules, like Brute Force, are available for performing optimization, EHS proposes using the **Groundwater-Management (GWM) Process** to solve the broad range of transient groundwater-management problems by combined use of simulation-and optimization-modeling techniques. EHS will use GWM to optimize the City supply well field by limiting groundwater-level declines and managing groundwater withdrawals, and conjunctively using groundwater and surface-water resources. The groundwater flow simulations will be performed using **MODFLOW2005**, the latest version of the U.S. Geological Survey modular finite-difference groundwater flow code. **MODPATH** will be used to simulate the particle-tracking and capture zones of the supply wells. **MT3DMS** will be used to simulate the migration of the contaminant plumes in determining whether plume stabilization and control has been achieved following the optimization of the City supply well field.

3. **Evaluation of the Extent of Northwest DBCP Plume**

As stated previously, Model simulations of the DBCP plume indicated that the DBCP concentrations observed at City supply well 17 could be attributed to the migration of the DBCP plume from areas south and/or west/northwest of City supply well 17, and also to the presence of the remnants of a DBCP source in the Shallow and Intermediate zones (<100 feet below ground surface [ft-bgs]). Furthermore, the rate of pumping from City supply well 17 significantly impacted the migration of the DBCP plume within its vicinity. It is our understanding that the City is looking at provisions to prevent the migration of the DBCP plume towards City supply well 17 and/or other City supply wells 9, 13, and 14, which are located north of City supply well 17. However, the City does not have any definition the DBCP plume extent in the vicinity of City supply well 17.

EHS suggests that we first evaluate the extent of the Northwest DBCP Plume prior to outlining a definitive approach for preventing the migration of DBCP to City supply well 17 or areas north of City supply well 17. EHS proposes to do this by first evaluating the different approaches like sampling of domestic/Ag wells that are located west/northwest of City supply well 17, discrete depth sampling in City supply wells 17 and/or 20 to determine the impacted intervals/zones within the subsurface formations, and installation of a multi-screened monitoring well to sample the groundwater at specific depths.

4. Feasibility Evaluation of Groundwater Pumping Control Systems

As part of attaining the overall groundwater management objectives of the city, EHS proposes performing a feasibility evaluation the following options to control / reduce the pumping of groundwater from City supply wells:

1. Throttling of the discharge control valve or a by-pass valve
2. Turn on and off the groundwater pumping system or use of similar techniques, for e.g. installation of hi-lo levels controls in the City supply wells
3. Installation of Variable Frequency Drive (VFD) to the groundwater pumping system

Results of this feasibility evaluation will provide the City with the most cost effective and technically feasible option to control groundwater pumping from the City supply wells following optimization of the City supply well field.

5. Technical Memorandum

Following completion of the Proposal activities, a technical memorandum will be prepared summarizing the results and our recommendations for optimizing the City supply well field. The Memo will at a minimum include the following deliverables –

- Results of the optimization simulations including a schedule outlining the pumping rates for the City supply wells following the startup of the SWTP
- Different approaches for determining the extent of the Northwest DBCP plume
- Cost-benefit analysis of VFDs with time frame of ROI (return of investment) and a procurement list of the VFD equipment

6. Meetings

Prior to start of the optimization activities, an initial meeting will be held with the City staff to discuss all pertinent issues related to the Project. Following completion of the Proposal activities, a meeting will be conducted with the City staff to discuss and present the predictive results.

PROPOSED SCHEDULE

EHS estimates that the scope of work can be completed within approximately 8 weeks of receiving approval to proceed. A *Technical Memorandum* will be submitted to the City following completion of the SOW activities. However, the schedule could be modified as needed to accommodate delays that are triggered by circumstances outside the influence of EHS.

COST SUMMARY

We propose to perform the work on a time-and-expense basis in accordance with terms of the City of Lodi Professional Services Agreement. We have estimated the following costs for Tasks 1 through 5. Additionally, the costs of this Scope of Work will not exceed an amount of \$ 50,000.

Task 1 – Evaluation of City Supply Wells	\$ 2,640
Task 2 – Simulation & Optimization of the City Well Field	\$ 22,340
Task 3 – Evaluation of NW DBCP Plume	\$ 3,120
Task 4 – Feasibility Evaluation of Groundwater Pumping Control Systems	\$ 6,240
Task 5 – Technical Memorandum	\$ 8,240
Task 6 – Meetings (3 meetings)	\$ 2,760
TOTAL ESTIMATED COSTS	\$ 45,340

In summary, the optimization of the City supply well field will allow the City to effectively manage its groundwater resources as well as attain stabilization of its DBCP and VOC plumes. We appreciate the opportunity to assist the City of Lodi in attaining their groundwater objectives. Please contact me at (415) 424-3009 if you need any further information.

Sincerely,

ECOGREEN HYDRO SOLUTIONS, INC.



Varinder S. Oberoi, PE
Principal Hydrologist

COST ESTIMATE FOR OPTIMIZATION OF CITY WELL FIELD			
CITY OF LODI			
TASK/CATEGORY	Rate	Proposed Costs	
		Units	Cost
Task 1	EVALUATION OF CITY SUPPLY WELLS		
<i>LABOR</i>			
Engineer	110.00	12	1,320.00
Modeler / Hydrogeologist	110.00	12	1,320.00
GIS / AUTOCAD Specialist	90.00		
Staff / Technician	75.00		
SUBTOTAL - Task 1			2,640.00
Task 2	SIMULATION & OPTIMIZATION OF CITY WELL FIELD		
<i>LABOR</i>			
Principal	120.00	12	1,440.00
Modeler / Hydrogeologist	110.00	190	20,900.00
GIS / AUTOCAD Specialist	90.00		
Staff / Technician	75.00		
SUBTOTAL - Task 2			22,340.00
Task 3	EVALAUTION OF MIGRATION OF NW DBCP PLUME		
<i>LABOR</i>			
Principal	120.00	4	480.00
Modeler / Hydrogeologist	110.00	24	2,640.00
GIS / AUTOCAD Specialist	90.00		
Staff / Technician	75.00		
SUBTOTAL - Task 3			3,120.00
Task 4	FEASIBILITY EVALUATION OF GROUNDWATER PUMPING CONTROL SYSTEMS		
<i>LABOR</i>			
Principal	120.00	8	960.00
Senior Engineer	110.00	48	5,280.00
GIS / AUTOCAD Specialist	90.00		
Staff / Technician	75.00		
SUBTOTAL - Task 4			6,240.00
Task 5	TECHNICAL REPORT		
<i>LABOR</i>			
Principal	120.00	20	2,400.00
Modeler / Hydrogeologist / Engineer	110.00	40	4,400.00
GIS / AUTOCAD Specialist	90.00	16	1,440.00
Staff / Technician	75.00		
SUBTOTAL - Task 5			8,240.00
Task 6	MEETINGS (2 Nos.)		
<i>LABOR</i>			
Principal	120.00	12	1,440.00
Modeler / Hydrogeologist	110.00	12	1,320.00
GIS / AUTOCAD Specialist	90.00		
Staff / Technician	75.00		
SUBTOTAL - Task 6			2,760.00
TOTAL			45,340.00

NOTE

1. Task 2 also represents the simulation of the DBCP and VOC plumes following optimization of the City well supply



Insurance Requirements for Contractor The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract 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 contract, 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. <u>COMPREHENSIVE GENERAL LIABILITY</u>
\$1,000,000 Ea. Occurrence
\$2,000,000 Aggregate | 2. <u>COMPREHENSIVE AUTOMOBILE LIABILITY</u>
\$1,000,000 - Ea. Occurrence |
| 3. <u>PROFESSIONAL LIABILITY / ERRORS AND OMISSIONS</u>
\$1,000,000 Ea. Occurrence | |

NOTE: 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.).

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, 95241-1910; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

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

- (a) Additional Named Insured Endorsement
Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional named insureds.
(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)
- (b) Primary Insurance Endorsement
Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.
- (c) 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.
- (d) Severability of Interest Clause
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (e) Notice of Cancellation or Change in Coverage Endorsement
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

Compensation Insurance The Contractor shall take out and maintain during the life of this contract, 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 contract 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 by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

NOTE: No contract agreement will be signed nor will any work begin on a project until the proper insurance certificate is received by the City.

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
CITY MANAGER TO EXECUTE TASK ORDER NO. 24 WITH
TREADWELL & ROLLO AND PROFESSIONAL SERVICE
AGREEMENT WITH ECOGREEN HYDRO SOLUTIONS FOR
CITYWIDE GROUNDWATER MODELING AND ANALYSIS, AND
FURTHER APPROPRIATING FUNDS

=====

WHEREAS, management of the City’s groundwater resources has become increasingly complex and important, and in September 2012, the City will start up the surface water treatment plant that will reduce groundwater extraction by 7,000 acre feet per year or more than 40 percent below current levels; and

WHEREAS, in 2008, Treadwell & Rollo prepared a groundwater flow and contaminant transport model (model) that has been used to predict the movement of volatile organic compounds (VOC), such as PCE, within the Central Plume Area; and in February 2012, the City entered into a professional services agreement with Applied Remedial Technologies to include DBCP water quality data in the model. Results of that work identified three separate DBCP plumes in the northwest, northeast and southern areas of the City; and

WHEREAS, as the City brings on line the surface water treatment plant, it is appropriate to establish a new strategy for operation of the City’s well field that is focused upon optimized coordination with surface water deliveries and the containment and/or treatment of the DBCP and VOC plumes that are present in the groundwater beneath the City; and

WHEREAS, the services of Treadwell & Rollo and EcoGreen Hydro Solutions (formerly Applied Remedial Technologies) will expand the model to include the Central, Southern, Western and Northern VOC plumes and the three DBCP plumes. The model will be used to simulate the migration of the plumes under various well field pumping scenarios and to optimize locations for monitoring wells in the Northern, Southern, and Western plume areas.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute Task Order No. 24 in the amount of \$37,780 with Treadwell & Rollo, of Oakland, California, and a Professional Services Agreement in the amount of \$45,340 with EcoGreen Hydro Solutions, of Sunnyvale, California, for citywide groundwater modeling and analysis; and

BE IT FURTHER RESOLVED that funds in the amount of \$100,000 be appropriated from the PCE/TCE Rates Fund.

Dated: August 1, 2012

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I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 1, 2012, by the following vote:

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

RANDI JOHL
City Clerk



TM

CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Amendment No. 1 to Task Order No. 4 of Master Professional Services Agreement (\$163,712) with RMC Water and Environment, of Walnut Creek, for Water Meter Program Phase 2 Construction Administration and Appropriating Funds (\$164,000)

MEETING DATE: August 1, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute Amendment No. 1 to Task Order No. 4 of master professional services agreement in the amount of \$163,712 with RMC Water and Environment, of Walnut Creek, for Water Meter Program Phase 2 construction administration and appropriating funds in the amount of \$164,000.

BACKGROUND INFORMATION: On March 7, 2012, City Council approved Task Order No. 4 to the master professional services agreement with RMC Water and Environment (RMC) for construction administration of the Phase 2 construction project that includes the installation of 26,350 feet of pipe and 2,111 residential water meters.

Amendment No. 1 to Task Order No. 4 will substantially increase the construction inspection and documentation effort as the project proceeds to completion. The amendment will increase the authorized fee from \$416,993 to \$580,705. A copy of the approved scope of work and fee estimate is provided as Exhibit 1 and a copy of the proposed amendment to the scope of work and fee estimate is provided as Exhibit 2.

The approved scope of work and fee was based upon experience obtained during the Phase 1 construction project that included 4,220 feet of pipe and 3,998 residential water meters. The Phase 1 contractor methodically moved block to block, installing pipe and meters. This is unlike the Phase 2 contractor's methods that are geographically scattered over a large area with many meter crews engaged in the various installation stages (main tap, bore hole excavation, directional boring, connection to home service, backfill of excavation, surface restoration, temporary paving and final paving). In order to properly observe the contractor's work, document contract work, document extra work, and adequately deal with customer inquiries, it is necessary to have additional personnel in the field. The estimated cost for Amendment No. 1 is based upon the costs to date projected forward to the end of October, the project completion date.

The additional services included in Amendment No. 1 are summarized below.

Task 1 – The budget hours for responding to contractor requests for information, design clarifications, and changed field conditions is increased by 208 hours, at a cost of \$38,480.

APPROVED: _____
Konradt Bartlam, City Manager

Task 2 – Weekly project coordinating meetings with the City, contractor, and construction manager have been implemented in contrast to the monthly meetings anticipated. The additional cost is \$8,580.

Task 3 – Field observation services have been expanded to include an additional full-time inspector and increased hours for the field interns. A total of 1,351 hours have been added, at an estimated cost of \$151,522.

Task 4 – The scope of work for this task is amended to eliminate a pilot program for computer field tablets to assist in the documentation of the construction activity. The cost is reduced by \$34,870.

The contract specifications cannot direct the contractor in the means and methods for completing the work. In this case, the means and methods require a higher level of staffing and support services than anticipated. In the future, it will continue to be a challenge to estimate the level of effort for construction support and management services prior to the start of the actual contract work.

FISCAL IMPACT: The cost of this amendment is included in the Water Utility Financial Model.

FUNDING AVAILABLE: Requested Appropriation:
Water Fund (181): \$164,000

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

FWS/pmf

Attachments

City of Lodi Water Meter Program
Task Order No. 4
Phase 2 Construction Management Services
Exhibit A - Detailed Scope of Work

The City of Lodi (City) Water Meter Program (WMP) Phase 2 Water Meter Installation and Main Replacement Project consists of the construction/installation of the following:

- Approximately 26,350 lineal feet of water main to replace existing, undersized mains located in backyard easements.
- Approximately 2,111 residential water meters and related water service improvements.

This Scope of Work (SOW) for construction management services associated with the City's WMP Phase 2 project includes four tasks described below for the various work components and the responsible person(s), the applicable work phase and duration for the task, the deliverables, and assumptions used in developing the scope of work and associated level of effort included in the budget. The performance of this SOW by Consultant is for the sole benefit of the City and shall not be relied upon or used by any third party without the express written consent of the City and Consultant.

Basis for Scope and Fee: The basis for the scope and level of effort shown in the budget is a construction contract duration of 210 calendar days (approximately 147 working days or 30 weeks), extending from March to October 2012. It is also assumed for staffing and level of effort estimates that there will be up to three pipeline construction crews for water main installation and up to one meter installation crew. This assumption has dictated assumed staffing for the project, which may need to be adjusted based on the contractor's actual crew deployment during construction.

Task 1 – Engineering Services During Construction (ESDC)

Purpose: The Consultant shall provide engineering services during construction to address review and respond to contractor submittals, prepare record drawings and to provide overall technical support to the City. The ESDC effort will be led by Tom Dugan (Resident Engineer - RE) and supported by the WMP Phase 2 design team of Mike Matson (Senior Reviewer), Kevin Smith (Project Manager), and Victor Alaniz (CAD Production).

Phase/Duration: Entire Contract Period; March - October 2012

Task 1.1 – Submittal Review

Consultant will review contractor submittals for compliance with the Contract Documents. Consultant will process submittals that require the engineer of record's review and approval. Consultant will prepare written submittal review comments for each submittal and provide the City submittal recommendations.

Assumptions:

- The level of effort is limited to the budgeted hours

Deliverables:

- Submittal review written comments and action recommendation (e.g. Make Corrections

Noted) on City standard form.

Task 1.2 – Clarifications and RFI Responses

Consultant will provide technical responses to contractor requests for information (RFIs), technical support to resolve field issues and conflicts and prepare Contract Document Clarifications (CDC) to clarify requirements of the work. Consultant will respond to RFIs and clarification requests as needed or as directed by the RE. Consultant may conduct site visits to gain an understanding of field issues if required.

Assumptions:

- The level of effort is limited to the budgeted hours

Deliverables:

- Written design clarifications and RFI responses to drawings and/or specification using standard RMC forms

Task 1.3 – Record Drawings

Consultant will prepare record drawings from the contractor's as-built WMP Phase 2 drawings.

Assumptions:

- Contractor as-built markups will be of sufficient content and quality for drafting into CAD files

Deliverables:

- Hard Copy: One (1) full size vellum drawing set
- Electronic: One PDF file set of drawings and the specifications, and one set of AutoCAD files

Task 1.4 – Permit Registration Documents (PRD)

Prior to the start of construction activity, the City of Lodi must apply for coverage under the General Construction Storm Water Permit (2009-0009-DWQ). The City will be required to file completed Permit Registration Documents (PRDs) and receive the State Water Resources Control Board (SWRCB) approval by being issued a Waste Discharger Identification number (WDID).). The PRDs, along with SWPPP, will be prepared by the contractor and treated as a submittal. Consultant will support the City in reviewing the completeness and accuracy of the PRDs and SWPPP. The Contractor will serve as the "Data Submitter" and be responsible for uploading the documents to the SMARTS. The City will serve as the Legally Responsible Person (LRP) and will review the Consultant comments prior to the submittal being returned to the contractor.

Assumptions:

- The level of effort is limited to the budgeted hours

Deliverable:

- Consultant shall prepare written submittal review comments on the contractor's PRD, SWPPP, SWPPP amendments, reports, and filings for Notice of Termination (NOT).

Task 2 – Contract Administration

Purpose: The Consultant shall provide construction contract administration services throughout the WMP Phase 2 construction period. Services will include the subtasks described below. Contract administration activities will be led by Tom Dugan (RE) and supported by RMC and Nolte Vertical Five

(NV5) staff.

Phase/Duration: Entire Contract Period; March - October 2012 plus a one month closeout period.

Task 2.1 -Contract Award

The Consultant will support the City as needed during contract award and execution of the contract. Consultant activities during this period may include assisting the City with processing and reviewing the contractor's performance and payment bonds, and insurance certificates for general liability and property damage insurance, and workers' compensation.

Assumptions:

- The level of effort is limited to the budgeted hours

Task 2.2 - Pre-Construction Meeting

The Consultant will organize, prepare for and conduct the pre-construction meeting between the Contractor, Consultant, the City Construction Project Manager (CPM) and other key City staff.

Deliverable:

- Pre-Construction Meeting Agenda and Minutes

Task 2.3 - Monthly Progress Payment

The Consultant will review the Contractor's monthly payment request and recommend an action to the CPM, who will be responsible for approving the Contractor's monthly payment request. As a part of the pay request review process, Consultant will review contractor record drawing markups, monthly construction schedule update, dust control effectiveness and SWPPP implementation and make recommendations for withholding payment if these items are not in conformance with the Contract Documents.

Assumptions:

- Up to seven (7) monthly progress payment requests will be processed.

Deliverable:

- Monthly written pay request comments and recommended City action on City payment request form.

Task 2.4 - Contract Change Orders

The Consultant will be responsible for managing contract change order processing. The Consultant will identify potential contract change orders (PCOs) and coordinate with the CPM and Contractor regarding the PCO. The Consultant and CPM will meet with the Contractor to negotiate changes to the construction contract cost and schedule associated with the PCO. The Consultant will prepare a recommendation for action to the City for resolving the PCO and prepare contract change order documentation for acceptance by the City. Consultant will track all change orders through project acceptance.

The Consultant will review proposed construction change orders involving changes to the design intent. The Consultant ESDC staff will prepare design details, documentation and construction cost estimates as requested for change orders.

Assumptions:

- Up to two change orders will be processed for City approval

City of Lodi
Water Meter Program Task Order No. 4

- Change orders will consist of an aggregation of PCO items consolidated into a single Change Order

Deliverable:

- PCO/CCO tracking log in MS Excel format
- Contract Change Order documentation

Task 2.5 - Schedule Review

The Consultant will review the contractor's initial baseline schedule and subsequent schedule updates. The review will include evaluation of schedule activities, logic, durations, critical path items, incorporation of constraints and requirements, progress of the construction.

Assumptions:

- Up to seven total schedule submittals (initial and updates) will be submitted by contractor

Deliverable:

- Written comments to the Contractor on the baseline and monthly schedule updates

Task 2.6 - Construction Progress Meetings

The Consultant will schedule and conduct monthly construction progress meetings with the CPM and Contractor. The Consultant will also informally meet with the contractor regularly to discuss progress and expected upcoming activity.

Assumptions:

- Up to seven (7) monthly progress meetings will be conducted by Consultant
- Lead inspector time for progress meetings is included in Task 3.1

Deliverable:

- Monthly construction meeting agenda and minutes in .pdf format via email

Task 2.7 - Public Noticing Support

The Consultant will support and oversee noticing tasks required of the Contractor ahead of work in areas of the City. The Consultant will review contractor notices and ensure that the contractor performs noticing as required in the Contract Documents. Consultant will develop and post to the City web page monthly construction fliers informing residents of the construction status and prepare and distribute up to 10 additional supplemental noticing documents. The Contractor will separately prepare and distribute construction notices to residents ahead of commencement of construction work in the affected neighborhood.

Assumptions:

- RE will support contractor and lead inspector efforts in public noticing to the level of effort in the Task 2.9 budget
- Lead inspector time for public noticing support is included in Task 3

Deliverable:

- Construction updates for City webpage posting
- Up to 10 supplemental notices in door hanger format

Task 2.8 - Meter Assembly Procurement Management

The Consultant will assist the City in reviewing the meter assembly manifests and condition of

the meters at time of delivery to the Contractor's warehouse. The Contractor will have ultimate responsibility for scheduling meter assembly deliveries with the meter supplier, and keeping the Consultant and/or City informed of the meter assembly delivery schedule.

Deliverable:

- Reviewed meter assembly manifests

Task 2.9 - Project Closeout

Prior to final acceptance, the CPM, Consultant, and contractor will conduct a site walk and prepare an official punch list of all incomplete contract work items that the contractor must correct. The Consultant will also review the contractor's as-built records and confirm that all contract documents (i.e. warranties and guarantee) are complete and accurate. The Consultant will review the contractor's final pay request and prepare a letter of recommendation that the City accept the Contract work for the project.

Deliverables:

- Punch list of Incomplete Contract work items
- Letter of Recommendation for acceptance the Contract work for the project.

Task 3 – Field Observation Activities

Purpose: The Consultant will provide limited inspection services throughout the construction period. Services will include general field observation and inspection tasks, mainline and meter installation inspection and/or observation, and providing and coordinating specialty inspections and testing for the project. The task lead will be Bill Ballou (Lead Field Inspector).

Phase/Duration: Entire Contract Period; March - October 2012

Task 3.1 - Monitor Field Activity

The Consultant will direct and coordinate field observation services necessary to monitor compliance with the Contract Documents. The Consultant is responsible for directing and documenting field inspections and observations consistent with the requirements of the Contract Documents. The Consultant will document construction activity, record construction progress, and track field changes to main replacement plan and profiles and meter installation plans. The contractor will be responsible for the official as-built markup drawings. Monitoring and coordination activities will include:

- Requesting and have performed special testing/inspection as necessary (e.g. soil backfill and AC pavement compaction, concrete sampling and testing);
- Assigning field staff to areas of construction activity;
- Communicating with field staff to maintain a consistent field observation and inspection practice;
- Tracking time and materials force account work, including verifying proper documentation from contractor;
- Coordinating service shut down and restoration requests with the City MSC staff;
- Checking materials and equipment against qualified products list and submittals and respective certificates of compliance;
- Checking certified laboratory test and field test reports.

The Consultant will coordinate daily with the contractor to assess performance and work

progress. The Contractor is responsible for quality control of its work and full compliance with contract documents; the Consultant is responsible for quality assurance for the Contractor's work. The Consultant will enforce compliance through the use of Advisory Notices and Non-Compliance Notices to the extent provided for in the Contract Documents.

Task 3.2 – Replacement Water Main Installation

The Consultant will be responsible for observing and reporting for the following pipeline installation activities:

- Reviewing the Contractor's activities (means and methods) to ensure performance that meets the requirements of the Contract Documents;
- Verifying that the appropriate and submitted materials are being used in accordance with the manufacturer's recommendation and the Contract Documents;
- Coordinating daily with the Contractor and/or CPM;
- Recording construction activity (Daily Inspection Reports);
- Reviewing Contractor's as-built mark ups at least monthly;
- Witnessing the mainline hydrostatic pressure tests and disinfection in accordance with the Testing and Inspection Summary Table in Task 3.4, including collecting samples for Bac-T testing by City as requested by the contractor and the City;
- Verifying proper installation of 1-inch service "hot taps" on existing and replacement water mains;
- Verifying abandonment of water mains.

The Consultant will complete daily field inspection reports for days when field inspection and observation are performed to document construction and inspection activities.

Task 3.3 – Meter Installation

The Consultant will provide, oversee and direct field intern observer(s) who will be responsible for observation of the meter installations, 1-inch and 2-inch service line installations (mainline to dwelling), and the abandonment of backyard service lines. The Consultant activities may also include:

- Witnessing water meter installations, backyard service abandonments, and 1-inch service "hot taps" to the mainline;
- Documenting meter installation and field condition changes on the Phase 2 in-field meter installation database.
- Preparing daily reports when in the field and tracking field changes to the plans.
- Coordinating amongst the Consultant team regarding the contractor's work sites, activities, and potential contract deviations.

Task 3.4 – Materials Testing

The Consultant will provide the services of a materials testing firm that will be available on-call to perform soil backfill compaction, concrete sampling and compression testing, asphalt concrete compaction, and related sampling and testing. The Consultant will schedule specialty inspections and testing, observe sampling and field tests and review test results. The Testing and Inspection Summary Table below provides an estimated number of tests expected to be performed for the project.

Testing and Inspection Summary Table

Activity	Method	Est. Testing Frequency	Test Description/Notes	Quantity	Specification Reference
Soils Testing					
Trench Section					
Bedding	Cal Test 231; ASTM D7380	Test every 500-lf to achieve a relative density of 90%	Test imported material to verify contractor's submittal	53	Special Provision 6-19; Standard Specification 19-5; Standard Detail 501A & 506
Haunching	Cal Test 231; ASTM D7380	Test every 500-lf to achieve a relative density of 90%	Test imported material to verify contractor's submittal		Special Provision 6-19; Standard Specification 19-5; Standard Detail 501A & 506
Pipe Zone/Final Backfill	Cal Test 231; ASTM D7380	Test every 500-lf to achieve a relative density of 92%	Test imported material to verify contractor's submittal		Special Provision 6-19; Standard Specification 19-5; Standard Detail 501A & 506
Structures and Manholes	Cal Test 231; ASTM D7380	Compaction test around all manhole & structures; R.C. 92%	Test imported material to verify contractor's submittal	10	Special Provision 6-19; Standard Specification 19-5; Standard Detail 501A & 506
Yard Restoration	Cal Test 231; ASTM D7380	Landscaped areas 85% for top 6-inches	No testing anticipated for private yards	0	Special Provision 6-19.05
Subgrade Compaction (Sidewalks/Drive)	Cal Test 231; ASTM D7380	Compaction test: 90% min 8-inch (typ.), 90% 12-inch commercial driveway	No testing anticipated of private property; Minimal testing within Public Right of Way.	5	Special Provision 6-19.05
Concrete Testing					
Curb and Gutter, Sidewalk, Driveway	Cal Test 521; ASTM C39	Conduct slump test (4-inch slump, 3000 psi)	No testing anticipated of private property; Minimal testing within Public R/W to verify mix design performance.	10	Special Provision 6-19.05
AC Testing					
Trench	Cal Test 308, 309	Test AC density every 400lf	Perform Nuclear Gauge Density Test	53	Special Provisions 6-39
Street Patch (Class E)	Cal Test 308, 309	Test AC density upon request	Perform Nuclear Gauge Density Test	20	

Task 3 Assumptions

- The Contractor is responsible for quality control of its work, site safety and site supervision, and meeting the requirements of the Contract Documents.
- The Consultant will not be on site full time and field inspections and observations are limited to the level of effort included in the Task Order budget.

Task 3 Deliverables:

- Chronological daily inspection reports of days in field in .pdf format
- Specialty inspection test reports: Hard copy (1) and .pdf format file
- Advisory Notices and Non-Compliance Notices: pdf format file

Task 4 – Document Control and Management

Purpose: The Consultant will provide document and project management services, including project closeout documentation activities. This task will be led by Tom Dugan (RE). On optional service is included that would develop and implement a protocol to test field tablet computers for field staff data entry.

Phase/Duration: Entire Contract Period; March - November 2012

Task 4.1 – Construction Document Management

The Consultant will maintain a working copy (digital format) of construction documentation and will maintain activity logs. The Consultant will also administer the submittal review process. The Consultant will review the Contractor's submittal schedule for completeness and will provide written comments to the Contractor. The Consultant shall retain copies of all submittal documents and ensure that an accurate file is available for ready retrieval throughout the project.

The following list of documents that will be included in the project construction documentation file:

- Submittals and Shop Drawings
- RFIs and Design Clarifications
- Progress Payment Requests
- Potential Change Orders
- Change Orders
- Pending Claims
- Work Change Directives
- Inspector Daily Reports
- Material Testing Reports
- Construction Meeting Minutes
- General Project Correspondence
- Construction Photos
- Contractor Project Schedule and Updates
- Meter Assembly Manifest and Field Data
- Project Closeout Summary (i.e. Contractor's request for acceptance, warranty and guarantees)

Assumptions:

- Construction documentation will be stored on and made accessible to the City through RMC's FileShare FTP site.
- Consultant will provide FTP site access information (user name and password) to CPM.
- City will be responsible for downloading information and documents for its use.
- City will request that Consultant upload information to the FTP site to maintain content control with Consultant.
- Consultant will utilize a part time intern to enter field data from field staff into the field database

Deliverables:

- Compiled construction documentation organized by type and ordered by serial number or chronologically

Task 4.2 – Conformed Phase 1 and Phase 2 Database

The Consultant shall merge the Phase 2 construction database with the Field Reconnaissance database delivered to the City under Task Order No. 1. The addition of construction records to 2010 field reconnaissance information will provide a valuable source of asset management data to the City. This merging was not completed for Phase 1. The Phase 1 construction database

would be merged as part of this task.

Assumptions:

- City will provide Consultant with up to date list of Assessor Parcel Numbers (APN) in the City. Consultant will merge databases using Assessor Parcel Numbers.
- Consultant will review merged database and, where possible, combine data fields from the different datasets that contain similar information. The objective of this exercise is to make the three datasets comparable to one another in a single database. Extraneous data will be removed from database.
- Consultant will identify APNs that are not rectified throughout the three data sources; however, the Consultant will not rectify datasets.

Deliverables:

- Updated access database file with conformed 2010 field reconnaissance data, Phase 1 construction data and Phase 2 construction data.
- Transmittal TM describing the additions to the database.

Task 4.3 – Project Management and QAQC

The Consultant will perform project management activities, including preparing monthly invoices and Task Order progress reports, coordinating with and reporting to City staff on project progress against the scope, budget and schedule; and managing subconsultant activities and progress. The Consultant shall also implement a quality assurance program for the project and conduct quality control reviews on work products.

Assumptions:

- Management activities over a 7 month construction duration and one month project closeout phase

Deliverables:

- Monthly invoices and progress reports

Task 4.4 – Pilot Program for Testing of Field Tablets for Construction Reporting and Documentation

The Consultant will develop a testing protocol and acquire limited equipment and software to test and evaluate an electronic means of entering construction data, information and documentation. Consultant will work with City staff to develop some basic goals and objectives for field use of tablets on construction projects, including interfacing with the City's existing information systems to upload and download data and documents.

Assumptions:

- The tablet and software expense is limited to the budgeted amount
- The City will provide input on its goals and objectives that will be the basis for the testing protocol
- The extent of protocol development and testing will be limited to the budgeted labor hours
- Use of the tablet will be in addition to the field observation and reporting activities and will not replace them

Deliverable:

- Testing protocol TM with recommendation for tablet and software (.pdf format via email)
- One computer tablet device with installed software and licenses
- Evaluation report summarizing the results of the testing (.pdf format via email)



Fee Estimate

**City of Lodi - Water Meter Program Phase 2
Construction Management Services**

Tasks	RMC Labor								Total Hours	Total Labor Costs (1)	Nolte Labor				Total Hours	Total Labor Costs (2)	Outside Services		ODCs		Total Fee	
	Mike Matson	Tom Dugan	Kevin Smith	Admin	Accounting	Field Intern Observer	Field Intern Observer	Carlos Felix			Victor Alaniz	Bill Ballou	Nolte	Nolte			Neil Anderson, Inc.	Subtotal	Sub Consultant Total Cost (3)	ODCs		Total ODCs (4)
	PIC Tech Support	RE	Design PM	Project Administrator	Project Accountant	Intern 2	Intern 1	IT Support			Utility Engineer	Lead Inspector	Inspector DB Support	CAD			Materials Testing					
<div style="display: flex; justify-content: space-between; margin-bottom: 5px;"> Intern Hourly Wage \$ 20.00 \$ 20.00 OH Burden 150% Profit 10% Total Multiplier 285.0% </div>																						
Task 1: Engineering Services During Construction																						
1.1 Submittal Review	2	16	8						26	\$5,130				0	\$0		\$0	\$0	\$0	\$5,130		
1.2 Clarifications and RFI Responses	2	24	16						42	\$8,170				0	\$0		\$0	\$350	\$385	\$8,555		
1.3 Record Drawings			16						16	\$2,960	32	8		90	\$11,320		\$11,320	\$12,452	\$570	\$16,039		
1.4 Permit Registration Documents		16							16	\$3,120				0	\$0		\$0	\$0	\$0	\$3,120		
Subtotal Task 1:	4	56	40	0	0	0	0	0	100	\$19,380	32	8	0	90	\$11,320	\$0	\$11,320	\$12,452	\$920	\$1,012		
Task 2: Contract Administration																						
2.1 Contract Award		16							16	\$3,120				0	\$0		\$0	\$0	\$0	\$3,120		
2.2 Pre-Construction Meeting		16							16	\$3,120				0	\$0		\$0	\$140	\$154	\$3,274		
2.3 Monthly Progress Payment		28							28	\$5,460				0	\$0		\$0	\$0	\$0	\$5,460		
2.4 Contract Change Orders		24							24	\$4,680				0	\$0		\$0	\$0	\$0	\$4,680		
2.5 Schedule Review		14							14	\$2,730				0	\$0		\$0	\$0	\$0	\$2,730		
2.6 Construction Progress Meetings		28							28	\$5,460				0	\$0		\$0	\$490	\$599	\$5,999		
2.7 Public Noticing Support		30							30	\$5,850				0	\$0		\$0	\$0	\$0	\$5,850		
2.8 Meter Assembly Procurement Management		40							40	\$7,800				0	\$0		\$0	\$0	\$0	\$7,800		
2.9 Project Closeout		32							32	\$6,240		16		16	\$2,240		\$2,240	\$2,464	\$250	\$8,979		
Subtotal Task 2:	0	228	0	0	0	0	0	0	228	\$44,490	0	16	0	0	\$2,240	\$0	\$2,240	\$2,464	\$880	\$47,892		
Task 3: Field Observation Activities																						
3.1 Monitor Field Activity									0	\$0		147		147	\$20,580		\$20,580	\$22,638	\$0	\$22,638		
3.2 Replacement Water Main Installation									0	\$0		588		588	\$82,320		\$82,320	\$90,552	\$5,480	\$86,580		
3.3 Meter Installation									882	\$51,156		147		147	\$20,580		\$20,580	\$22,638	\$3,000	\$77,094		
3.4 Materials Testing	8								8	\$2,120				0	\$0	\$35,000	\$35,000	\$38,500	\$0	\$40,620		
Subtotal Task 3:	8	0	0	0	0	882	0	0	890	\$53,276	0	882	0	882	\$123,480	\$35,000	\$158,480	\$174,328	\$8,480	\$9,328		
Task 4: Document Control Management																						
4.1 Construction Document Management	4	80		40					394	\$36,120				0	\$0		\$0	\$250	\$275	\$36,395		
4.2 Conformed Phase 1 and Phase 2 Database		12	32						44	\$8,260				0	\$0		\$0	\$0	\$0	\$8,260		
4.3 Project Management and QA/QC	4	30		16					74	\$10,950	28			28	\$4,200		\$4,200	\$4,620	\$0	\$15,770		
4.4 Pilot Program for Testing of Field Tablets	4	40	80	24					156	\$27,660		60		60	\$8,400		\$8,400	\$9,240	\$2,000	\$39,100		
Subtotal Task 4:	12	162	112	64	16	0	270	32	665	\$82,990	28	60	0	0	\$8	\$12,800	\$0	\$12,800	\$2,250	\$99,325		
TOTAL	24	448	162	64	16	882	270	32	1888	\$289,106	60	968	0	88	1118	\$149,548	\$38,000	\$184,548	\$293,184	\$13,783		
Full Time Equivalents	2%	38%	13%	5%	1%	75%	23%	3%	160%		5%	82%	0%	8%	95%				3.0%			

- The individual hourly rates include salary, overhead and profit.
- Subcontractors will be billed at actual cost plus 10%.
- Other direct costs (ODCs) such as reproduction, delivery, mileage (rates will be those allowed by current IRS guidelines), and travel expenses, will be billed at actual cost plus 10%.
- RMC reserves the right to adjust its hourly rate structure and ODC markup at the beginning of the calendar year for all ongoing contracts.

City of Lodi Water Meter Program
Task Order No. 4
Phase 2 Construction Management Services
Amendment No. 1
Exhibit A - Detailed Scope of Work

The City of Lodi (City) is implementing the Water Meter Program (WMP) Phase 2 Water Meter Installation and Main Replacement Project construction consisting of:

- Approximately 26,350 lineal feet of water main to replace existing, undersized mains located in backyard easements.
- Approximately 2,111 residential water meters and related water service improvements.

The City authorized Task Order No. 4 to RMC Water and Environment to provide construction management services during the Phase 2 construction project. This Amendment No. 1 to Task Order No. 4 Scope of Work (SOW) addresses additional effort required to manage construction beyond the effort assumed in the original Task Order No. 4. Performance of this SOW by Consultant is for the sole benefit of the City and shall not be relied upon or used by any third party without the express written consent of the City and Consultant. The primary reasons for increasing the level of effort include:

- The approach to construction by the City's contractor has been geographically scattered, requiring field inspector to cover a large area. The completed Phase 1 construction project, used as a model for this project, was done in a methodical block-by-block geographical approach that kept construction activities within a tight radius.
- Additional meter installation crews, including separate preparation and restoration crews, has extended the effective time for each installation, requiring repeated visits by intern field observers to document construction methods and results.
- Community concerns are more than anticipated, primarily due to unknown or conflicting distribution system conditions that have required the City and the RMC Construction Management team to investigate and resolve on a case by case basis.

Basis for Amendment No. 1 Scope and Fee:

The basis for the scope and level of effort shown in the budget is the projection forward, to the end of the construction contract, of the recent level of effort required to manage the City's contractor and their construction schedule and approach to ensure a successful project for the City. The construction contract is expected to continue to the end of October 2012. The additional level of effort included in this Amendment No. 1 includes one additional full time main line pipe inspector (two total) from May through August and additional field intern observer hours through October 2012. This level of effort for field staff is higher than assumed in the original staffing plan for the project.

Task 1 – Engineering Services During Construction (ESDC)

Purpose: The Consultant shall provide engineering services during construction to address review and respond to contractor submittals, prepare record drawings and to provide overall technical support to the City.

City of Lodi
Water Meter Program Amendment No. 1 to Task Order No. 4

Phase/Duration: Entire Contract Period; March - October 2012

Amendment No. 1:

This Amendment No. 1 adds man-hour level of effort required to document, address and respond to a greater number of RFIs from the contractor that were not anticipated in the original Task Order No. 4 scope of work and budget. It is assumed for purposes of establishing this amended budget that most RFIs and submittals have been addressed as of the end of May and that the principal remaining work item under Task 1 is preparation of record drawings.

Task 2 – Contract Administration

Purpose: The Consultant shall provide construction contract administration services throughout the WMP Phase 2 construction period. Services will include the subtasks described below. Contract administration activities will be led by Tom Dugan (RE) and supported by RMC and Nolte Vertical Five (NV5) staff.

Phase/Duration: Entire Contract Period; March - October 2012 plus a one month closeout period.

Amendment No. 1:

This Amendment No. 1 adds man-hour level of effort required for preparing for, conducting and documenting the decisions made during additional regular construction meetings. The original Task Order No. 4 scope and budget were based on monthly meeting frequency. At the City's direction and starting in the first week of May, RMC is now conducting weekly construction meetings.

Task 3 – Field Observation Activities

Purpose: The Consultant will provide limited inspection services throughout the construction period. Services will include general field observation and inspection tasks, mainline and meter installation inspection and/or observation, and providing and coordinating specialty inspections and testing for the project. The task lead will be Bill Ballou (Lead Field Inspector).

Phase/Duration: Entire Contract Period; March - October 2012

Amendment No. 1:

This Amendment No. 1 provides for one additional mainline field inspector and additional hours for field intern observers to cover contractor operations.

The additional mainline field inspector is needed through August 2012 to allow the lead field inspector to more actively coordinate and document contractor claims of extra work due to unexpected utility conflicts, changed conditions, delays, and other reasons. A total of 648 additional main line inspector hours are provided for observation of water main replacement methods and results and documentation thereof from May to the end of August 2012. This second main line inspector was not included in the original Task Order No. 4 scope and budget.

A total of 286 additional hours are also provided for the lead field inspector to increase presence on the water main replacement and meter installation components of the construction project. The lead field inspector will take on additional field responsibilities for discussing contractor concerns relative to field conditions, utility conflicts, potential extra work activities and document these items for review and action by the Resident Engineer. The additional lead field inspector hours will provide full time inspection and documentation of contractor activity through October 2012. The level of effort for mainline field inspectors in the original Task Order No. 4 was a total of 882 hours from March through October 2012.

The total additional mainline field inspector labor is 934 hours.

The field intern observers were originally scoped and budgeted to provide 1,152 labor hours through September 2012 to observe and document meter installation construction methods and results and support documentation of the construction effort. Based on the current approach by the contractor, it is assumed that an additional 428 labor hours are required to observe meter installations by the contractor and to assist in document management and data entry activities.

The level of effort for specialty testing services, consisting of soil compaction testing, asphalt concrete compaction testing and concrete sampling and testing is decreased by 43% to reflect current rate of specialty inspection and testing for the project. The net budget reduction is reallocated to other tasks within the Scope of Work, as amended, to reduce the total Amendment No. 1 cost.

Task 4 – Document Control and Management

Purpose: The Consultant will provide document and project management services, including project closeout documentation activities. This task will be led by Tom Dugan (RE). An optional service is included that would develop and implement a protocol to test field tablet computers for field staff data entry.

Phase/Duration: Entire Contract Period; March - November 2012

Amendment No. 1:

This amendment eliminates subtask 4.2 – Conformed Phase 1 and Phase 2 Database consisting of the conforming of Phase 1 and Phase 2 database into the City’s CIS database. The City will be considering the value of merging the construction data into the field reconnaissance database, which is linked to the City’s Customer Information System database. Should the City elect to proceed with conforming of the construction databases with the field reconnaissance database, RMC will perform this work under existing Task Order No. 1 or a separate authorization. The budget for Subtask 4.2 is reallocated to other tasks within the Scope of Work, primarily creating the data entry forms and database used during Phase 2 construction.

This amendment eliminates the remaining unperformed scope of work under Subtask 4.4 – Pilot Program for Testing of Field Tablets. Approximately \$2,500 has been expended on this subtask through May 2012 in researching available field equipment and software. The remaining budget is reallocated to other tasks within the Scope of Work, as amended, to reduce the total Amendment No. 1 cost.

RMC WATER AND ENVIRONMENT

CITY OF LODI

MICHAEL H. MATSON
Sr. Vice President

KONRADT BARTLAM
City Manager

Date

Date

ATTEST:

RANDI JOHL
City Clerk

APPROVED AS TO FORM:

D. STEPHEN SCHWABAUER
City Attorney 



Fee Estimate

City of Lodi - Water Meter Program Phase 2
Construction Management Services Amendment No. 1

Intern Hourly Wage	OH Burden	Profit	Total Multiplier
\$ 20.00 \$ 20.00	160%	10%	286.0%

Tasks	RMC Labor								Nolte Labor					Outside Services			ODCs		Total Fee		
	Mike Matson	Tom Dugan	Kevin Smith	Admin	Accounting	Field Intern Observer	Field Intern Observer	Carlos Felix	Victor Alaniz	Bill Ballou	Mike Wademan	Nolte	Nolte	Neil Anderson, Inc.	Subtotal	Sub Consultant Total Cost (3)	ODCs	Total ODCs (4)			
	PIC Tech Support	RE	Design PM	Project Administr	Project Accountant	Intern 2	Intern 1	IT Support	Utility Engineer	Lead Inspector	Mainline Inspector	Inspector DB	CAD	Materials Testing							
	\$265	\$195	\$165	\$95	\$110	\$58	\$58	\$125		\$150	\$140	\$140	\$90	\$60							
Task 1: Engineering Services During Construction																					
1.1 Submittal Review								0	\$0						0	\$0		\$0	\$0		
1.2 Clarifications and RFI Responses				208				208	\$38,480						0	\$0		\$0	\$0		
1.3 Record Drawings								0	\$0						0	\$0		\$0	\$0		
1.4 Permit Registration Documents								0	\$0						0	\$0		\$0	\$0		
Subtotal Task 1:	0	0	208	0	0	0	0	208	\$38,480	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$38,480	
Task 2: Contract Administration																					
2.1 Contract Award								0	\$0						0	\$0		\$0	\$0		
2.2 Pre-Construction Meeting								0	\$0						0	\$0		\$0	\$0		
2.3 Monthly Progress Payment								0	\$0						0	\$0		\$0	\$0		
2.4 Contract Change Orders								0	\$0						0	\$0		\$0	\$0		
2.5 Schedule Review								0	\$0						0	\$0		\$0	\$0		
2.6 Construction Progress Meetings (11 Additional)		44						44	\$8,580						0	\$0		\$0	\$0		
2.7 Public Noticing Support								0	\$0						0	\$0		\$0	\$0		
2.8 Meter Assembly Procurement Management								0	\$0						0	\$0		\$0	\$0		
2.9 Project Closeout								0	\$0						0	\$0		\$0	\$0		
Subtotal Task 2:	0	44	0	0	0	0	0	44	\$8,580	0	0	0	0	0	\$0	\$0	\$0	\$0	\$0	\$8,580	
Task 3: Field Observation Activities																					
3.1 Monitor Field Activity								0	\$0						0	\$0		\$0	\$0		
3.2 Replacement Water Main Installation								0	\$0	286	648			934	\$130,760		\$130,760	\$143,836			
3.3 Meter Installation						153	264	417	\$24,186					0	\$0		\$0	\$0			
3.4 Materials Testing								0	\$0					0	\$0	\$ (15,000.00)	-\$15,000	-\$16,500			
Subtotal Task 3:	0	0	0	0	0	153	264	417	\$24,186	0	286	648	0	934	\$130,760	\$ (15,000.00)	\$115,760	\$127,336	\$0	\$0	\$151,522
Task 4: Document Control Management																					
4.1 Construction Document Management		8						8	\$1,560					0	\$0		\$0	\$0			
4.2 Conformed Phase 1 and Phase 2 Database								0	\$0					0	\$0		\$0	\$0			
4.3 Project Management and QA/QC								0	\$0					0	\$0		\$0	\$0			
4.4 Pilot Program for Testing of Field Tablets	-4	-32	-74					-32	-\$24,990	-60				-60	-\$8,400	-\$8,400	-\$9,240	-\$2,000			
Subtotal Task 4:	-4	-24	-74	0	0	0	0	-32	-\$23,430	0	-60	0	0	-60	-\$8,400	\$0	-\$8,400	-\$9,240	-\$2,000	-\$2,200	-\$36,430
TOTAL	-4	20	134	0	0	153	264	-32	\$47,816	0	226	0	0	874	\$122,360	-\$15,000	\$107,360	\$118,096	(\$2,000)	(\$2,200)	\$163,712

- The individual hourly rates include salary, overhead and profit.
- Subconsultants will be billed at actual cost plus 10%.
- Other direct costs (ODCs) such as reproduction, delivery, mileage (rates will be those allowed by current IRS guidelines), and travel expenses, will be billed at actual cost plus 1
- RMC reserves the right to adjust its hourly rate structure and ODC markup at the beginning of the calendar year for all ongoing contracts.

1. AA# _____
 2. JV# _____

**CITY OF LODI
 APPROPRIATION ADJUSTMENT REQUEST**

TO: Internal Services Dept. - Budget Division
 3. FROM: Rebecca Areida-Yadav 5. DATE: 07/09/2012
 4. DEPARTMENT/DIVISION: Public Works

6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW					
	FUND #	BUS. UNIT #	ACCOUNT #	ACCOUNT TITLE	AMOUNT
A. SOURCE OF FINANCING	181		3205	Fund Balance	\$ 164,000.00
B. USE OF FINANCING	181	181465	1825.2150	Water Meter Program Phase 2	\$ 164,000.00

7. REQUEST IS MADE TO FUND THE FOLLOWING PROJECT NOT INCLUDED IN THE CURRENT BUDGET

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.

Amendment to agreement with RMC Water & Environment for the water meter program phase 2 project.

If Council has authorized the appropriation adjustment, complete the following:

Meeting Date: _____ Res No: _____ Attach copy of resolution to this form.

Department Head Signature: Stacey Sander

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. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING CITY MANAGER TO EXECUTE AMENDMENT NO. 1 TO TASK ORDER NO. 4 OF MASTER PROFESSIONAL SERVICES AGREEMENT WITH RMC WATER AND ENVIRONMENT FOR WATER METER PROGRAM PHASE 2 CONSTRUCTION ADMINISTRATION AND FURTHER APPROPRIATING FUNDS

WHEREAS, on March 7, 2012, City Council approved Task Order No. 4 to the master professional services agreement with RMC Water and Environment (RMC) for construction administration of the Phase 2 construction project that includes the installation of 26,350 feet of pipe and 2,111 residential water meters; and

WHEREAS, the Phase 2 construction is geographically scattered over a large area with many meter crews engaged in the various installation stages (main tap, bore hole excavation, directional boring, connection to home service, backfill of excavation, surface restoration, temporary paving and final paving), and it is necessary to have additional personnel in the field in order to properly observe the contractor's work, document contract work, document extra work, and adequately deal with customer inquiries; and

WHEREAS, staff recommends execution of Amendment No. 1 to Task Order No. 4 of the Master Professional Services Agreement with RMC Water and Environment.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute Amendment No. 1 to Task Order No. 4 of Master Professional Services Agreement with RMC Water and Environment, of Walnut Creek, California, for Water Meter Program Phase 2 Construction Administration, in the amount of \$163,712; and

BE IT FURTHER RESOLVED that funds in the amount of \$164,000 be appropriated from the Water Fund.

Dated: August 1, 2012

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 1, 2012, by the following vote:

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

RANDI JOHL
City Clerk



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Change Order with West Coast Arborists, Inc., of Anaheim, for Tree Survey Services (\$7,000) and Appropriating Funds (\$7,000)

MEETING DATE: August 1, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute change order with West Coast Arborists, Inc., of Anaheim, in the amount of \$7,000 and appropriating funds in the amount of \$7,000.

BACKGROUND INFORMATION: This project includes updating the existing tree inventory prepared in 2001 to reflect the size, location, and health of City trees. This information will enable City staff to properly prioritize and budget tree maintenance needs, which minimizes the risk of injury or damage from falling trees and branches. A contract with West Coast Arborists, approved by City Council May 2, 2012, included surveying 9,900 trees located in the public right-of-way, parks and at City facilities. The work is approximately 75 percent complete, however we have discovered there are approximately 4,000 more trees than expected to be surveyed within the City.

To continue the tree survey, a change order is requested by the contractor in the amount of \$7,000. This extends the contract unit price of \$1.75 per tree to the additional 4,000 trees to be surveyed. This will increase the annual contract price to \$26,275. This change order will ensure that all trees located in the public right-of-way, parks and at City facilities are surveyed. The final cost will be determined by the final number of trees surveyed.

FISCAL IMPACT: An updated tree inventory will enable cost-effective management and maintenance of the City's urban forest and will reduce liability associated with falling trees and limbs.

FUNDING AVAILABLE: Requested Appropriation:
Gas Tax Fund (3215036): \$7,000.00

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

Prepared by Kathryn E. Garcia, Compliance Engineer
FWS/KMG/pmf
cc: Deputy Public Works Director – Utilities
Compliance Engineer Attachment

APPROVED: _____
Konradt Bartlam, City Manager



July 16, 2012

City of Lodi
Public Works Department
ATTN: Kathryn Garcia, Compliance Engineer
P.O. Box 3006
Lodi, CA 95241-1910

RE: CITY-WIDE TREE SURVEY 2012

Dear Ms. Garcia,

According to our Inventory Data Collector, Mr. Cal Haupt, he estimates that we are approximately 70%-75% complete with the project, however, there still remains an additional 3,000-4,000 tree sites. The estimated number of trees listed in the bid documents was 9,900 tree sites. As of Friday, July 13, we had already collected 10,433 tree sites.

The purpose of this letter is to respectfully request authorization to continue the project utilizing the unit rate of \$1.75 per tree site. As a result, an additional amount of about \$7,000 will be needed to complete the project.

Should you have any questions or require additional information, please do not hesitate to contact me at (800) 521-3714.

Sincerely,

A handwritten signature in blue ink that reads 'Victor M. Gonzalez'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Victor M. Gonzalez
Vice-President

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING CITY MANAGER TO EXECUTE
CONTRACT CHANGE ORDER WITH WEST COAST
ARBORISTS, INC., FOR TREE SURVEY SERVICES
AND FURTHER APPROPRIATING FUNDS

=====

WHEREAS, as on May 2, 2012, City Council awarded the contract for tree survey services for 2012 to West Coast Arborists, Inc., in the amount of \$19,275; and

WHEREAS, the work is approximately 75% complete and a change order in the amount of \$7,000 is needed in order to complete the survey; and

WHEREAS, staff recommends approval of the contract change order to ensure that all trees located in the public right-of-way, parks and at City facilities are surveyed.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a contract change order to the contract for tree survey services with West Coast Arborists, Inc., of Anaheim, California, in the amount of \$7,000; and

BE IT FURTHER RESOLVED that funds in the amount of \$7,000 be appropriated from the Gas Tax Fund for this project.

Dated: August 1, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 1, 2012, by the following vote:

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

RANDI JOHL
City Clerk



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Adopt Resolution Approving the Amended and Restated Northern California Power Agency Market Purchase Program Agreement and Authorizing Execution by the City Manager

MEETING DATE: August 1, 2012

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution approving the Amended and Restated Northern California Power Agency Market Purchase Program Agreement and authorizing execution by the City Manager.

BACKGROUND INFORMATION: The Market Purchase Program (MPP) Agreement was made effective August 1, 2007, by and among the Northern California Power Agency (NCPA), the City of Lodi and other NCPA Members, to enable NCPA, on behalf of the MPP participants, to engage in contract transactions to purchase power. Since its inception the MPP has operated successfully for Lodi by facilitating execution of these contracts for the benefit of its electric utility customers.

Due to the changes in the wholesale electric market, including new regulatory obligations, Lodi and the other MPP Members have requested NCPA to revise the MPP Agreement to enable NCPA to transact new products that are not available under the current MPP Agreement. To satisfy this request, NCPA, working in coordination with the MPP participants, has developed the Amended and Restated Market Purchase Program Agreement to provide for these new products. The Amended MPP Agreement will enable NCPA to engage in transactions, on behalf of Lodi and others, to purchase and sell energy, resource adequacy capacity, Renewable Energy Certificates (RECs), Green House Gas (GHG) compliance instruments, and physical option products. Through these MPP contract transactions, authorized under the Amended MPP Agreement, Lodi will assure greater rate and budget stability by: (i) reducing the proportion of energy the City needs to acquire in a potentially volatile spot market; (ii) transacting in bundled and unbundled RECs to manage the Lodi's renewable energy portfolio as mandated by the State of California; (iii) satisfying resource adequacy per California Independent System Operator mandate in a more efficient manner; and (iv) satisfying GHG emission compliance obligations per State of California mandate.

The Amended MPP Agreement specifies the terms and conditions under which NCPA will perform such services, including, but not limited to, NCPA's and the City of Lodi's obligations regarding transaction process, transaction authorization, and financial requirements. The Amended MPP Agreement also includes various provisions related to the Lodi's financial obligations, including Security Deposit requirements. A summary of the proposed revisions that are incorporated in the Amended MPP Agreement is attached to this staff report as Attachment A for your reference. The Amended MPP Agreement is also attached to this staff as Attachment B for your reference.

APPROVED: _____
Konradt Bartlam, City Manager

All transactions made under the Amended MPP Agreement will be approved by Lodi's Risk Oversight Committee in accordance with Resolution 2012-34 (City of Lodi Risk Management and Compliance Program, approved April 4, 2012), prior to their execution.

FISCAL IMPACT: No additional funding is required.

FUNDING AVAILABLE: Not applicable.

Elizabeth A. Kirkley
Electric Utility Director

PREPARED BY: Matt Foskett Consulting LLC

EAK/MFC/lst

AMENDED AND RESTATED
MARKET PURCHASE PROGRAM AGREEMENT

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This AMENDED AND RESTATED MARKET PURCHASE PROGRAM AGREEMENT (“the Agreement”) is made effective as of _____ (“the **Effective Date**”), by and among the Northern California Power Agency, a joint powers agency of the State of California (“**NCPA**”) and those of its Members who execute this Agreement (“**Participants**”). NCPA and the Participants are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

A. NCPA and the Participants desire to amend the Market Purchase Program Agreement made effective August 1, 2007, by and among NCPA and the Market Purchase Program Participants, to enable NCPA, on behalf of the Participants, to engage in Contract Transactions to purchase and sell Energy, Resource Adequacy Capacity, RECs, GHG Compliance Instruments and Physical Option Products, for the benefit of the Participants’ customers.

B. This Agreement is made to amend the Market Purchase Program Agreement, and to enable NCPA to transact in Approved Products identified in the Energy Risk and Counterparty Risk Management Regulations, on behalf of the Participants in accordance with the terms and conditions contained herein.

C. The Participants, through Contract Transactions authorized by this Agreement, seek to assure greater rate and budget stability by: (i) reducing the proportion of Energy that Participants need to acquire in a potentially volatile

spot market; (ii) transacting in bundled and unbundled RECs to manage Participants' renewable energy portfolios; (iii) satisfying applicable resource adequacy requirements more efficiently; and (iv) satisfying applicable GHG emission compliance obligations more efficiently.

D. The Participants desire that NCPA negotiate and enter into Contract Transactions with creditworthy counterparties to allow Participants to diversify their counterparty risk by subscribing to a more diverse portfolio of Contract Transactions than if each individually selected a single market counterparty.

E. The Participants recognize that several factors, including but not limited to, evaluation of counterparty risk, operational risk, price, and liquidity requirements, may be relevant to the decision of whether to enter into any Contract Transaction, including whether to use bundled or unbundled REC Transactions to accomplish individual Participant's renewable portfolio goals.

F. The Participants further desire to enable and obligate NCPA to conduct the foregoing activities, and to enable and obligate the Participants to deliver, take delivery of, and pay for Approved Products, and to pay NCPA for the costs of undertaking the foregoing activities.

G. The Parties further desire, insofar as possible, to insulate other Participants from the risks inherent in the transactions undertaken by any given

Participant, and to insulate non-Participant Members and NCPA from the risks undertaken by the Participants.

NOW THEREFORE, in consideration of the foregoing, the Parties agree and intend to be legally bound as follows:

Section 1. Definitions.

1.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms shall have the following respective meanings:

1.1.1 “Adjusting Participant” means a Participant who has agreed to assume all or a portion of a Withdrawing Participant’s Subscription Percentage in one or more Contract Transactions, as set forth in Section 11.2.1.

1.1.2 “Agreement” means this Amended and Restated Market Purchase Program Agreement, including all Exhibits attached hereto, as each may be amended from time to time in accordance with the terms and conditions hereof.

1.1.3 “All Resources Bill” means the single, combined monthly bill from NCPA to a Participant with respect to all NCPA programs and projects, as such may be amended from time to time.

1.1.4 “Allocating Participant” means a Participant who has formally elected and agreed to allocate all or a portion of its then existing Subscription Percentage share in one or more Contract Transactions to an existing or new Participant as set forth in Section 11.1.

1.1.5 “Annual Budget” means a NCPA budget for a specific Fiscal Year as adopted by the Commission, as it may be amended from time to time.

1.1.6 “Approved Products” means Energy, Resource Adequacy Capacity, RECs, GHG Compliance Instruments and Physical Option Products indentified as such in the Energy Risk and Counterparty Risk Management Regulations.

1.1.7 “Associate Member” means an associate member of NCPA.

1.1.8 “Auction” shall mean those Commission-approved auctions set forth in Exhibit G.

1.1.9 “BART” means the San Francisco Bay Area Rapid Transit District.

1.1.10 “Bilateral Agreement” means an agreement used to purchase and sell Approved Products, entered into by NCPA with Third

Parties or among Participants. A Bilateral Agreement shall be in a form approved by the Commission.

1.1.11 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time.

1.1.12 "Bundled REC" means a REC procured or sold together with Energy as a "bundled" commodity.

1.1.13 "Broker" shall mean those Commission-approved brokers set forth in Exhibit H.

1.1.14 "Cap and Trade Program" means: (i) CARB's Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms as set forth in title 17, California Code of Regulations, chapter 1, subchapter 10, article 5 (commencing with section 95800), as such may be amended from time to time, or (ii) other GHG compliance obligations, including but not limited to, federal, regional, state, or local jurisdictions.

1.1.15 "CARB" means the California Air Resources Board, or its successor organization.

1.1.16 "CARB Offset Credit" means a tradable compliance instrument issued by CARB that represents a GHG reduction or GHG removal enhancement of one metric ton of CO₂.

1.1.17 "Claims" has the meaning set forth in Section 14.2.

1.1.18 "Commission" means the NCPA Commission.

1.1.19 "Commodity Costs" means the costs billed to NCPA by a Third Party or Participant for an Approved Product acquired pursuant to a Contract Transaction.

1.1.20 "Commodity Revenues" means the payments rendered to NCPA by a Third Party or Participant for an Approved Product sold by NCPA pursuant to a Contract Transaction.

1.1.21 "Constitutive Documents" means, with respect to NCPA, the Joint Exercise of Power Act (Cal. Govt. Code § 6500 *et seq.*), the Joint Powers Agreement and any resolutions adopted thereunder, and the NCPA Rules of Procedure, and with respect to each Participant, the California Government Code and other statutory provisions applicable to such Participant, any applicable agreements, charters, contracts or other documents concerning the formation, operation or decision making of such Participant, including, if applicable, its City Charter, and any codes,

ordinances, bylaws, and resolutions adopted by such Participant's governing body.

1.1.22 "Contract Price" means, with respect to any Contract Transaction under this Agreement, the price per MWh, price per MW, price per REC, price per metric ton of carbon dioxide equivalent, and/or a combination of such per unit prices listed in the applicable Transaction Confirmation.

1.1.23 "Contract Transaction" means a purchase or sale of Approved Products involving a Third Party or Participant that satisfies the Transaction Conditions, and has been approved by each involved Party through use of a Participant Authorization in accordance with Section 6 of this Agreement.

1.1.24 "Deal Capture System" means NCPA's internal database that includes all of the MPP transactions and related details, such as scheduling, payments, price, delivery dates, Participant Subscription Percentage and the counterparties.

1.1.25 "Defaulting Party" has the meaning set forth in Section 13.1.

1.1.26 "Designated Representatives" means with respect to NCPA, its General Manager; and with respect to each Participant, its Utility

Director (an employee other than the Utility Director may be designated by resolution of the Participant's governing body).

1.1.27 "Effective Date" means the later of: (i) the date set forth in the preamble of this Agreement; or (ii) the date this Agreement is executed by all of the Participants.

1.1.28 "Electric System" means, with respect to each Participant except BART and the Port of Oakland, all properties and assets, real and personal, tangible and intangible, of the Participant now or hereafter existing, used or pertaining to the generation for resale, transmission, transformation, distribution or sale of electric capacity and energy, or the utilization of such, including all additions, extensions, expansions, improvements and betterments thereto and equipment thereof; provided, however, that to the extent the Participant 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 Participant'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. Should BART become a Participant under this Agreement, Electric System, with reference to BART shall mean its rail transit system. Should the Port of Oakland become a

Participant under this Agreement, Electric System, with reference to the Port of Oakland shall mean the Port of Oakland.

1.1.29 "Emissions Allowance" means a limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent.

1.1.30 "Energy" means the generation or use of electric power over a period of time, usually expressed in megawatt hours, kilowatt hours or gigawatt hours.

1.1.31 "Energy Risk and Counterparty Risk Management Regulations" means that certain NCPA Energy Risk and Counterparty Risk Management Regulations, version 1.5, approved May 6, 2011, as the same may be amended from time to time.

1.1.32 "Energy Risk Management Policy" means that certain NCPA Energy Risk Management Policy, version 1.3, approved June 16, 2011, as the same may be amended from time to time.

1.1.33 "Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the market transaction hereunder. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides ("SOx"), nitrogen oxides ("NOx"), carbon monoxide ("CO") and other pollutants; (2) any

avoided emissions of carbon dioxide (“CO₂”), methane (“CH₄”) and other greenhouse gases (“GHGs”) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as green tag reporting rights. Environmental Attributes do not include: (1) any energy, capacity, reliability or other power attributes; (2) production tax credits associated with the construction or operation of the energy projects and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation; (3) fuel-related subsidies or "tipping fees" that may be paid to seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; (4) emission reduction credits encumbered or used by the unit(s) for compliance with local, state, or federal operating and/or air quality permits; and (5) RECs.

1.1.34 “Event of Default” has the meaning set forth in Section 9.7.3 and Section 13.1.

1.1.35 “Exchange” means a Commission-approved organized market on which transactions relating to Approved Products, in the form of

standardized contracts, may be entered into. Examples of Exchanges include the New York Mercantile Exchange (“NYMEX”) and the Intercontinental Exchange (“ICE”).

1.1.36 “Fiscal Year” means the NCPA fiscal year; currently the twelve month period beginning July 1 and ending on the next following June 30.

1.1.37 “Fixed MPP Costs” means those costs deemed to be incurred by NCPA regardless of whether NCPA transacts with Third Parties or Participants under this Agreement, including start-up costs and attorneys’ fees.

1.1.38 “General Operating Reserve” means the NCPA General Operating Reserve created through resolution of the Commission, as the same may be amended from time to time.

1.1.39 “Greenhouse Gas” or “GHG” includes, but is not limited to, carbon dioxide (“CO₂”), methane (“CH₄”), nitrous oxide (“N₂O”), sulfur hexafluoride (“SF₆”), hydrofluorocarbons (“HFCs”), perfluorocarbons (“PFCs”), and other fluorinated gasses.

1.1.40 “GHG Compliance Instrument” means any instrument, including but not limited to, Emission Allowance, CARB Offset Credit or

Sector-Based Offset Credit that can be used to fulfill a GHG emissions compliance obligation.

1.1.41 “Initial Term” has the meaning set forth in Section 12 of this Agreement.

1.1.42 “Joint Powers Agreement” means that certain Amended and Restated Northern California Power Agency Joint Power Agreement dated as of January 1, 2008, as the same may be amended from time to time.

1.1.43 “Mandatory Reporting Regulation” or “MRR” means CARB’s Regulation for the Mandatory Reporting of Greenhouse Gas Emissions as set forth in title 17, California Code of Regulations, chapter 1, subchapter 10, article 2 (commencing with section 95100), as such may be amended from time to time.

1.1.44 “Master Agreement” means a Commission-approved agreement used to purchase and sell Approved Products, entered into by NCPA with Third Parties. A Master Agreement shall be in the form of a standardized industry agreement, with such modifications as have been approved by the Commission, provided that, in any particular instance, a Master Agreement may be modified in the discretion of the NCPA General Manager and NCPA General Counsel, after consultation with the

Participants, where such modifications are reasonably required in order to consummate the Master Agreement or to transact under the MPP.

1.1.45 "Maximum Contract Price" means the applicable lawful ceiling price for Approved Products at the time a Contract Transaction is consummated.

1.1.46 "Member" means any Member or Associate Member of NCPA.

1.1.47 "MW" means megawatt.

1.1.48 "MWh" means megawatt hour.

1.1.49 "MPP" or "Market Purchase Program" means the NCPA Market Purchase Program established by this Agreement, consisting of all Contract Transactions hereunder and all Participants hereto as program Participants.

1.1.50 "MPP Costs" are all Fixed MPP Costs and Variable MPP Costs (each including administrative and general overhead costs), other than Transaction Specific Costs and Commodity Costs associated with the MPP.

1.1.51 "NCPA" has the meaning set forth in the preamble hereto.

1.1.52 “NCPA Rules of Procedure” means the Rules of Procedure for the Northern California Power Agency, sometime referred to as the “NCPA By-laws”, as such may be amended from time to time.

1.1.53 “Participant” means a Member of NCPA who has executed this Agreement as set forth herein.

1.1.54 “Participant Authorization” means a Participant’s written and properly executed authorization of a Contract Transaction, in the form of Exhibit A, Exhibit B, or Exhibit C.

1.1.55 “Party” or “Parties” has the meaning set forth in the preamble hereto; provided that “Third Parties” are entities that are not party to this Agreement.

1.1.56 “Physical Call Option” means a contract that offers a buyer the right, but not the obligation, to buy a quantity of Energy to be delivered at a predetermined price.

1.1.57 “Physical Collar Transaction” means a transaction strategy used to mitigate the risk of market price volatility, consummated through the purchase of a Physical Call Option and the sale of a Physical Put Option, for the same term and quantity, to effectuate a ceiling and floor price for Energy transactions.

1.1.58 “Physical Option Products” means a Physical Call Option or Physical Collar Transaction for Energy that is entered into to stabilize the costs of Energy for one or more Participants.

1.1.59 “Physical Put Option” means a contract that offers a seller the right, but not the obligation, to sell a quantity of Energy to be delivered at a predetermined price.

1.1.60 “Port of Oakland” means the City of Oakland, acting by and through its Board of Port Commissioners.

1.1.61 “Principal Counsel” means with respect to NCPA, its General Counsel, and with respect to each Participant, its City Attorney or General Counsel.

1.1.62 “Procure” or “Purchase” and other forms of such verbs, including Procurement, Procuring, Procured, Purchasing and Purchased means acquiring Approved Products through Contract Transactions with Third Parties or Participants.

1.1.63 “Renewable Energy Certificate” or “REC” means a certificate of renewable energy generation from units that register in the WREGIS system, or other commonly accepted renewable energy generation tracking system or program, which can be used to verify compliance with state and provincial regulatory requirements such as Renewable Portfolio

Standards. A REC may or may not include associated Environmental Attributes as specified in a Contract Transaction.

1.1.64 “Renewable Portfolio Standard” or “RPS” means the California Renewable Energy Resources Act, SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session), as may be amended from time to time.

1.1.65 “Replacement Commodity Costs” means the costs billed to NCPA by a Third Party or Participant for an Approved Product acquired by NCPA as an alternative supply of Approved Product in order to complete a Contract Transaction.

1.1.66 “Resource Adequacy Capacity” is that capacity in MW that has been approved by each Participant, acting as a local regulatory authority, as capacity available to ensure that adequate resources are available to meet peak demand and planning reserves for the purposes of local area and system reliability.

1.1.67 “Revenues” means with respect to each Participant other than BART, all income, rents, rates, fees, charges and other revenues derived by the Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing: (a) 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; (b) 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 (c) the proceeds derived by the Participant 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 (i) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Participant; or (ii) contributions from customers for the payment of costs and construction of facilities to serve them. Should BART become a Participant, with reference to BART, Revenues means, all income, rents, rates, fees, charges, grants, fares or tariffs, subventions and other moneys derived from its operations including, without limiting the generality of the foregoing, (i) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, grants, fares or tariffs, subventions or other moneys and (ii) the proceeds derived directly or indirectly from the sale, lease or other disposition of all or a part of its assets, but the term Revenues shall not include any moneys derived from sources the use of which is limited by law to expenditures other than operating expenses.

1.1.68 "Request for Proposal" or "RFP" means the issuance of a request for offers and or bids to purchase or sell Approved Products.

1.1.69 "Scheduling Protocols" means the applicable provisions of the Scheduling Coordinator Program Agreement and any other contractual or other arrangements between NCPA and the relevant Participant concerning the scheduling, delivery and metering of a Contract Transaction approved by the Parties.

1.1.70 "Sector-Based Offset Credit" means a credit issued from a sector-based crediting program once the crediting baseline for a sector has been reached.

1.1.71 "Security Deposit" means funds deposited by Participants with NCPA that are irrevocably committed and held in the General Operating Reserve in accordance with Section 9.4. Such funds are available for use by NCPA in accordance with the terms and conditions hereof.

1.1.72 "Sale" or "Sell" and other forms of such verb, including Selling and Sold, means to transfer Approved Products through Contract Transactions to Third Parties or Participants.

1.1.73 "Subscription Percentage" means that proportion of a Contract Transaction that a Participant subscribes to through a Participant Authorization, in accordance with the terms of this Agreement.

1.1.74 "Term" has the meaning set forth in Section 12.

1.1.75 "Transaction Conditions" has the meaning set forth in Section 4.

1.1.76 "Transaction Confirmation" has the meaning given to it in the Master Agreement used to transact Approved Products through a Contract Transaction.

1.1.77 "Transaction Instrument" has the meaning set forth in Section 5.

1.1.78 "Transaction Specific Costs" means any and all costs, except for Commodity Costs, directly or indirectly incurred by NCPA arising due to the execution of a Contract Transaction. Transaction-Specific Costs include, but are not limited to, termination payments, counterparty requests for assurances, related legal fees, option premiums and associated staff time.

1.1.79 "Unbundled REC" means a REC procured or sold as a separate commodity, apart from the underlying renewable Energy that was generated to create the REC.

1.1.80 "Utility Director" means the most senior employee of a Participant with authority and duty to direct, manage, and control operations of the Participant's electric utility; or, if the Participant does not have an electric utility, the most senior employee with authority and duty to direct, manage, and control acquisition and use of electric power on behalf of that Participant.

1.1.81 "Variable MPP Costs" are those costs that are common to all Participants under this Agreement but are expected to vary with the size and scope of the MPP established under this Agreement, including NCPA staff time.

1.1.82 "WECC" means the Western Electricity Coordinating Council, or its successor organization.

1.1.83 "Withdrawing Participant" means a Participant that has withdrawn from the Agreement as set forth in Section 11.2.1.

1.1.84 "WREGIS" means the Western Renewable Energy Generation Information System which is the independent, renewable energy tracking system for the region covered by WECC, established by the California Energy Commission pursuant to Section 399.25 of the California Public Utilities Code, as the same may be amended from time to time.

1.2 Rules of Interpretation. As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: the terms “herein,” “hereto,” “herewith” and “hereof” are references to this Agreement taken as a whole and not to any particular provision; the term “include,” “includes” or “including” shall mean “including, for example and without limitation;” and references to a “Section,” “subsection,” “clause,” or “Exhibit” shall mean a Section, subsection, clause or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made, and reference to a law, regulation or ordinance includes any amendment or modification thereof. A reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. The singular shall include the plural and the masculine shall include the feminine, and *vice versa*.

Section 2. Effectiveness of Agreement. This Agreement shall be in force as to each Participant on the first day of the month following the Effective Date, subject to the provisions for new Participants in Section 11.1 below.

Section 3. Authority. NCPA has the authority to purchase and sell Approved Products using Contract Transactions in accordance with the terms of this Agreement. Participants shall have the authority to subscribe to Contract Transactions pursuant to the terms and conditions set forth in this Agreement.

Section 4. Transaction Conditions. All Contract Transactions consummated in accordance with this Agreement shall satisfy the following conditions (“**Transaction Conditions**”):

4.1.1 Contract Transactions shall be made in accordance with all requirements and conditions set forth in NCPA’s Energy Risk Management Policy and Energy Risk and Counterparty Risk Management Regulations, including, but not limited to, those limiting the term and volume of Contract Transactions; and

4.1.2 Contract Transactions shall be limited to those Approved Products listed in NCPA’s Energy Risk Management Policy and Energy Risk and Counterparty Risk Management Regulations; and

4.1.3 The Contract Price for a Contract Transaction shall not exceed the Maximum Contract Price for the relevant product.

Section 5. Transaction Instruments.

5.1 NCPA shall negotiate and enter into all necessary agreements and related or incidental documents required to consummate a Contract Transaction;

provided, however, that all Contract Transactions undertaken by NCPA pursuant to this Agreement may only be initiated using one or more of the following Commission-approved instruments (“**Transaction Instruments**”):

5.1.1 Contract Transactions may be initiated through the use of a Commission-approved Master Agreement. Commission-approved Master Agreements are listed in Exhibit D.

5.1.2 Contract Transactions may be initiated through the use of a Commission-approved Bilateral Agreement. Commission-approved Bilateral Agreements are listed in Exhibit E.

5.1.3 Contract Transactions may be initiated through the use of a Commission-approved Exchange. Commission-approved Exchanges are listed in Exhibit F.

5.1.4 Contract Transactions may be initiated through the use of a Commission-approved Auction.

The relevant Exhibits of the Agreement shall be amended from time to time to reflect the addition of and removal of Commission-approved Transaction Instruments in accordance with Section 14.5.2.

5.2 Amendments to Transaction Instruments. The Commission-approved Master Agreements and Commission-approved Bilateral Agreements utilized to consummate Contract Transactions may, in any given instance, be

modified in the discretion of the NCPA General Manager and NCPA General Counsel, after consultation with the Participants, to include additional terms and conditions approved by the Parties' Designated Representative and approved as to form, procedure and authorization by the Parties' Principal Counsel, or to delete previously approved Commission modifications to the form of the Master Agreement(s) and Bilateral Agreement(s), where such modifications are reasonably required in order to transact under the MPP.

Section 6. Transaction Process and Participant Subscription to a Contract

Transaction. From time-to-time, NCPA may propose that one or more Participants subscribe to a Contract Transaction, or one or more Participants may request NCPA to initiate a Contract Transaction in accordance with the terms and conditions of the Agreement. All Contract Transactions undertaken pursuant to the Agreement shall be initiated: (i) through the use of a Request for Proposal initiated by NCPA, or in response to a Request for Proposal initiated by a Third Party or Participant, (ii) through use of direct and/or bilateral negotiations with a Third Party or Participant, or (iii) on a Commission approved Exchange or Auction. At NCPA's sole discretion, a Contract Transaction may be centrally cleared or entered into through the use of a Broker.

6.1 **Contract Transaction Subscription Process.** To initiate a Contract Transaction NCPA shall deliver a Participant Authorization for the proposed

Contract Transaction to each Participant who is seeking to transact Approved Products. Each such Participant Authorization shall be substantially in the form of Exhibit A, B or C, as applicable, and shall specify, among other things, the quantity and price (or not-to-exceed price) for the Approved Product(s) contemplated to be consummated through a Contract Transaction. Each Participant shall promptly review such proposed Participant Authorization, and upon such review may elect to subscribe to a Contract Transaction by delivering an executed Participant Authorization to NCPA.

6.2 NCPA Obligations. Upon receipt of a duly executed Participant Authorization, NCPA shall use reasonable efforts to attempt to consummate a Contract Transaction through use of a corresponding Transaction Instrument, as specified in a Participant Authorization, on behalf of one or more Participants; provided, however, that NCPA shall not enter into a Contract Transaction for any Participant that: (i) has failed to maintain sufficient Security Deposits as required by Section 9.4, (ii) is otherwise in default under the terms of this Agreement, or (iii) has not met the Transaction Conditions set forth in Section 4 of this Agreement.

Upon consummation of a Contract Transaction, NCPA shall notify and report the transaction results to each Participant that has a Subscription Percentage in said Contract Transaction.

6.3 Participant Obligations. By executing this Agreement, each Participant acknowledges and agrees to be bound by their Designated Representatives' execution and Principal Counsel's approval as to form, procedure and authorization of a Participant Authorization substantially in the form of Exhibit A, B, or C hereto, as applicable, for each corresponding Contract Transaction. Each Participant also: (i) acknowledges and approves the terms of the corresponding Transaction Instrument(s) utilized by NCPA to consummate a Contract Transaction, and agrees to take any and all actions necessary for NCPA to comply in a timely manner with any terms and conditions of said Transaction Instrument(s), (ii) agrees to pay for and take delivery of its Subscription Percentage share, or to take receipt of payment for and deliver its Subscription Percentage share of Approved Products, and (iii) agrees to pay its Subscription Percentage share of all fees, costs, or other amounts payable in connection with the execution, arrangement, maintenance, and termination or liquidation of Contract Transactions.

6.4 Subscription Percentages. The Subscription Percentages of each Participant for each Contract Transaction shall be maintained in NCPA's Deal Capture System, and summary reports therefrom will be provided to Participants upon request.

Section 7. Delivery and Receipt of a Contract Transaction. Approved Products shall be delivered to or collected from Participants in accordance with each Participant's Subscription Percentage of a Contract Transaction.

7.1 Deliveries to Participants. Any Approved Products delivered to NCPA from a Contract Transaction shall be delivered to each Participant in proportion to such Participant's Subscription Percentage, and each Participant shall accept and pay for its Subscription Percentage share of such Contract Transaction.

7.2 Delivery from Participants. Any Approved Products delivered by NCPA to a Third Party from a Contract Transaction shall be supplied by each Participant in proportion to such Participant's Subscription Percentage, and each Participant shall accept payment for its Subscription Percentage share of such Contract Transaction.

7.3 Failure to Take Delivery or Deliver. To the extent a Participant is unable to accept delivery of any Approved Products in full, or a Participant is unable to make delivery of any Approved Products in full, NCPA shall either: (i) dispose of such surplus Approved Products, in its sole discretion, in such a manner as to attempt to maximize Participant value, or (ii) purchase an alternative supply of equivalent Approved Products, in its sole discretion, in such a manner as to attempt to minimize Participant cost, in order to complete

full delivery of the Contract Transaction, or terminate the Contract Transaction with respect to that Participant. If a Participant fails to deliver Approved Products to NCPA, NCPA, in its sole discretion, may seek to purchase an alternative supply of Approved Products to deliver Participant's relevant supply obligation in full under the Contract Transaction, in such a manner as to attempt to minimize Participant cost. A Participant that fails to deliver Approved Products to NCPA in accordance with its Subscription Percentage shall be responsible for all costs incurred by NCPA in connection with Approved Products replacement, or Contract Transaction termination, including any associated Replacement Commodity Costs. If a Participant fails to provide NCPA with Approved Products in accordance with its Subscription Percentage, and NCPA is unable to purchase an equivalent alternative supply of Approved Products to deliver Participant's relevant supply obligations in full under the Contract Transaction, or otherwise terminates the Contract Transaction, all damages assessed to NCPA that are attributed to Participant's failure to deliver the Approved Product will be charged to and paid by that Participant.

7.4 Scheduling. Contract Transactions shall be scheduled for the Participants in accordance with the Scheduling Protocols.

7.5 REC Transfers. Transferring RECs as required pursuant to a Contract Transaction made in accordance with the Agreement shall be

performed in accordance with: (i) the rules and procedures established by WREGIS, or (ii) the rules and procedures adopted by other commonly accepted renewable energy generation tracking systems or programs, as applicable.

7.6 GHG Compliance Instrument Transfers. Transferring GHG Compliance Instruments as required pursuant to a Contract Transaction made in accordance with the Agreement shall be performed in accordance with: (i) the Cap and Trade Program, (ii) the Mandatory Reporting Regulations, or (iii) the rules and procedures adopted by other commonly accepted GHG Compliance Instrument tracking systems or programs, as applicable.

Section 8. Cooperation and Further Assurances. Each of the Parties agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by any other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. Further, the Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to transact in an Approved Product using a Contract Transaction, including with respect to negotiating and executing any agreements to implement any credit support arrangements.

Section 9. Financial Obligations, Invoicing and Security Deposit

Administration.

9.1 Participant Payment Obligations. Each Participant agrees to pay to NCPA each month the sum of the following:

9.1.1 Estimated Fixed MPP Costs of \$900 (estimated Fixed MPP Costs may be adjusted each Fiscal Year, as approved by the Commission, during the Annual Budget process); and

9.1.2 One-twelfth (1/12) of Participant's allocated share of estimated Variable MPP Costs for the Fiscal Year as determined in Section 9.2; and

9.1.3 Transaction Specific Costs for each Contract Transaction in accordance with Participant's Subscription Percentage share; and

9.1.4 Commodity Costs for each Contract Transaction in accordance with Participant's Subscription Percentage share.

In addition to the aforementioned monthly payment obligations, each Participant is obligated to fund: (i) any and all required Security Deposits calculated in accordance with Section 9.4, and (ii) the working capital requirement for the Market Purchase Program maintained by NCPA as set forth in the Annual Budget.

9.2 Calculation of Variable MPP Costs. Participants' payment obligations for Variable MPP Costs under Section 9.1 shall be calculated as follows. For each Fiscal Year, NCPA shall estimate the total Variable MPP Costs to be incurred under this Agreement. A share of the estimated total Variable MPP Costs will be allocated to each Participant based on each Participant's proportionate share of the total Participants' Contract Transaction volumes for all Approved Products forecasted to be transacted during the Fiscal Year, as estimated by NCPA in its sole discretion.

9.3 True-Up of Budgeted vs. Actual Fixed MPP Costs and Variable MPP Costs. Upon the conclusion of each Fiscal Year, NCPA, as part of its Annual Budget settlement process, shall compare each Participant's payment of estimated Fixed MPP Costs and Variable MPP Costs during the Fiscal Year with actual Fixed MPP Costs and Variable MPP Costs incurred on behalf of Participant. Overpayments and/or underpayments of Fixed MPP Costs and Variable MPP Costs will be credited and/or debited to Participants as directed by the Commission in the Annual Budget settlement process.

9.4 Security Deposit Requirements. Each Participant agrees that any funds deposited at NCPA to satisfy Participant's Security Deposit requirements pursuant to this Agreement shall be irrevocably committed and held by NCPA in the General Operating Reserve, and that such funds may be used by NCPA in

accordance with Section 9.4.4. Each Participant's Security Deposit will be accounted separately from and in addition to any other security accounts or deposits maintained pursuant to any other agreement between NCPA and the Participant, or any other such security account or deposits required of Members. In connection with fulfilling the Security Deposit requirements of this Agreement, Participant may elect to use its uncommitted funds held in the General Operating Reserve to satisfy in whole or in part its Security Deposit required under Section 9.4. If Participant chooses to satisfy in whole or in part its security requirements using its uncommitted funds held in the General Operating Reserve, Participant is required to execute and deliver to NCPA an Irrevocable Letter of Direction, as set forth in Exhibit I, directing NCPA to utilize Participant's uncommitted General Operating Reserve funds for such purposes, and the designated funds will thereafter be irrevocably committed and held by NCPA to satisfy the requirements of this Agreement.

9.4.1 Initial Amounts. Prior to subscribing to a Contract

Transaction a Participant shall insure that sufficient Security Deposit funds have been deposited with and are held by NCPA equal to the highest three (3) months of estimated Commodity Costs for all Contract Transactions in which Participant has or will subscribe to purchase Approved Products, as estimated by NCPA. Such Security Deposit requirement may be satisfied by

Participant in whole or part either in cash, through irrevocable commitment of its uncommitted funds held in the General Operating Reserve in accordance with Section 9.4, or through a clean, irrevocable letter of credit satisfactory to NCPA's General Manager. Commodity Revenues resulting from a Contract Transaction may not be counted against or netted with a Participant's Security Deposit requirements; hence Commodity Revenues may not be used in lieu of Security Deposit funds, or a letter of credit, to reduce a Participant's obligations under Section 9.4 of this Agreement.

9.4.2 Additional Security Deposit Amounts. In addition to a Security Deposit amount equal to the highest three (3) months of estimated Commodity Costs for all Contract Transactions in which Participant has or will subscribe, incremental funds may be required from a Participant to commence a transaction, satisfy a margin call or terminate and liquidate a Contract Transaction. Prior to executing a Contract Transaction, NCPA's Chief Financial Officer, or designee, will notify each subscribing Participant of the necessary incremental Security Deposit amount to be funded and deposited with NCPA by inserting such amount in the relevant portion of the Participant Authorization.

9.4.3 Subsequent Deposits. Periodically, and at least quarterly, NCPA shall review and revise its estimate of all costs for which Participant

shall be obligated to pay under this Agreement. Following such review, NCPA shall determine whether each Participant has a sufficient Security Deposit balance at NCPA. To the extent that any Participant's Security Deposit balance is greater than one hundred and ten percent (110%) of the amount required herein, NCPA shall credit such amount as soon as practicable to the Participant's next following All Resources Bill, or by separate special invoice. To the extent that any Participant's Security Deposit balance is less than ninety percent (90%) of the amount required herein, NCPA shall add such amount as soon as practicable to such Participant's next All Resources Bill, or as necessary, to a special invoice to be paid by Participant upon receipt. Credits or additions shall not be made to Participants who satisfy these Security Deposit requirements in whole through the use of a letter of credit, provided that the amount of the letter of credit shall be adjusted, as required from time to time, in a like manner to assure an amount equal to the highest three (3) months of estimated Commodity Costs is available to NCPA.

9.4.4 Use of Security Deposit Funds. NCPA may use any and all Security Deposit funds held by NCPA (or utilize a letter of credit provided in lieu thereof) to pay any costs it incurs hereunder, including making payments to counterparties under any Transaction Instrument used to

consummate a Contract Transaction, replacing Approved Products not delivered by a Participant that subscribes to a Contract Transaction, or for termination payments, requests for assurances by Third Parties, credit support, and related expenses incurred pursuant to a Contract Transaction, without regard to any individual Participant's Security Deposit balance or proportionate share of MPP Costs, and irrespective of whether NCPA has issued an All Resources Bill or special invoice for such costs to the Participants or whether a Participant has made timely payments of All Resources Bills or special invoices. Should Participant have satisfied its Security Deposit requirements in whole or part through a letter of credit, NCPA may draw on such letter of credit to satisfy Participant's obligations hereunder at NCPA's sole discretion.

9.4.5 Accounting. If Security Deposit funds or a letter of credit are used by NCPA to pay any costs it incurs hereunder as described in Section 9.4.4, NCPA will maintain a detailed accounting of each Participant's shares of funds withdrawn, and upon the collection of all or a part of such withdrawn funds, NCPA will credit back to each non-defaulting Participant the funds collected in proportion to such non-defaulting Participant's share of funds initially withdrawn.

9.4.6 Emergency Additions. In the event that funds are withdrawn pursuant to Section 9.4.4, or if the Security Deposit held by NCPA is otherwise insufficient to allow for NCPA to pay any invoice, demand, request for further assurances by Third Parties, or Claims, NCPA shall notify all Participants of the deficiency. In conjunction with such notice, NCPA shall send a special or emergency assessment invoice to the Participant or Participants that caused or are otherwise responsible for the deficiency. Each Participant of such an invoice shall pay to NCPA such assessment when and if assessed by NCPA within two (2) Business Days of the invoice date of the assessment, or shall consent to and direct NCPA to draw on any existing letter of credit Participant has established for such purposes. In the event that the Participant or Participants that caused or are otherwise responsible for the deficiency cannot, does not or will not pay to NCPA the special or emergency assessment within two (2) Business Days of the invoice date, NCPA shall immediately submit a special or emergency invoice to all remaining Participants in accordance with Section 14.3.2, and such remaining Participants shall pay to NCPA such assessment within two (2) Business Days of the invoice date of the assessment, or shall consent to and direct NCPA to draw on any existing letter of credit that Participant has established for such purposes.

9.4.7 Security Deposit Interest. NCPA shall maintain a detailed accounting of each Participant's Security Deposits, and withdrawals of such funds, held by NCPA. Security Deposits held by NCPA shall be invested by NCPA in accordance with the General Operating Reserve policies and investment policies adopted by the NCPA Commission. Interest earned on the Security Deposit funds shall be proportionately credited to the Participants in accordance with their weighted average balances held therein. Any Security Deposit losses caused by early termination of investments shall be allocated among the Participants in accordance with the General Operating Reserve provisions and guidelines approved by the Commission, as the same may be amended from time to time; provided, however, to the extent that either the General Operating Reserve provisions and guidelines do not apply or the Security Deposit is not adequate to cover the losses, then such losses shall be allocated among the Participants in accordance with their proportionate Security Deposit balances.

9.4.8 Return of Funds. Upon termination or a permitted withdrawal of a Participant in accordance with this Agreement, the affected Participant may apply to NCPA for the return of their share of Security Deposit funds ninety (90) days after the effective date of such termination or withdrawal. However, NCPA shall, in its sole but reasonable discretion, as

determined by the NCPA General Manager, estimate the then outstanding liabilities of the Participant, including any estimated contingent liabilities and shall retain all such funds, if any, until all such liabilities have been fully paid or otherwise satisfied in full. After all such liabilities have been satisfied in full, as determined by NCPA's General Manager, any remaining balance of the Participant's share of the Security Deposit will be refunded to the Participant within sixty (60) days thereafter

9.5 Contract Transactions Removed from the MPP. Any Contract Transaction shall no longer be included in the calculation of a Participant's obligations set forth in Section 9.1 or the Security Deposit requirements set forth in Section 9.4 on the date its Transaction Confirmation terminates or expires and Participant's obligations under this Agreement attributed to such a Contract Transaction have been satisfied in full; provided, however, that all other obligations set forth in this Agreement shall remain effective and applicable to such Participant, including but not limited to this Agreement's Indemnity and Hold Harmless obligation set forth in Section 14.2 and Joint Liability obligation set forth in Section 14.3.2. All other Contract Transactions shall continue to be included in the calculation of a Participant's obligations set forth in Section 9.1 and the Security Deposit requirements set forth in Section 9.4, until such time as NCPA approves otherwise. NCPA may, in its sole discretion, remove a

Contract Transaction from the calculation of a Participant's obligations through alternate means including assignment, book-out, offsetting transaction, or termination. Any proceeds or costs associated with removing a Contract Transaction from use in the calculation of Participants' obligations herein shall be allocated among the Participants in accordance with their Subscription Percentages unless otherwise agreed upon in writing by the Participants.

9.6 Invoicing.

9.6.1 Invoices. As part of NCPA's regular, monthly, advance billing (the "All Resources Bill") or by separate special invoice, as required in the circumstances, NCPA will issue an invoice to each Participant that will include its Subscription Percentage share of the Commodity Costs, Commodity Revenues, MPP Costs and Transactions Specific Costs due or payable (or any adjustments thereto) in accordance with Section 9. Each invoice shall include, but is not limited to the following:

(i) The total Transaction Specific Costs and Commodity Costs attributable to Procurement of Approved Products under this Agreement for such month and the relevant Participant's share thereof;

(ii) The total Transaction Specific Costs and Commodity Revenues collected from Selling Approved Products under this Agreement for such month and the relevant Participant's share thereof;

- (iii) The total MPP Costs attributable to program services for such month and the relevant Participant's share thereof;
- (iv) The quantity of Approved Products, by Contract Transaction, delivered to or supplied from such Participant (or an estimate thereof) and the unit price for such Approved Products;
- (v) Appropriate settlement and meter data (or an estimate thereof);
- (vi) Any adjustments to prior invoices required based on actual data received that was estimated in a previous invoice;
- (vii) Notice of the amount, if any, that NCPA has paid or expects to pay using Security Deposit funds; and
- (viii) Amounts due from (or credited to) such Participant under Section 9.4.3.

9.6.2 Payment of Invoices. All non-emergency invoices delivered by NCPA in the normal course of billing hereunder (including the All Resources Bill and special invoices) are due and payable within thirty (30) days of the invoice date; provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day.

NCPA may apply a Participant's Security Deposit share to the payment of all or any portion of an invoice issued to such Participant (including that portion

of an invoice relating to the MPP), provided that application of such Security Deposit funds shall not relieve the Participant from any late payment charges pursuant to Section 9.6.3. To the extent that NCPA applies Security Deposit funds to pay an amount due under an invoice, following receipt of payment of such invoice by the relevant Participant, NCPA shall deposit the relevant portion of the payment to the General Operating Reserve and credit such Security Deposit to such Participant. Emergency invoices shall be due as indicated in Section 9.4.6 above.

9.6.3 Late Payments. Any amount due and not paid by a Participant in accordance with Section 9.6.2 and 9.4.6 shall bear interest computed on a daily basis until paid at the lesser of: (i) the per annum prime rate (or reference rate) of the Bank of America NT&SA then in effect, plus two percent (2%), or (ii) the maximum rate permitted by law.

9.7 Settlement Data and Examination of Books and Records.

9.7.1 Settlement Data. NCPA will make metering and settlement data available to the Participants, as applicable. Procedures and formats for the provision of such data will be as established by the NCPA Commission from time to time.

9.7.2 Examination of Books and Records. Any Participant to this Agreement shall have the right to examine the books and records created

and maintained by NCPA pursuant to this Agreement at any reasonable, mutually agreed upon time.

9.7.3 Revenue Covenant. Any failure of a Participant to meet its obligations hereunder or to cure such failure in a timely manner shall constitute an Event of Default and the Defaulting Party shall be subject to such remedies of NCPA as provided for herein. Each Participant covenants and agrees:

(i) To continue to pay or advance to NCPA, from its Revenues only, provided that such sources shall not include any sums derived from sources the use of which is limited by law to expenditures other than operating expenses, and its obligations under this Agreement. Each Participant further agrees that it will fix the rates and charges for services provided by its Electric System so that it will at all times have sufficient money in its department revenue funds to meet this obligation;

(ii) To make payments under this Agreement from the Revenues of, and as an operating expense of, its Electric System;

(iii) To 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, such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any dispute

exists provided such interruption, interference or reduction in services is caused by forces constituting an Act of God and not reasonably contemplated by the Parties; and

(iv) To 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.

Section 10. Administration of Agreement.

10.1 General. Except as otherwise specified in this Agreement, the NCPA Commission has sole overall responsibility and authority for the administration of this Agreement. Any acts, decisions or approvals taken, made or sought by NCPA under this Agreement shall be taken, made or sought, as applicable, in accordance with NCPA's Constitutive Documents and Section 10.2.

10.2 Action by Participating Members.

10.2.1 Forum. Whenever any action anticipated by this Agreement is required to be taken by the Participants, such actions shall be taken at a regular or special meeting of the NCPA Commission, but shall be participated in only by those Commissioners, or their designated alternates, who represent Participants.

10.2.2 Quorum. A quorum at NCPA Commission meetings for purposes of acting upon matters relating to this Agreement shall consist of

Commissioners, or their designated alternates, representing the majority of Participants to the extent not inconsistent with Section 10.2.3(i), provided that as to matters related to a specific Contract Transaction a quorum shall consist of Commissioners, or their designated alternatives, representing a majority interest in the Contract Transaction based upon their Subscription Percentages.

10.2.3 Voting. Each Participant shall have the right to cast one vote with respect to matters pertaining to this Agreement, with a majority vote of the Participants required for action subject to the following exceptions:

(i) Upon request of any Participant representative with a Subscription Percentage in a specific Contract Transaction, the voting on an issue related to a specific Contract Transaction shall be by Participant Subscription Percentage with a 65% or more favorable vote necessary to carry the action.

(ii) After any decision related to this Agreement, other than for a specific Contract Transaction, is taken by the affirmative vote of less than 65% of the Participants, the action can be reviewed and revised if a Participant gives notice of intention to seek such review and revision to NCPA and each of the other Participants within ten (10) days following the date on which such action was taken. Upon receipt of such a request for reconsideration, the Chairman of

the Commission shall agendaize the matter for reconsideration at the next regular meeting of the Commission or at a special meeting if the circumstances so warrant. The action shall be upheld upon a majority vote of the authorized representatives of the Participants, where each Participant will have the right to cast one vote as to the matter presented for reconsideration. Any action taken upon reconsideration shall be final.

Section 11. Admission and Withdrawal of Participants.

11.1 Admission of New Participants. Following the Effective Date of this Agreement, a Member may execute this Agreement and become a Participant provided that such joinder is approved by the NCPA Commission in accordance with Section 10.2, and the new Participant: (i) reimburses existing Participants for a proportionate share of the applicable costs identified during NCPA's Annual Budget process and any MPP Costs incurred to establish and administer this MPP Program as determined by existing Participants, and (ii) satisfies all Security Deposit requirements under this Agreement.

A new Participant shall not be entitled to receive any Approved Products or be obligated to provide any Approved Products in connection with a Contract Transaction entered into prior to the date it becomes a Participant unless one or more Allocating Participants formally elect to allocate a portion of its

Subscription Percentage share of an existing Contract Transaction to such new Participant.

Upon execution of such formal agreement therefore and affirmative vote thereon by all Allocating Participants, NCPA shall prepare and distribute to each Participant the written agreement between the new Participant and the Allocating Participant(s) indicating the agreed upon change in the Subscription Percentage(s) for the designated Contract Transaction(s), a counterpart of this Agreement executed by the new Participant, and a report from NCPA's Deal Capture System reflecting the revised Subscription Percentages. Any reduction in any Allocating Participant's Security Deposit share shall be credited to the Allocating Participants in accordance with Section 9.4.3.

11.2 Withdrawal of Participants.

11.2.1 Requirements and Process. A Participant may voluntarily withdraw from this Agreement by providing two (2) years' advance written notice to NCPA and the other Participants. Notwithstanding the aforementioned, such Withdrawing Participant's liability pursuant to Section 14.3.2 will not be eliminated or reduced after Withdrawing Participant formally withdraws unless Withdrawing Participant no longer has a Subscription Percentage in an outstanding Contract Transaction, or Withdrawing Participant has assigned all its outstanding Contract

Transaction Subscription Percentage to an Adjusting Participant. If Withdrawing Participant has no Subscription Percentage in an outstanding Contract Transaction or has otherwise assigned all its outstanding Contract Transaction Subscription Percentage to an Adjusting Participant, such Withdrawing Participant shall continue to be considered a non-defaulting Participant with no outstanding Contract Transactions for the purposes of Section 14.3.2 from the time Withdrawing Participant provides two (2) years' advance written notice of its intent to withdraw from this Agreement to the time that Participant formally withdraws. Upon the mutual agreement of two or more Participants, the Withdrawing Participant may assign all, or a portion of, its Subscription Percentage share of its Contract Transactions to an Adjusting Participant, if such withdrawal and assignment does not violate any applicable credit support conditions contained in any of the relevant agreements to which the Withdrawing Participant and/or Adjusting Participant is a party. The Withdrawing Participant shall provide to NCPA the applicable assignment agreement between the Withdrawing Participant and the Adjusting Participant(s) regarding any such assignments and NCPA shall reflect the change in its Deal Capture System recording the new allocation of Subscription Percentages.

11.2.2 Associated Costs. A Withdrawing Participant shall reimburse NCPA for any and all costs resulting from the withdrawal, including but not limited to the legal, accounting, and administrative costs of winding up and assuring the complete satisfaction and discharge of the Withdrawing Participant's obligations. A Withdrawing Participant will continue to be liable for all Contract Transactions entered into on its behalf, including all Security Deposit requirements set forth in Section 9.4, that are not otherwise assumed by an Adjusting Participant.

11.2.3 No Effect on Prior Liabilities. Withdrawal by any Participant will not terminate any ongoing or un-discharged contingent liabilities or obligations resulting from this Agreement until they are assigned to an Adjusting Participant, or are otherwise satisfied in full, or such Withdrawing Participant has provided a mechanism reasonably acceptable to NCPA and the remaining Participants, for the satisfaction in full thereof.

Section 12. Term and Termination. The Term of this Agreement shall commence on the Effective Date, and shall continue through the end of the then current Fiscal Year plus five (5) years (the "Initial Term"), so the Initial Term of this Agreement is coincident with the Fiscal Year. After the Initial Term has expired, this Agreement shall remain in effect until NCPA terminates this Agreement upon two (2) years' advance written notice to all Participants.

Section 13. Default and Remedies.

13.1 Events of Default. An Event of Default under this Agreement shall exist upon the occurrence of any one or more of the following by a Party in default of its obligations hereunder ("**Defaulting Party**"):

13.1.1 If any Party fails to make any payment or to provide assurances as required pursuant to this Agreement or to a Contract Transaction when due hereunder within two (2) Business Days after receipt of notice given by NCPA of such non-payment; or

13.1.2 The failure of the Defaulting Party to perform any other covenant or obligation under this Agreement where such failure is not cured within ten (10) calendar days following receipt of a notice from NCPA demanding cure (provided that this shall not apply to any failure to make payments (which is covered by Section 13.1.1); or

13.1.3 If any representation or warranty of the Defaulting Party material to the transactions contemplated hereby shall prove to have been incorrect in any material respect when made and the Defaulting Party does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within ten (10) calendar days of the date of receipt of notice from any other Party demanding cure; or

13.1.4 If a Participant is in default or in breach of any of its covenants under any other agreement with NCPA and such default or breach is not cured within the time periods specified in such agreement; or

13.1.5 The failure of NCPA to perform any covenant or obligation under this Agreement following a ten (10) calendar day notice to cure by any non-defaulting Participant.

13.2 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied within the time period specified in Section 13.1, above, as may be applicable, after written notice has been sent to the Defaulting Party from NCPA specifying the default and demanding that the same be remedied; provided, however, that failure of a Party to provide such notice shall not be deemed a waiver of such default.

13.3 Participation Rights Of Defaulting Party. Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default and until such Event of Default is cured, the Participant that is the Defaulting Party shall not have the right to participate under Section 10.2 on any matters with respect to this Agreement.

13.4 Remedies in the Event of Default.

13.4.1 Remedies of NCPA. Upon the occurrence of an Event of Default where a Participant is the Defaulting Party, without limiting its other

rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action NCPA may have against the Defaulting Party Participant, NCPA may:

(i) Suspend the provision of services under this Agreement to such Defaulting Party, including the delivery or sale of Approved Products pursuant to any Contract Transactions until the Event of Default is cured; and

(ii) Demand that the Defaulting Party provide further assurances to compel the correction of the default, including the collection of a surcharge, or such other actions as may be necessary to produce Revenues to secure the cure of the Event of Default; and

(iii) Terminate this Agreement as to the Defaulting Party, on ten (10) calendar days' prior written notice to the Defaulting Party and following approval of the non-defaulting Participants.

13.4.2 Sale/Transfer of Participants Account Upon Default.

Upon any default of a Participant caused by the failure of such Participant to pay any sums due, and provided that such default is not cured in a timely manner, then NCPA shall use its best efforts to sell and transfer for the Defaulting Party's account all or a portion of the Defaulting Party's Contract Transactions for the remainder of the term of this Agreement.

Notwithstanding that all or any portion of the Defaulting Party's Contract Transactions is so sold or transferred, the Defaulting Party shall remain liable for all of its obligations not otherwise satisfied by the sale or transfer of Defaulting Party's Contract Transactions hereunder unless released therefrom by NCPA upon assumption by a transferee or assignee.

13.4.3 Remedies of Participants. Upon the occurrence of an Event of Default where NCPA is the Defaulting Party, and following the applicable cure periods, the Participants may, without limiting their other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action the Participants may have against NCPA, terminate this Agreement in whole, subject to the provisions of Section 13.5.4.

13.4.4 Special Covenants Regarding Security Deposit. In the event that a Participant's Security Deposit balance is insufficient to cover all invoices for costs incurred under this Agreement sent to such Participant, then, without limiting NCPA's other rights or remedies available under this Agreement, at law or in equity, such Participant 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, raising rates and charges to its customers to increase its Revenues to replenish

its share of the Security Deposit requirements as provided herein, 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 with all due haste.

13.5 Effect of Termination or Suspension.

13.5.1 Generally. The suspension or termination of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged contingent liabilities or obligations arising from this Agreement until such obligations are satisfied in full, and all of the costs incurred by NCPA in connection with such suspension or termination, including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other costs and expenses that NCPA is entitled to recover under this Agreement, and other reasonable and necessary costs associated with any and all of the remedies, are paid in full.

13.5.2 Suspension by NCPA. If performance of all or any portion of this Agreement is suspended by NCPA with respect to a Participant in accordance with Section 13.4.1(i), such Participant shall pay any and all costs incurred by NCPA as a result of such suspension including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated

with such suspension and any portion of the MPP Costs that were not recovered from such Participant as a result of such suspension.

13.5.3 Termination by NCPA. If this Agreement is terminated by NCPA with respect to a Participant in accordance with Section 13.4.1(iii), such Participant shall pay any and all costs incurred by NCPA as a result of such termination, including reasonable attorney fees, the fees and expenses of other experts, including auditors and accountants, other reasonable and necessary costs associated with such termination and any portion of the MPP Costs that were not, or will not be, recovered from such Participant as a result of such termination; provided, however, if NCPA terminates this Agreement with respect to the last Participant, then this Agreement shall terminate.

13.5.4 Termination by Participants. If this Agreement is terminated by all Participants in accordance with Section 13.4.3, or by unanimous consent of all of the Parties hereto, then the Participants shall pay to NCPA all previously unpaid MPP Costs incurred as of the date of such termination, and following such termination, the Participants shall cooperate and act in good faith to negotiate and agree upon the method of allocating among the Participants in proportion to their respective Subscription Percentages the costs and benefits of the Contract Transactions, all

Transaction Instruments then in effect, and any financing agreements or

commitments and any matters pertaining to the administration, management, control, operation and maintenance of the Contract Transactions. NCPA shall reasonably cooperate with the Participants in connection with implementing the foregoing and the Participants shall indemnify NCPA for any costs incurred in connection therewith, including reasonable attorney fees, fees and expenses of other experts, including auditors and accountants and other reasonable and necessary costs. If the parties are unable to reach agreement as to the foregoing, then the parties agree to submit the matter to mediation with a mutually agreed upon mediator. If the parties are still unable to reach agreement following mediation, then the matter shall be submitted to binding arbitration subject to the rules of the American Arbitration Association, the costs of such arbitration being borne proportionally among the Participants.

Section 14. Miscellaneous.

14.1 Confidentiality. The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement, to the extent possible, consistent with applicable laws, including the California Public Records Act. It shall be the responsibility of the holder of the claim of confidentiality or trade secret to defend at its expense against any request that such information be disclosed. Confidential or trade secret information shall be marked or expressly identified as such.

14.2 Indemnification and Hold Harmless. Subject to the provisions of Section 14.4, each Participant agrees to indemnify, defend and hold harmless NCPA and its Members, including their respective governing officials, officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts ("Claims"), to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of a Participant, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

14.3 Several Obligations and Joint Liabilities.

14.3.1 Several Obligations. No Participant shall, in the first instance, be liable under this Agreement for the obligations of any other Participant or for the obligations of NCPA incurred on behalf of other Participants. Each Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise provided for herein. The obligation of each Participant under this Agreement is, in the first instance, a several obligation and not a joint obligation with those of the other Participants.

Notwithstanding the foregoing, the Participants acknowledge that any debts or obligations incurred by NCPA under this Agreement on behalf of any of them shall be borne solely by such Participants, and not by non-Participant Members of NCPA, pursuant to Article IV, Section 3(b) of the Joint Powers Agreement.

14.3.2 Joint Liabilities. Notwithstanding the provisions of the Joint Powers Agreement and the general nature of the liabilities in this Agreement as several, the Participants agree that, if a Participant defaults under this Agreement, the non-defaulting Participants will be jointly liable for the obligations of such defaulting Participant in proportion to each non-defaulting Participant's share of the total cost of all outstanding Contract Transactions entered into by all non-defaulting Participants during the five (5) years prior to the date of the default, unless and until NCPA is able to fully recover from the defaulting Participant. Provided, however, that any non-defaulting Participant with no outstanding Contract Transactions for the five (5) years prior the date of the default shall nonetheless have an obligation equal to one-half (1/2) that of the non-defaulting Participant with the lowest outstanding Contract Transactions during such five (5) year period, and that if no non-defaulting Participant has outstanding Contract Transactions during such five (5) year period, then each non-defaulting Participant shall

share the obligation equally. In the event that the date of default occurs within five (5) years of the Effective Date, then such five (5) year period shall be shortened to include the time from the effective date of this Agreement until the date of the default.

14.3.3 Non-Defaulting Participant Rights as to Defaulting Participant. Should NCPA impose joint liability in accordance with Section 14.3.2, this Agreement shall in no way limit, restrict or preclude a non-defaulting Participant from independently seeking equitable contribution, at its sole expense, from any defaulting Participant.

14.4 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY PARTICIPANT OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR

EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NCPA AND EACH PARTICIPANT EACH HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.

14.5 Amendments.

14.5.1 Amendments in General. Except where this Agreement specifically provides otherwise, this Agreement may be amended only by

written instrument executed by the Parties with the same formality as this Agreement.

14.5.2 Approval and Amendment of Exhibits. Notwithstanding the provisions of Section 14.5.1, any addition to, amendment to or termination of the Exhibits attached hereto shall take effect after being approved by the Commission in a manner consistent with the voting procedures set forth in Section 10.2.3 of this Agreement, without the requirement of an approval of the individual Participants governing body.

14.6 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

14.7 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

14.8 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended

to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

14.9 Notices. Any notice, demand or request required or authorized by this Agreement to be given to any Party shall be in writing, and shall either be personally delivered to a Participant's Designated Representative and the Secretary of the Commission or transmitted to the Participant and the Secretary of the Commission at the address shown on the signature pages hereof. The designation of such address may be changed at any time by written notice given to the Secretary of the Commission who shall thereupon give written notice of such change to each Participant.

14.10 Warranty of Authority. Each Participant, and NCPA, represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms as to the Participant and as to NCPA. Upon execution of this Agreement, each Participant shall deliver to NCPA a resolution of the governing body of such Participant evidencing approval of and authority to enter into this Agreement and an opinion of legal counsel that such authority was duly exercised in accordance with such Participant's Constitutive Documents.

14.11 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

14.12 Assignment. Except as provided by Section 11 no Participant may assign or otherwise transfer their interest in their Subscription Percentage, or any other rights and obligations under this Agreement, without the express written consent of NCPA.

14.13 Venue. In the event that a Party brings any action under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

14.14 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court

may set such fees in the same action or in a separate action brought for that purpose.

14.15 Interpretation. Each Party to this Agreement is sophisticated in the operation of its respective Electric System, and in the purchasing and selling of Approved Products. Each Party to this Agreement was represented by counsel during the negotiation of this Agreement. Hence, this Agreement shall be interpreted as being equally drafted by all Parties and without reference to Civil Code Section 1654 requiring interpretation against Parties causing an ambiguity.

14.16 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties or by any third person, to be for the benefit of any Third Party, nor shall any Third Party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

14.17 List of Exhibits. The Exhibits referenced herein shall be denoted as follows:

Exhibit A: Participant Authorization – Energy

Exhibit A-1: Additional Transaction Terms and Conditions - Energy

Exhibit B: Participant Authorization – RECs

Exhibit B-1: Additional Transaction Terms and Conditions – RECs

Exhibit C: Participant Authorization – Resource Adequacy Capacity

Exhibit C-1: Additional Transaction Terms and Conditions – Resource
Adequacy Capacity

Exhibit D: Participant Authorization – GHG Compliance Instruments

Exhibit D-1: Additional Transaction Terms and Conditions – GHG
Compliance Instruments

Exhibit E: NCPA Commission-Approved Master Agreements

Exhibit F: NCPA Commission-Approved Bilateral Agreements

Exhibit G: NCPA Commission-Approved Exchanges

Exhibit H: NCPA Commission-Approved Auctions

Exhibit I: NCPA Commission-Approved Brokers

Exhibit J: Irrevocable Letter of Direction – Market Purchase Program

IN WITNESS WHEREOF, each Participant has executed this Agreement with the approval of its governing body, and NCPA has authorized this Agreement in accordance with the authorization of its Commission.

NORTHERN CALIFORNIA
POWER AGENCY
651 Commerce Drive
Roseville, CA 95678

CITY OF ALAMEDA
2000 Grand Street
Alameda, CA 94501

By: _____
Title: **General Manager**
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Its: **General Counsel**
Date: _____

By: _____
Its: _____
Date: _____

CITY OF BIGGS
465 "C" Street
Biggs, CA 95917

CITY OF GRIDLEY
685 Kentucky Street
Gridley, CA 95948

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

CITY OF HEALDSBURG
401 Grove Street
Healdsburg, CA 95448

CITY OF LODI
221 W. Pine Street
Lodi, CA 95240

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

ATTEST:

RANDI JOHL, City Clerk

CITY OF LOMPOC
100 Civic Center Plaza
Lompoc, CA 93436

CITY OF UKIAH
300 Seminary Ave.
Ukiah, CA 95482

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

Approved as to form:

Approved as to form:

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

EXHIBIT A

PARTICIPANT AUTHORIZATION – ENERGY

The undersigned Participant hereby subscribes to the following Contract Transaction and agrees to transact Energy designated as an Approved Product pursuant to the Amended and Restated Market Purchase Program Agreement and the Transaction Instrument designated below, supplemented and modified as follows:

- (a) Seller:
- (b) Purchaser:
- (c) Period of Delivery: Beginning _____ Ending _____
- (d) Schedule (Days and Hours): _____
- (e) Maximum Delivery Rate: _____
- (f) Delivery Point(s): _____
- (g) Type of Product: _____
- (h) Contract Quantity: _____MWhrs / MW
- (i) Contract Price: See Attachment A-1
- (j) Transmission Path for the Transaction: _____
- (k) Form of Transaction Instrument: _____
- (l) Special Terms and Exceptions: See Attachment A-1
- (m) Security Deposit Amount Required _____
- (n) Transfer from GOR _____
- (o) Pay by Check or Wire (specify) _____

Except to the extent herein provided for, no amendment or modification to the Agreement shall be enforceable unless reduced to writing and executed by both Parties. Those persons executing this Participant Authorization and the Parties hereby warrant that they are authorized to do so.

Participant

NCPA

By: _____
Designated Representative

By: _____
General Manager

Date: _____

Date: _____

Approved as to Legal Form,
Procedure and Authorization

Approved as to Legal Form

By: _____
Principal Counsel

By: _____
General Counsel

EXHIBIT A-1

ATTACHMENT A-1
ADDITIONAL TRANSACTION TERMS AND CONDITIONS
ENERGY

(Attach Buyer's/Seller's completed Attachment A-1 to the Participant Authorization)

EXHIBIT B

PARTICIPANT AUTHORIZATION – RECs

The undersigned Participant hereby subscribes to the following Contract Transaction and agrees to transact RECs designated as an Approved Product pursuant to the Amended and Restated Market Purchase Program Agreement and the Transaction Instrument designated below, supplemented and modified as follows:

- (a) Seller: _____
- (b) Purchaser: _____
- (c) Type of REC: _____
- (d) Applicable Program: _____
- (e) Product Type: _____
- (f) Certifier: _____
- (g) Contract Quantity: _____ MWhrs/ _____ RECs
- (h) Vintage: _____
- (i) Reporting Year: _____
- (j) Renewable Energy Resource (if applicable): _____
- (k) Resource Type (if applicable): _____
- (l) Contract Price: See Attachment B-1
- (m) Delivery Term: Beginning _____ Ending _____
- (n) Alternate Payment Terms: See Attachment B-1
- (o) Allocation of Change in Law Risk: _____
- (p) Delivery Point: _____
- (q) Alternate Title Transfer: _____
- (r) Form of Transaction Instrument: _____
- (s) Special Terms and Exceptions: See Attachment B-1
- (t) Security Deposit Amount Required _____
- (u) Transfer from GOR _____
- (v) Pay by Check or Wire (specify) _____

Except to the extent herein provided for, no amendment or modification to the Agreement shall be enforceable unless reduced to writing and executed by both Parties. Those persons executing this Participant Authorization and the Parties hereby warrant that they are authorized to do so.

Participant

NCPA

By: _____
Designated Representative

By: _____
General Manager

Date: _____

Date: _____

Approved as to Legal Form,
Procedure and Authorization

Approved as to Legal Form

By: _____
Principal Counsel

By: _____
General Counsel

EXHIBIT B-1

ATTACHMENT B-1
ADDITIONAL TRANSACTION TERMS AND CONDITIONS
RECs

(Attach Buyer's/Seller's completed Attachment B-1 to the Participant Authorization)

EXHIBIT C

PARTICIPANT AUTHORIZATION – RESOURCE ADEQUACY CAPACITY

The undersigned Participant hereby subscribes to the following Contract Transaction and agrees to transact Resource Adequacy Capacity designated as an Approved Product pursuant to the Amended and Restated Market Purchase Program Agreement and the Transaction Instrument designated below, supplemented and modified as follows:

- (a) Seller:
- (b) Purchaser:
- (c) Period of Delivery: Beginning _____ Ending _____
- (d) Contract Quantity NQC: _____MW
- (e) Resource Name: _____
- (f) CAISO Resource ID: _____
- (g) Resource Type: _____
- (h) Resource Category (if applicable): _____
- (i) Delivery Point(s): _____
- (j) Path 26 (North, South or None): _____
- (k) Local Area/System Capacity: _____
- (l) Deliverability/NQC Restrictions: See Attachment C-1
- (i) Contract Price: See Attachment C-1
- (j) Transmission Path for the Transaction: _____
- (k) Form of Transaction Instrument: _____
- (l) Special Terms and Exceptions: See Attachment C-1
- (m) Security Deposit Amount Required _____
- (n) Transfer from GOR _____
- (o) Pay by Check or Wire (specify) _____

Except to the extent herein provided for, no amendment or modification to the Agreement shall be enforceable unless reduced to writing and executed by both Parties. Those persons executing this Participant Authorization and the Parties hereby warrant that they are authorized to do so.

Participant

NCPA

By: _____
Designated Representative

By: _____
General Manager

Date: _____

Date: _____

Approved as to Legal Form,
Procedure and Authorization

Approved as to Legal Form

By: _____
Principal Counsel

By: _____
General Counsel

EXHIBIT C-1

ATTACHMENT C-1
ADDITIONAL TRANSACTION TERMS AND CONDITIONS
RESOURCE ADEQUACY CAPACITY

(Attach Buyer's/Seller's completed Attachment C-1 to the Participant Authorization)

EXHIBIT D

PARTICIPANT AUTHORIZATION – GHG COMPLIANCE INSTRUMENTS

The undersigned Participant hereby subscribes to the following Contract Transaction and agrees to transact GHG Compliance Instruments designated as an Approved Product pursuant to the Amended and Restated Market Purchase Program Agreement and the Transaction Instrument designated below, supplemented and modified as follows:

- (a) Seller:
- (b) Purchaser:
- (c) Type of GHG Compliance Instrument: _____
- (d) Applicable Program: _____
- (e) Issuing Body: _____
- (f) Certifier: _____
- (g) Contract Quantity: _____ Compliance Instrument
- (h) Vintage: _____
- (i) Reporting Year: _____
- (j) Source (if applicable): _____
- (k) Resource Type (if applicable): _____
- (l) Contract Price: See Attachment B-1
- (m) Delivery Term: Beginning _____ Ending _____
- (n) Alternate Payment Terms: See Attachment B-1
- (o) Allocation of Change in Law Risk (if applicable): _____
- (p) Delivery Point (if applicable): _____
- (q) Special Terms and Exceptions: See Attachment B-1
- (r) Security Deposit Amount Required: _____
- (s) Transfer from GOR: _____
- (t) Pay by Check or Wire (specify): _____

Except to the extent herein provided for, no amendment or modification to the Agreement shall be enforceable unless reduced to writing and executed by both Parties. Those persons executing this Participant Authorization and the Parties hereby warrant that they are authorized to do so.

Participant

NCPA

By: _____
Designated Representative

By: _____
General Manager

Date: _____

Date: _____

Approved as to Legal Form,
Procedure and Authorization

Approved as to Legal Form

By: _____
Principal Counsel

By: _____
General Counsel

EXHIBIT D-1

ATTACHMENT D-1
ADDITIONAL TRANSACTION TERMS AND CONDITIONS
GHG COMPLIANCE INSTRUMENTS

(Attach Buyer's/Seller's completed Attachment D-1 to the Participant Authorization)

EXHIBIT E

NCPA COMMISSION APPROVED MASTER AGREEMENTS

This Exhibit E contains the list of Commission approved Master Agreements that may properly be used as Transaction Instruments to consummate Contract Transactions pursuant to Section 5.1.1 of this Agreement.

1. EDISON ELECTRIC INSTITUTE (EEI) MASTER POWER PURCHASE & SALE AGREEMENT VERSION 2.1 (MODIFIED 4/25/00); INCLUDING NCPA PREFERRED TERMS
2. WSPP AGREEMENT, AS MOST RECENTLY AMENDED AT THE TIME OF THE TRANSACTION.

EXHIBIT F

NCPA COMMISSION APPROVED BILATERAL AGREEMENTS

This Exhibit F contains the list of Commission approved Bilateral Agreements that may properly be used as Transaction Instruments to consummate Contract Transactions pursuant to Section 5.1.2 of this Agreement.

1. NONE

EXHIBIT G

NCPA COMMISSION APPROVED EXCHANGES

This Exhibit G contains the list of Commission approved Exchanges that may properly be used to consummate Contract Transactions pursuant to Section 5.1.3.

1. NEW YORK MERCANTILE EXCHANGE (“NYMEX”)
2. INTERCONTINENTAL EXCHANGE (“ICE”)

EXHIBIT H

NCPA COMMISSION APPROVED AUCTIONS

This Exhibit H contains the list of Commission approved Auctions that may properly be used to consummate Contract Transactions pursuant to Section 5.1.4.

1. NONE

EXHIBIT I

NCPA COMMISSION APPROVED BROKERS

This Exhibit I contains the list of Commission approved Brokers that may be used to consummate Contract Transactions.

1. NONE

**IRREVOCABLE LETTER OF DIRECTION
MARKET PURCHASE PROGRAM**

To: Chief Financial Officer, Northern California Power Agency

From: _____
Name of Participant ("Participant")

Subject: IRREVOCABLE LETTER OF DIRECTION

I hereby certify that I have been duly authorized on behalf of Participant's governing body to irrevocably authorize and direct Northern California Power Agency ("NCPA") to pay any and all obligations incurred by NCPA on behalf of Participant, as a Party to the AMENDED AND RESTATED MARKET PURCHASE PROGRAM AGREEMENT, as the same may be amended from time to time, from any funds held by NCPA for such purposes, including any funds held and committed in Participant's General Operating Reserve account as security deposits for such obligations.

Authorized, Approved, and
Directed by: _____ Date: _____
Designated Representative

Approved As to Legal Form, Procedure and Authorization:

Principal Counsel Date: _____

Attachment A

Summary of Revisions to the Market Purchase Program Agreement

The following is a summary of the proposed revisions to the Market Purchase Program Agreement, organized by Agreement section:

General Modifications

- The Agreement has been modified to enable the purchase **and sale** of the following Approved Products:
 - Energy
 - Resource Adequacy Capacity
 - Renewable Energy Certificates
 - GHG Compliance Instruments
 - Physical Option Products
- The procurement process and requirements have been decomposed into various sections in the Agreement; each such section is described below
- Multiple formatting changes have been made throughout the Agreement

Section 1 – Definitions

- Revised several definitions in Section 1
- Added new definitions in Section 1, including for example:
 - Approved Products
 - Auction
 - Bilateral Agreement
 - Cap and Trade Program
 - Commodity Revenues
 - Contract Transaction
 - Physical Option Products
 - Replacement Commodity Costs
- Deleted some existing definitions in Section 1

Section 2 – Effectiveness of Agreement

- The Agreement is set to become effective on the first day of the month following the Effective Date

Section 3 – Authority

- Added Section 3 to clarify the authorities provided to NCPA and the Participants under the Agreement

Section 4 – Transaction Conditions

- The conditions that must be met prior to consummating a Contract Transaction have been consolidated into Section 4, specifically:
 - All Contract Transactions must be made in accordance with the NCPA Risk Management Policies and Regulations, are limited only to the Approved Products listed in the NCPA Risk Management Policies and Regulations, and may not exceed the Maximum Contract Price

- The “Net Short” provisions have been removed from the Agreement because the Net Short protection is enforced through the NCPA Risk Management Policies and Regulations

Section 5 – Transaction Instruments

- Section 5 has been added to the Agreement to identify the types of Commission-approved Transaction Instruments that are enabled to be used to consummate Contract Transactions:
 - Master Agreements
 - EEI & WSPP Agreement
 - Bilateral Agreements
 - Exchanges
 - Auctions

Section 6 – Transaction Process and Participant Subscription to a Contract Transaction

- Section 6 has been modified to include the process NCPA will use to enter into Contract Transactions, including both NCPA and the Participants’ obligations (e.g. Contract Transaction Participant Authorizations)
- Expanding the options under which Contract Transactions may be initiated:
 - Through use of a RFP, or in response to a RFP
 - Through use of direct and/or bilateral negotiations with a Third Party or Participant
 - On a Commission-approved Exchange or Auction
- Clarified the roles and responsibilities of the Designated Representative and the Participants’ Principal Counsel so that Designated Representatives are approving the Contract Transaction, and the Principal Counsel is approving the Contract Transaction as to form, process and procedure

Section 7 – Delivery and Receipt of a Contract Transaction

- Section 7 includes new rules associated with the delivery and receipt of Contract Transactions, including Participants’ obligations to delivery Approved Products to NCPA to support a sale made by NCPA on behalf of a Participant
- New language has been added to Section 7 to address the situation where a Participant fails to provide Approved Products that have been sold by NCPA
 - The language includes the authority for NCPA to procure replacement products to fulfill the sales obligation, and such costs will be allocated to the defaulting Participant
 - Language has also been added to describe the process used to transfer RECs and GHG Compliance Instruments purchased/sold under the MPP

Section 8 – Cooperation and Further Assurances

- Minor language modifications/clarifications

Section 9 – Financial Obligations, Invoicing and Security Deposit Administration

- Added language to allow NCPA/Participants to adjust the Fixed MPP Costs rate based on NCPA’s annual budget and respective program efforts
- The Variable MPP Costs calculation was simplified, and will now include volumes for all Approved Products, not just Energy

- All Security Deposits required under the Agreement will be held as committed funds in NCPA's GOR, and Participants may commit uncommitted funds in the GOR to meet their Security Deposit obligations through use of an Irrevocable Letter of Direction
- The calculation of the Initial Security Deposit requirement will now be based on the three (3) highest months of Commodity Costs for all Approved Products, not just Energy
- Added language to prohibit the use of Commodity Revenues as/or to offset Security Deposit requirements
- Added new authority in the Agreement to enable NCPA to request Participants to provide Additional Security Amounts that are in excess of the three (3) month Security Deposit requirement; to cover other obligations that may be imposed on NCPA due to the expansion of Approved Product types
- Clarified which Contract Transactions are or are not used to calculate a Participant's financial obligations under the Agreement
- Other minor language modifications

Section 10 – Administration of Agreement

- Minor language modifications/clarifications

Section 11 – Admission and Withdrawal of Participants

- Added language to Section 11 to clarify a Withdrawing Participant's continuing obligations under Section 14.3.2 of the Agreement and to Deposit Security with NCPA for any outstanding Contract Transactions beyond the two (2) year period in which the Participant officially withdraws from the Agreement

Section 12 – Term and Termination

- The Term of the Agreement includes an Initial Term of five (5) years, and an automatic renewal for two (2) year increments thereafter

Section 13 – Default and Remedies

- Minor language modifications/clarifications

Section 14 – Miscellaneous

- Modified the Participant liability provisions of the Agreement to include both several and joint liability. Each Participant will effectively have a several liability for their respective Contract Transaction, but to the extent a Participant defaults, all non-defaulting Participants will have a joint liability for such default
 - This provision have been added to the Agreement to address cross member risk concerns, and is consistent with the provisions of the Natural Gas Program Agreement
- Added language to enable amendments to the Exhibits of the Agreement based on NCPA Commission action; no individual Participant governing body approval will be required for such amendments
- Added other miscellaneous provisions, including:
 - Venue
 - Attorneys' Fees
 - Interpretation
 - No Third Party Beneficiaries

Exhibits

- Added a new Participant Authorization for Resource Adequacy
- Added a new Participant Authorization for RECs
- Added a new Participant Authorization for GHG Compliance Instruments
- Added new Exhibits to list the Commission-approved:
 - Master Agreements
 - Bilateral Agreements
 - Exchanges
 - Auctions
 - Brokers
- Added a new Exhibit containing an Irrevocable Letter of Direction for GOR deposits
- Removed NCPA's pro forma RFP from the Exhibits

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY
COUNCIL APPROVING THE AMENDED AND
RESTATED NORTHERN CALIFORNIA
POWER AGENCY MARKET PURCHASE
PROGRAM AGREEMENT

=====

WHEREAS, the Market Purchase Program (MPP) Agreement was made effective August 1, 2007, by and among the Northern California Power Agency (NCPA), the City of Lodi and other NCPA members, to enable NCPA, on behalf of the MPP participants, to engage in contract transactions to purchase power; and

WHEREAS, since its inception the MPP has operated successfully for Lodi by facilitating execution of these contracts for the benefit of its electric utility customers; and

WHEREAS, due to changes in the wholesale electric market, including new regulatory obligations, Lodi and the other MPP participants have requested NCPA to revise the MPP Agreement to enable NCPA to transact new products that are currently not available under the MPP Agreement; and

WHEREAS, to satisfy this request, NCPA, working in coordination with the MPP participants, has developed the Amended and Restated Market Purchase Program Agreement to provide for these new products; and

WHEREAS, the Amended MPP Agreement will enable NCPA to engage in transactions, on behalf of the Lodi and others, to purchase and sell energy, resource adequacy capacity, Renewable Energy Certificates (RECs), Green House Gas (GHG) compliance instruments and physical option products; and

WHEREAS, through these MPP contract transactions, authorized under the Amended MPP Agreement, Lodi will assure greater rate and budget stability by: (i) reducing the proportion of energy the City needs to acquire in a potentially volatile spot market; (ii) transacting in bundled and unbundled RECs to manage the Lodi's renewable energy portfolio as mandated by the State of California; (iii) satisfying applicable resource adequacy requirements per California Independent System Operator mandate in a more efficient manner; and (iv) satisfying applicable GHG emission compliance obligations per State of California mandate; and

WHEREAS, the Amended MPP Agreement specifies the terms and conditions under which NCPA will perform such services, including, but not limited to, NCPA's and the City of Lodi's obligations regarding transaction process, transaction authorization, and financial requirements; and

WHEREAS, the City of Lodi, as a signatory to the Amended MPP Agreement, will be responsible to pay to NCPA each month the sum of the following: (i) fixed MPP costs of \$900; (ii) one-twelfth of the City's allocated share of variable MPP costs calculated in accordance with the agreement; (iii) transaction specific costs for the City's contract transactions; and (iv) commodity costs for the City's contract transactions; and

WHEREAS, in addition to the aforementioned monthly payment obligations, the City of Lodi is obligated to fund: (i) the City of Lodi's share of any and all required security deposits calculated in accordance with the Amended MPP Agreement; and (ii) the City of Lodi's share of working capital requirements for the Market Purchase Program maintained at NCPA as set forth in the NCPA Annual Budget.

NOW, THEREFORE BE IT RESOLVED, that the City Council hereby authorizes approval of the Northern California Power Agency Amended and Restated Market Purchase Program Agreement and authorizes execution by the City Manager with administration by the Electric Utility Director.

Dated: August 1, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 1, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Establishing Guidelines for a First Time Home Buyer Program and Authorizing an Application to the State Department of Housing and Community Development for \$500,000 of HOME Funding

MEETING DATE: August 1, 2012

PREPARED BY: Community Development Department

RECOMMENDED ACTION: Adopt Resolution establishing guidelines for a First Time Home Buyer Program (FTHB) and authorizing an application to the State Department of Housing and Community Development (HCD) for \$500,000 of HOME funding.

BACKGROUND INFORMATION: The City of Lodi had historically received Community Development Block Grant (CDBG) and HOME Program funding annually from the U.S. Department of Housing and Urban Development (HUD) as a participating jurisdiction in the San Joaquin Urban County.

In 2009, the City of Lodi established itself as an Entitlement Community to receive the annual CDBG allocation directly from HUD. While Lodi does qualify to receive CDBG funds directly from HUD, it does not qualify to receive HOME funds directly and is therefore required to pursue funding from the State HCD, where it is pooled and made available through a competitive application process.

The State HCD makes those HOME funds available for housing rehabilitation, new construction, and acquisition and rehabilitation, for both single-family and multifamily projects, and predevelopment loans by Community Housing Development Organizations (CHDOs). All activities must benefit lower-income renters or owners.

In 2009, Lodi applied for and was awarded \$800,000 for a First Time Home Buyer Loan Program. That two-year contract for funding expired on May 31st, 2012.

We intend to submit application for another allocation of HOME Program funding for that same activity through HCD during the application period ending August 17, 2012. One modification from the previous program is that we are opening it to include both Acquisition Only and Acquisition with Rehab activities. Many of the homes on the market that are available to our low-income clientele, require some degree of repairs and/or renovations. As an Acquisition Only activity, buyers would not be able to get into those homes through our program unless the owners made all repairs prior to close of escrow. Having the option to do Acquisition with Rehab within our program will allow us to provide more assistance to first-time homebuyers with the current market conditions.

APPROVED: _____
Konradt Bartlam, City Manager

The maximum allocation allowed for these multi-activity HOME programs is \$700,000 and the minimum is \$500,000. Any jurisdiction awarded HOME funds through HCD is not allowed to apply for additional funding until it has used 50 percent of its current allocation, or the contract for funding has expired.

The attached First Time Home Buyer Program Guidelines (Exhibit A) meet the basic requirements and regulations for program operation established by HCD.

Program Guidelines – Key Points

Income Eligibility: Household incomes at or below 80 percent of Area Median Income (AMI), based upon the following household sizes.

Source: State of California Housing and Community Development 2012 CDBG & HOME Income Levels Effective February 9, 2012

<i>1 Person</i>	<i>2 Persons</i>	<i>3 Persons</i>	<i>4 Persons</i>	<i>5 Persons</i>	<i>6 Persons</i>	<i>7 Persons</i>	<i>8 Persons</i>
<i>\$37,150</i>	<i>\$42,450</i>	<i>\$47,750</i>	<i>\$53,050</i>	<i>\$57,300</i>	<i>\$61,550</i>	<i>\$65,800</i>	<i>\$70,050</i>

Loan Type: Deferred (silent second) loan up to \$60,000.

Interest Rate: 2 percent.

Term: Loan shall be “due and payable” 30 years from close of escrow, upon transfer of the property, or when the home is no longer owner-occupied, whichever comes first.

Buyer Contribution: Minimum 2 percent of the purchase price.

Affordability Period: Five years – Loans up to \$15,000
Ten years – Loan amount \$15,000 to \$39,999
Fifteen years – Loan amount \$40,000 to \$60,000.

Qualification Req.: Must not have owned a home in the past three years.
Must attend and obtain a certificate from an approved first-time homebuyer education/counseling session.

FISCAL IMPACT: Program administration and project delivery costs incurred by the City are eligible expenses reimbursed through the grant program.

FUNDING AVAILABLE: HOME Program Funding through State Housing and Community Development

Jordan Ayers, Deputy City Manager

Konradt Bartlam
Community Development Director

Exhibit A

First Time Home Buyer Down-Payment Assistance Program Guidelines

City of Lodi

Homebuyer Acquisition Only/ Acquisition with Rehabilitation Program Guidelines



For:

CalHome Program
Community Development Block Grant
(CDBG) Program and
HOME Investment Partnerships Program

Serving the City of Lodi

CalHome Approved (date)
CDBG Approved (date)
HOME Approved (date)

HOMEBUYER PROGRAM GUIDELINES

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HOMEBUYER PROGRAM GUIDELINES

1.0. GENERAL

The above-named entity, hereinafter referred to as the “Sponsor,” has entered into a contractual relationship with the California Department of Housing and Community Development (“HCD”) to administer one or more HCD-funded homebuyer programs. The homebuyer program described herein (the “Program”) is designed to provide assistance to eligible homebuyers in purchasing homes, also referred to herein as “housing units”, located within the Program’s eligible area, as described in Section 3.1.A. The Program provides this assistance in the form of deferred payment “silent” second priority loans as “Gap” financing toward the purchase price and closing costs of affordable housing units that will be occupied by the homebuyers as their primary residence. The Program will be administered by the City of Lodi, (the “Program Operator”).

1.1. PROGRAM OUTREACH AND MARKETING

All outreach efforts will be done in accordance with state and federal fair lending regulations to assure nondiscriminatory treatment, outreach and access to the Program. No person shall, on the grounds of age, ancestry, color, creed, physical or mental disability or handicap, marital or familial status, medical condition, national origin, race, religion, gender or sexual orientation be excluded, denied benefits or subjected to discrimination under the Program. The Sponsor will ensure that all persons, including those qualified individuals with handicaps, have access to the Program.

- A. The Fair Housing Lender and Accessibility logos will be placed on all outreach materials. Fair housing marketing actions will be based upon a characteristic analysis comparison (census data may be used) of the Program’s eligible area compared to the ethnicity of the population served by the Program (includes, separately, all applications given out and those receiving assistance) and an explanation of any underserved segments of the population. This information is used to show that protected classes (age, gender, ethnicity, race, and disability) are not being excluded from the Program. Flyers or other outreach materials, in English and any other language that is the primary language of a significant portion of the area residents, will be widely distributed in the Program-eligible area and will be provided to any local social service agencies. The Program may sponsor homebuyer classes to help educate homebuyers about the home buying process and future responsibilities. Persons who have participated in local homebuyer seminars will be notified about the Program.
- B. The Program Operator will work with local real estate agents and primary lenders to explain the Program requirements for eligible housing units and homebuyers, and to review Program processes. Local real estate agents and primary lenders will also be encouraged to have their customers participate in the Program.
- C. Section 504 of the Rehabilitation Act of 1973 prohibits the exclusion of an otherwise qualified individual, solely by reason of disability, from participation under any program receiving Federal funds. The Program Sponsor will take

appropriate steps to ensure effective communication with disabled housing applicants, residents and members of the public.

1.2. APPLICATION PROCESS AND SELECTION

- A. The Sponsor maintains a waiting list of applicants. Each applicant is asked to complete an application form, which asks for sufficient information concerning income, employment, and credit history to establish preliminary eligibility for Program participation. Completed applications are processed on a first-come-first-served basis. Applications are deemed complete only if all information is completed, the application is signed and dated, and a primary lender's pre-qualification letter is attached to the application. Incomplete applications are returned to the applicant and will not be date/time stamped until complete.
- B. Once the applicant's name comes to the top of the waiting list, their Program eligibility is confirmed and they are invited to a briefing regarding participation in the Program. At the briefing the application is reviewed and the potential homebuyer is given a "Preliminary Eligibility Letter" for the Program along with the following forms: Program Brochure, Attachment (G) Instructions to Home Buyer, List of Participating Lenders, Attachment (E) Sellers Lead-Based Paint Disclosure and the EPA Booklet (Protect Your Family from Lead in Your Home) and (F) Notice to Seller.

If the Program Operator encounters material discrepancies and/or misrepresentations, and/or there are income, asset, household composition, or other important questions that can't be resolved, the Sponsor reserves the right to deny assistance to the household. In this case, the applicant may re-apply after six months have elapsed from the time of written assistance denial.

- C. Each applicant must participate in individual Homebuyer Counseling provided by any HUD-certified homebuyer counseling agency and receive a certificate of completion.
- D. The potential homebuyer is given 90 days in order to find a qualified home and begin securing a primary loan for the housing unit. If during the 90-day time frame, the potential homebuyer is unable to purchase a home, an extension may be given. However, if it appears the potential homebuyer cannot participate in the Program, the reservation of funds expires and the next person on the waiting list is given an opportunity to participate in the Program.

1.3. THE HOME PURCHASE PROCESS

- A. The following is a simplified example of how a primary lender would analyze a homebuyer's finances to determine how much the homebuyer could afford to borrow from the primary lender towards homeownership.

**DEBT SERVICE
FOR A FAMILY OF FOUR EARNING \$3,388 PER MONTH**

HOUSING PAYMENTS		TOTAL OVERALL PAYMENTS
Principal & Interest Payment	\$ 865	\$1,180 Housing
Insurance	82	+200 <u>Other Debt Service</u>
Taxes	<u>233</u>	\$1,380 Total Debt Service
Total Housing Expense (PITI is 35% of \$3,388)	\$1,180	(Overall debt service per month is 41% of \$3,388)

OTHER HOUSEHOLD DEBT SERVICE

Car Payment	\$ 150
Credit Card Payment	<u>50</u>
Total Other Debt	\$ 200

A \$865 per month loan payment equates to borrowing \$143,000 at 5.88% for a 30 year term.

**SUBSIDY CALCULATION
FOR A FAMILY OF FOUR EARNING \$3,388 PER MONTH**

Purchase Price of Property	\$ 280,000
Less Primary loan amount	143,000
Less down payment of 1%	<u>2,800</u>
 Equals “GAP”	 \$ 134,200
 Plus estimated allowable settlement charges	 <u>8,400</u>
 Equals Total Subsidy	 \$ 142,600

B. The housing unit selection process will be conducted by the homebuyers. Prior to making an offer to purchase an eligible housing unit (see Section 3.0), homebuyer shall provide seller with a disclosure containing the following provisions:

- 1) Homebuyer has no power of eminent domain and, therefore, will not acquire the property if negotiations fail to result in an amicable agreement; and
- 2) Homebuyer's offer is an estimate of the fair market value of the housing unit, to be finally determined by a state licensed appraiser;

- 3) The housing unit will be subject to inspection. The housing unit must comply with local codes at the time of construction and local health and safety standards.
 - 4) All housing units built prior to January 1, 1978 will require a lead paint disclosure to be signed by both the homebuyer and Seller (Attachment E);
 - 5) Since the purchase would be voluntary, the seller would not be eligible for relocation payments or other relocation assistance;
 - 6) The seller understands that the housing unit must be either: currently owner-occupied, newly constructed, or vacant for three months prior to submission of the purchase offer.
 - 7) If the seller is not provided with a statement of the above six provisions prior to the purchase offer, the seller may withdraw from the agreement after this information is provided.
- C. Applicant submits executed standard form purchase and sale agreement and primary lender prequalification letter to Program Operator. The purchase and sale agreement will be contingent on the household and housing unit meeting Program eligibility requirements and receiving Program loan approval. Program Operator verifies applicant eligibility, housing unit and loan eligibility and amount of assistance to be provided consistent with these guidelines.
- D. Program Operator, where Program Operator is not the Sponsor, submits recommendation to the Sponsor for approval or denial, including the reasons for the recommendation. Sponsor determines Applicant's approval or denial, and instructs Program Operator to notify Applicant. Program Operator provides written notification to Applicant of approval or denial with reason and, if denied, a copy of the Program's appeal procedures.
- E. When Primary Lender requirements are met, Program funds are deposited into escrow, with required closing instructions and loan documents.
- F. At the time of escrow closing, the Sponsor shall be named as an additional loss payee on fire, flood (if required), and extended coverage insurance for the length of the loan and in an amount sufficient to cover all encumbrances or full replacement cost of the housing unit. A policy of Title Insurance naming the Sponsor as insured is also required.

1.4. HOMEBUYER COSTS

- A. Eligible households must document that they have the funds necessary for down payment and closing costs as required by the Primary Lender and the Sponsor. The Program's down payment requirement (below) is in place even if the Primary Lender has a lower down payment requirement. If the Primary Lender has a higher down payment requirement, there is no additional down payment requirement required by the Program.
- B. Homebuyer must contribute a minimum down payment of two percent (2%) of the purchase price, but may contribute more if desired.

- C. Sponsor will not provide more than twenty percent (20%) of the acquisition cost (purchase price plus all closing costs), or \$40,000, whichever is less. The subsidy will write down the cost of the primary lender's loan so that the payments of PITI are within approximately 26 to 32% of the gross household income. The Program Operator will determine the level of subsidy and affordability during underwriting of the Program's loan to make sure that it conforms to the requirements of the HCD funding Program.

1.5. HOMEBUYER EDUCATION

Buying a home can be one of the most confusing and complicated transactions anyone can make. Providing the future homebuyer with informative homebuyer education training, can bring success to the Sponsor, Program Operator, the Program and most importantly, the homebuyer. It has been documented that first-time homebuyers that have had homebuyer education have the ability to handle problems that occur with homeownership. All Program participants are required to attend a Sponsor-approved homebuyer education class. The homebuyer education class will cover such topics as the following: preparing for homeownership; available financing; credit analysis; loan closing; homeownership responsibilities; home maintenance; impact of refinancing and loan servicing. Methods of homebuyer counseling and education may include, but are not limited to: one-on-one counseling between homebuyer, counselor and family/individual and/or group workshops and informational sessions. Tools of instruction may include fliers, brochures, power point presentations, worksheets, etc.

1.6. CONFLICT OF INTEREST REQUIREMENTS

When the Sponsor's program contains Federal funds, the applicable Conflict of Interest requirements of 24 CFR Section 570.611 shall be followed for CDBG assistance, and Section 92.356 of the HOME Final Rule shall be followed for HOME assistance.

1.7. NON-DISCRIMINATION REQUIREMENTS

The Program will be implemented in ways consistent with the Sponsor's commitment to non-discrimination. No person shall be excluded from participation in, denied the benefit of, or be subject to discrimination under any program or activity funded in whole or in part with State funds on the basis of his or her religion or religious affiliation, age, race, color, creed, gender, sexual orientation, marital status, familial status (children), physical or mental disability, national origin, or ancestry, or other arbitrary cause.

2.0 APPLICANT QUALIFICATIONS

2.1. CURRENT INCOME LIMITS FOR THE AREA, BY HOUSEHOLD SIZE

All applicants must certify that they meet the household income eligibility requirements for the applicable HCD program(s) and have their household income documented. The income limits in place at the time of loan approval will apply when determining applicant income eligibility. All applicants must have incomes at or below 80% of the County's area median income (AMI), adjusted for household size, as published by HCD. (Attachment C).

Household: Means one or more persons who will occupy a housing unit. Unborn children

do not count in family size determination.

Annual Income: Generally, the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period.

2.2. INCOME QUALIFICATION CRITERIA

Projected annual gross income of the applicant household will be used to determine whether they are above or below the published HCD income limits. Income qualification criteria, as shown in the most recent HCD program-specific guidance at <http://www.hcd.ca.gov/fa/cdbg/GuideFedPrograms.html>, will be followed to independently determine and certify the household's annual gross income. The Program Operator should compare this annual gross income to the income the Primary Lender used when qualifying the household. The Primary Lender is usually underwriting to FHA or conventional guidelines and may not calculate the household income or assets in the same way as required by the Program. Income will be verified by reviewing and documenting tax returns, copies of wage receipts, subsidy checks, bank statements and third-party verification of employment forms sent to employers. All documentation shall be dated within six months prior to loan closing and kept in the applicant file and held in strict confidence.

A. HOUSEHOLD INCOME DEFINITION:

Household income is the annual gross income of all adult household members that is projected to be received during the coming 12-month period, and will be used to determine program eligibility. Refer to Income Inclusions and Exclusions for further guidance to the types of incomes to be included or excluded when calculating gross annual income. For those types of income counted, gross amounts (before any deductions have been taken) are used. Two types of income that are not considered would be income of minors and live-in aides. Certain other household members living apart from the household also require special consideration. The household's projected ability to pay must be used, rather than past earnings, when calculating income.

The link to Annual Income Inclusions and Exclusions is:

http://www.hcd.ca.gov/fa/cdbg/FedProgGuideDocs/AppendixB_AnnualIncomeInclusionsExclusions.doc

See Attachment A: 24 CFR Part 5 Annual Income Inclusions and Exclusions

B. ASSETS:

There is no asset limitation for participation in the Program. Income from assets, however, is recognized as part of annual income under the Part 5 definition. An asset is a cash or non-cash item that can be converted to cash. The value of necessary items such as furniture and automobiles are not included. (*Note: it is the income earned – e.g. interest on a savings account – not the asset value, which is counted in annual income.*)

An asset's cash value is the market value less reasonable expenses required to

convert the asset to cash, including, for example, penalties or fees for converting financial holdings, and costs for selling real property. The cash value (rather than the market value) of an item is counted as an asset.

The Link to Asset Inclusions and Exclusions is:

http://www.hcd.ca.gov/fa/cdbg/FedProgGuideDocs/AppendixC_AnnualIncomeAssetInclusionsExclusions.doc

See Attachment B: Part 5 Annual Income Net Family Asset Inclusions and Exclusions

2.3. DEFINITION OF AN ELIGIBLE HOMEBUYER

For CDBG, an eligible homebuyer means an individual or individuals or an individual and his or her spouse who meets the income eligibility requirements and is/are not currently on title to real property. Persons may be on title of a manufactured home unit, who are planning to sell the unit as part of buying a home located on real property. Documentation of homebuyer status will be required for all homebuyers. CDBG-funded programs may assist eligible homebuyers who are not “first-time” homebuyers.

HOME and CalHome-funded Programs are required to use the following definition of an eligible homebuyer, which is a “first-time homebuyer” from 8201(l) Title 25 California Code of Regulations:

“First-time homebuyer” means an individual or individuals or an individual and his or her spouse who have not owned a home during the three-year period before the purchase of a home with subsidy assistance, except that the following individual or individuals may not be excluded from consideration as a first-time homebuyer under this definition:

1. a displaced homemaker who, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse. A displaced homemaker is an adult who has not, within the preceding two years, worked on a full-time basis as a member of the labor force for a consecutive twelve-month period and who has been unemployed or underemployed, experienced difficulty in obtaining or upgrading employment and worked primarily without remuneration to care for his or her home and family;
2. a single parent who, while married, owned a home with his or her spouse or resided in a home owned by the spouse. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody or joint custody or is pregnant; or
3. an individual or individuals who owns or owned, as a principal residence during the three-year period before the purchase of a home with assistance, a dwelling unit whose structure is:
 - a. not permanently affixed to a permanent foundation in accordance with local or state regulations; or
 - b. not in compliance with state, local, or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

3.0. HOUSING UNIT ELIGIBILITY

3.1. LOCATION AND CHARACTERISTICS

- A. Housing units to be purchased must be located within the eligible area. The eligible area is described as follows: “Within **the Lodi city limits.**”

Housing unit types eligible for the homebuyer Program are **new or previously owned single-family residences; condominiums; or** manufactured housing on a single-family lot and placed on a permanent foundation system. HOME does not allow manufactured homes unless on a permanent foundation system.

- B. All housing units must be in compliance with State and local codes and ordinances.
- C. Housing units located within a 100 year flood zone will be required to provide proof of flood insurance with an endorsement naming the City of Lodi as loss payee in order to close escrow.
- D. Housing must be “modest”, so it may not exceed three bedrooms and two bathrooms unless there are documented extenuating circumstances (e.g. it would create an overcrowding situation, there is not a reasonable inventory of homes of this size, etc.) and the Loan Committee approves the exception request.

3.2. CONDITIONS

- A. Construction Inspection and Determining Need for Repairs.

Once the participating homebuyer has executed a purchase agreement for a housing unit, and prior to a commitment of Program funds, the following steps must be taken for the housing unit to be eligible for purchase under the Program:

- 1) When the Sponsor’s Program utilizes Federal funds and if the housing unit was constructed prior to 1978 then the lead-based paint requirements of Section 3.2.C will apply.
- 2) The Program Operator, a certified housing inspector, or a Sponsor representative will walk through the housing unit, determine if it is structurally sound, and identify any code related and health and safety deficiencies that need to be corrected. A list of code related repair items will be given to the homebuyers and their Realtor to be negotiated with the seller.

If there are one or more health and safety deficiencies, and/or violations of applicable building codes noted in the written report, the Sponsor will approve the subsidy only if:

- a. Repair prior to close of escrow. The buyer and seller agree to make necessary repairs to the dwelling unit prior to transfer of property ownership at their own expense; or

b. HOME acquisition and rehabilitation loan. If HOME funds are available, the buyer may use up to \$10,000 of the Sponsor’s First-Time Homebuyer loan to make necessary repairs. All health and safety hazards and code violations must be addressed under this option. Examples of allowable expenses include, but are not limited to: foundation repair, electrical repair or rewiring, plumbing or sewer repair, roof repair or replacement, heating system installation or repair, and repair of structurally-significant damaged wood. General property improvements are not eligible unless required to bring the dwelling unit into compliance with local health and safety standards or applicable building codes. For example, sidewalk repair would not be an eligible use of funds. However, if a sidewalk must be removed to correct a sewer problem, funds may be used to replace the portion of the sidewalk removed for the work. Buyers should note that the use of any Program funds for rehabilitation on a home built before 1978 may incur additional lead-based paint testing. Hiring of a contractor and completion of repairs will be conducted in accordance with the section entitled “Acquisition with Rehabilitation Process” below.

3) With the exception of 1)b. above, upon completion of all work required by the Program Operator, Sponsor, appraiser, pest inspector and/or certified housing inspector, a final inspection will be conducted prior to close of escrow. The inspector will sign off on all required construction work assuring that each housing unit receiving Program assistance is in compliance with local codes and health and safety requirements at the time of purchase and prior to occupancy.

B. Per Section 8208 of the State HOME regulations, no additional HOME assistance, including rehabilitation funds, may be provided during the period starting one year following the filing of the Project Completion Report through the end of the Affordability Period.

The HOME Affordability Period is as follows (amount does not include Activity Delivery Costs paid to the State Recipient by HCD):

Amount of HOME Assistance	Period of Affordability in Years
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

C. Lead-Based Paint Hazards: All housing units built prior to 1978 for which HOME or CDBG funding is anticipated are subject to the requirements of this section 3.2.C. Such homes must undergo a visual assessment by a person who has taken HUD’s online Visual Assessment course. Deteriorated paint must be stabilized using work safe methods. Clearance must be obtained after paint stabilization by a DHS certified LBP Risk Assessor/Inspector. HOME and CDBG general administrative and activity delivery funds may be used to pay for lead-based paint visual assessments, and if lead mitigation and clearance costs are incurred, these programs may incorporate the costs into the calculation of Program assistance.

The following requirements must be met:

- 1) **Notification:** a) Prior to homebuyer's obligation to purchase a pre-1978 home, the Buyer will be given the most recent copy of and asked to read the EPA pamphlet "*Protect Your Family From Lead in Your Home*". (EPA 747-K-94-001). A signed receipt of the pamphlet will be kept in the Sponsor's homebuyer file; b) A notice to residents is required following a risk assessment/inspection using form DHS 8552, which is provided by the DHS-certified Risk Assessor/Inspector; c) a notice to residents is required following lead-based paint mitigation work using Visual Assessment and Lead-based Paint Notice of Presumption and Hazard Reduction form, LBP – 1 (Attachment H).
 - 2) **Disclosure:** Prior to the homebuyer's obligation to purchase a pre-1978 housing unit, the HUD disclosure (Attachment E), "Seller's Lead-based Paint Disclosure" notice must be provided by the seller to the homebuyer.
 - 3) **Inspections:** The Inspector shall conduct a "Visual Assessment" of all the dwelling unit's painted surfaces in order to identify deteriorated paint. All deteriorated paint will be stabilized in accordance with CFR 35.1330 (a) and (b); and a Clearance shall be made in accordance with CFR 35.1340.
 - 4) **Mitigation:** If stabilization is required, the contractor performing the mitigation work must use appropriately trained workers. Prior to the contractor starting mitigation work the Program Operator shall obtain copies of the contractor's and workers' appropriate proof of LBP training, as applicable to the job in order to assure that only qualified contractors and workers are allowed to perform the mitigation.
- D. The Program Operator will: 1) confirm that the housing unit is within the eligible area, 2) will review each proposed housing unit to ensure that it meets all eligibility criteria before funding, and 3) ensure a completed Lead Compliance Document Checklist is placed in each purchaser's file (see Attachment I).

3.3. ACQUISITION WITH REHABILITATION PROCESS

As noted above, when HOME funding is available for First-Time Homebuyer assistance, up to \$10,000 (from all sources) may be used to bring the unit into compliance with health and safety standards and/or to correct code violations. If such repairs are required, a portion of this money may be used to make accessibility modifications for a household member with a disability. General property improvements, with the exception of weatherization improvements, are not allowed.

IMPORTANT: No later than six (6) months following close of escrow, repairs to the housing unit must address ALL health and safety and code issues, to be in compliance with HOME regulations; otherwise, the loan becomes due and payable.

If a portion of the Program loan is used for acquisition with rehabilitation, the following process will be followed:

- The buyer will be responsible for obtaining three (3) bids from qualified licensed contractors. The Sponsor's Program Operator has a list of qualified contractors, or the applicant may solicit bids from other licensed contractors if they meet the standards described below.
- Any funds used for rehabilitation on homes built prior to 1978 will require testing for lead based paint. If the total rehabilitation funds are equal to or less than \$5,000, all surfaces disturbed during rehabilitation and lead hazard reduction must be repaired using safe work practices. If total rehabilitation is between \$5,000 and \$10,000, lead based paint must either be presumed to be present or testing and risk assessment are required. Lead hazard reduction activities must be conducted using safe work practices. The Sponsor will provide a grant to cover all expenses incurred as a result of lead based paint as noted in the section entitled *Lead Based Paint Standards* below, but total rehabilitation, including this grant, may not exceed \$10,000.
- Contractors must hold a current and valid State of California General Contractor's license if the work consists of correction of health and safety issues or code violations. For accessibility modifications, the Sponsor may exercise discretion regarding contractors' requirements. The contractor may not be on the State or Federal debarred contractor lists. The contractor must have current and valid general liability and workmen's compensation insurance if applicable. The contractor must provide a one-year warranty for the work per State regulations.
- The buyer will review the bids with the Program Operator to ensure that the scope of work will correct any deficiencies, that it only includes allowable expenses and that the bids are reasonable, competitive and complete.
- The applicant will select a contractor from one of the Sponsor's/Program Operator's approved bids. All bidding contractors will be notified of the status of their proposals.
- The applicant will enter into a contract with the contractor (see Attachment J).
- The contractor will be responsible for securing all required permits for the scope of work.
- Work may not commence until the close of the acquisition loan.
- As work progresses, the contractor shall provide the buyer with a completed Payment and Construction Approval form (Attachment K) to request progress payments as outlined in the contract terms. The form must be signed by the contractor, the buyer, the inspector, and the Program Operator before a payment may be issued to the contractor.
- Final payment of a 10% retention will be released to contractor once the contractor submits the following to the Program Operator: (1) lien releases from any subcontractors, material suppliers, and laborers; (2) final or signed off Building Inspection card for contracted work (if applicable); (3) Notice of Completion.

3.4. ANTI-DISPLACEMENT POLICY AND RELOCATION ASSISTANCE

Eligible homes will be those that are currently owner-occupied or have been vacant for three months prior to the acceptance of a contract to purchase. A unit is ineligible if its purchase would result in the displacement of a tenant. It is not anticipated that the implementation of the Program will result in the displacement of any persons, households, or families. However, if tenant-occupied homes are included in the Program and relocation becomes necessary, the activity will be carried out in compliance with Sponsor's relocation

plan, which describes how those permanently displaced will be relocated and paid benefits in accordance with the following Federal laws.

A. Uniform Relocation Assistance (URA) and Real Property Acquisition Policies Act of 1970

The federal URA and Real Property Acquisition Policies, as amended by the URA Amendments of 1987, contains requirements for carrying out real property acquisition or the displacement of a person, regardless of income status, for a project or program for which HUD financial assistance (including CDBG and HOME) is provided. Requirements governing real property acquisition are described in Chapter VIII. The implementing regulations, 49 CFR Part 24, require developers and owners to take certain steps in regard to tenants of housing to be acquired, rehabbed or demolished, including tenants who will not be relocated even temporarily.

B. Section 104(d) of the Housing and Community Development Act of 1974

Section 104(d) requires each contractor (CHDO or State Recipient), as a condition of receiving assistance under HOME or CDBG, to certify that it is following a residential anti-displacement plan and relocation assistance plan. Section 104(d) also requires relocation benefits to be provided to low-income persons who are physically displaced or economically displaced as the result of a HOME or CDBG assisted project, and requires the replacement of low-income housing, which is demolished or converted. The implementing regulations for Section 104(d) can be found in 24 CFR Part 570(a).

3.5. PROPER NOTIFICATION AND DISCLOSURES

- A. Upon selection of a housing unit, a qualified seller and homebuyer will be given the necessary disclosures for the Program. The homebuyer must have read and signed all Program disclosure forms. Any and all property disclosures must be reviewed and signed by the homebuyer and seller.
- B. All owners who wish to sell their housing units must receive an acquisition notice (Attachment F) prior to submission of the homebuyer's original offer. This notice will be included in the contract and must be signed by all owners on title. The disclosure must contain the items listed in 1.3.B. (required for federally-funded programs).

4.0. PURCHASE PRICE LIMITS

The purchase price limits and appraised post-rehabilitation value for this Program shall not exceed the Maximum HOME Program Purchase Price/After-Rehab Value Limit for Sponsor's County as updated by HCD or HUD.

Note: For HOME- and CalHome-funded Programs the home purchase price of owner-occupied and homebuyer properties must be limited as follows: For CalHome-funded Programs, the purchase price can not exceed 100% of the area median purchase price as established by comparable sales or information provided by the California Real Estate

Association; for HOME-funded Programs the value (with or without rehabilitation) can not exceed 95 percent of the area median purchase price as established by HCD and HUD.

Attachment C: MAXIMUM PURCHASE PRICE/AFTER-REHAB VALUE LIMITS

*Sponsor will update these limits annually as HCD provides new information.

5.0. THE PRIMARY LOAN

Prior to obtaining a loan from the Sponsor, a homebuyer must provide evidence of financing for the maximum amount the Primary Lender is willing to loan (the “primary loan”).

A. QUALIFYING RATIOS

The front-end (housing) debt-to-income ratio shall be between 26% and 32% and is the percentage of a borrower’s gross monthly income (before deductions) that would cover the cost of the loan principal and interest payment, property taxes, property insurance, mortgage insurance, and HOA dues, if any.

The back-end (total) debt-to-income ratio shall be between 30% and 38% and is the percentage of a borrower’s gross monthly income that would cover the cost of housing as described in the paragraph above, plus any other monthly debt payments like car or personal loans and credit card debt, as well as child support and alimony payments.

B. INTEREST RATE

The primary loan must have a fixed interest rate that does not exceed the current market rate, as established by an index identified in the most recent NOFA. No temporary interest rate buy-downs are permitted.

C. LOAN TYPE AND TERM

The primary loan shall be fully amortized and have a term “all due and payable” in no fewer than 30 years. There shall not be a balloon payment due before the maturity date of the Program loan.

D. IMPOUND ACCOUNT

All households will be required to have impound accounts for the payment of taxes and insurance to ensure they remain current.

6.0. THE PROGRAM LOAN

A. MAXIMUM AMOUNT OF PROGRAM ASSISTANCE

The amount of Program assistance to a homebuyer toward purchase of a home shall not exceed the maximum HOME subsidy limit for Sponsor’s County per bedroom as designated by Section 221(d)(3) and shall never exceed more than 20% of the total indebtedness, or \$40,000, whichever is less.. See Attachment C. Any approved “grant”

amount for lead-based paint evaluation and reduction activities or for relocation assistance shall be included in this amount.

B. NON-RECURRING CLOSING COSTS

Non-recurring costs such as credit report, escrow, closing and recording fees, and title report and title insurance, title updates and/or related costs may be included in the Program loan.

C. AFFORDABILITY PARAMETERS FOR HOMEBUYERS

The actual amount of a buyer’s Program subsidy shall be computed according to the housing ratio parameters specified in Section 5.0.A.. Each borrower shall receive only the subsidy needed to allow them to become homeowners (“the Gap”) while keeping their housing costs affordable. The Program Operator will use the “front-end ratio” of housing-expense-to-income to determine if the amount of the proposed primary loan is acceptable and, ultimately, the Program subsidy amount required, bridging the gap between the acquisition cost (purchase price plus closing costs) less down payment, and the amount of the primary loan.

D. RATE AND TERMS FOR PROGRAM LOAN

All Program assistance to individual households shall be made in the form of deferred payment (interest and principal) loan (DPL).

The Program loan’s term shall be for 30 years.

The Program loan’s interest rate shall be 2% simple interest.

All Program loan payments shall be deferred because the borrowers will have their repayment ability fully utilized under the primary loan. Loan principal shall not be forgiven, and the loan period cannot be extended.

E. COMBINED LOAN-TO-VALUE RATIO

The loan-to-value ratio for a Program loan, when combined with all other indebtedness to be secured by the property, shall not exceed 100 percent of the sales price plus a maximum of up to 5 percent of the sales price to cover actual closing costs.

7.0. PROGRAM LOAN REPAYMENT

7.1. PAYMENTS ARE VOLUNTARY

Borrowers may begin making voluntary payments at any time.

7.2. RECEIVING LOAN PAYMENTS

A. Program loan payments will be made to:

- B. The Sponsor will be the receiver of loan payments or recaptured funds and will maintain a financial record-keeping system to record payments and file statements on payment status. Payments shall be deposited and accounted for in the Sponsor's Program Income Account, as required by HCD programs. The Program lender will accept loan payments from borrowers prepaying deferred loans, and from borrowers making payments in full upon sale or transfer of the property. All loan payments are payable to the Sponsor. The Sponsor may at its discretion, enter into an agreement with a third party to collect and distribute payments and/or complete all loan servicing aspects of the Program.

7.3. DUE UPON SALE OR TRANSFER

In the event that an owner sells, transfers title, or discontinues residence in the purchased property for any reason, the principal balance of the DPL is due and payable, except:

- A. The owner shall be assured a fair return on investment including the owner's investment and any capital improvement. If the Net proceeds are insufficient for the Sponsor to recapture the balance of Program Loan owed, the Sponsor shall share the Net proceeds with the owner in proportion to each party's investment in the property. The Net proceeds are the sales price less repayment of the primary loan, and closing costs.
- B. If the owner of the property dies, and the heir to the property meets income requirements, the First-Time Homebuyer definition, and intends to occupy the home as a principal residence, the heir may be permitted, upon approval of the Sponsor, to assume the loan at the rate and terms the heir qualifies for under the current participation guidelines. If the property owner dies and the heir does not meet eligibility requirements, the loan is due and payable.
- C. If an owner wants to convert the property to a rental unit, or any commercial or non-residential use, the loan is due and payable.
- D. The loan will be in default if the borrower fails to maintain required fire or flood insurance or fails to pay property taxes. See Attachment D on loan defaults for further information on property restrictions.

7.4. LOAN SERVICING POLICIES AND PROCEDURES

See Attachment D for local loan servicing policies and procedures. While the attached policy outlines a system that can accommodate a crisis that restricts borrower repayment ability, it should in no way be misunderstood: The loan must be repaid. All legal means to ensure the repayment of a delinquent loan as outlined in the Loan Servicing Policies and Procedures will be pursued.

7.5. LOAN MONITORING PROCEDURES

Sponsor will monitor Borrowers and their housing units to ensure adherence to Program requirements including, but not limited to, the following:

- A. Owner-occupancy
- B. Property tax payment
- C. Hazard insurance coverage
- D. Good standing on Primary loans
- E. General upkeep of housing units

8.0. PROGRAM LOAN PROCESSING AND APPROVAL

A. Loan Processing

All homebuyers or their representatives will be sent out an eligibility packet with all the necessary forms, disclosures, information, and application. They should submit a complete application packet with all the Sponsor's Program loan documents executed as well as all the information from the Primary Lender. The Primary Lender should submit: 1) accepted property sales contract with proper seller notification; 2) mortgage application with good faith estimates and first mortgage disclosures; 3) full mortgage credit report and rent verification; 4) current third party income verifications and verifications of assets; 5) homeownership education certificate, if applicable; and 6) signed underwriting transmittal summary and final signed loan application, both from primary lender. Staff will work with local lenders to ensure qualified participants receive only the benefit from the Sponsor's Program needed to purchase the housing unit and that leveraged funds will be used when possible.

B. Creditworthiness

Qualifying ratios are only a rough guideline in determining a potential borrower's creditworthiness. Many factors such as excellent or poor credit history, amount of down payment, and size of loan will influence the decision to approve or disapprove a particular loan. The borrower's credit history will be reviewed by the Sponsor and documentation of such maintained in the loan file. The Sponsor may elect to obtain a credit report or rely on a current copy obtained by the primary lender.

C. Documents from Primary Lender

After initial review of the qualified homebuyer's application packet, the Program Operator will request any additional documents needed. Documents may be faxed, but originals shall be received through the mail before Program funds are committed to escrow. Based on receipt and review of the final documents, the Program Operator will do an income certification (using most recent HCD program's guidance on income calculation and determination), and homebuyer certification (review of credit report and income taxes). Documentation of affordability will then be verified and subsidy requirement determined.

D. Disclosure of Program and Loan Information to Homebuyers

The Program's application and disclosure forms will contain a summary of the loan qualifications of the borrower with and without Program assistance. Housing ratios with and without Program assistance are also outlined in these guidelines. Information on the Program's application will be documented with third party verifications in the file. For example, the sales contract will provide the final purchase price and outline how much of the closing costs are to be paid by the seller, etc. The appraisal, termite and title report will provide information to substantiate the information in the sales contract and guide the construction inspection. The Program loan application will provide current debt and housing information and will be documented by the credit report and income/asset verifications. The Primary Lender's approval letter and estimated closing cost statement should reflect all the information in the loan package and show any contingencies of loan funding. Reviewing the Primary Lender's loan underwriting documentation will provide basic information about the qualification of the applicant and substantiate the affordability provided by the Program loan. By reviewing and crosschecking all the Primary Lender information, the final Program loan amount approved will fall within the affordability parameters of the Program.

8.1. COMPLETION OF UNDERWRITING AND APPROVAL OF PROGRAM LOAN

Once the loan approval package has been completed the Program Operator will submit it to the Sponsor for approval. Sponsor will review the request and may approve it with or without conditions. Upon approval, a final closing date for escrow is set and Program funds are accessed for the homebuyer.

8.2. PRIMARY AND PROGRAM LOAN DOCUMENT SIGNING

The homebuyer(s) sign promissory notes, loan agreements, deeds of trust, and statutory lending notices (Truth In Lending (TIL), etc.); the Deeds of Trust are recorded with the County Clerk/Recorder at the same time, and the request(s) for copy of Notice of Default are also recorded with the County Clerk/Recorder.

8.3. ESCROW PROCEDURES

The escrow/title company shall review the escrow instruction provided by the Program lender and shall issue a California Land Title Association (CLTA) and the American Land Title Association (ALTA) after closing. The CLTA policy is issued to the homebuyer and protects them against failure of title based on public records and against such unrecorded risks as forgery of a deed. The ALTA is issued to each lender providing additional coverage for the physical aspects of the property as well as the homebuyer's title failure. These aspects include anything which can be determined by only physical inspection, such as correct survey lines; encroachments; mechanics liens; mining claims and water rights. The Program lender instructs the escrow/title company in the escrow instructions as to what may show on the policy; the amount of insurance on the policy (all liens should be covered) and the loss payee (each lender should be listed as a loss payee and receive an original ALTA).

9.0. SUBORDINATE FINANCING

With today's high costs, in order for a low-income household to obtain a home, several funding sources might be required. Subordinate loans may be used to cover mortgage subsidy costs that exceed the Program maximum loan amount. All subordinate liens must have the payments deferred and the term must be for at least as long as the term of the Program loan.

10.0. EXCEPTIONS AND SPECIAL CIRCUMSTANCES

The Sponsor may make amendments to these Participation Guidelines. Any changes shall be made in accordance with regulations and approved by the Sponsor's governing body. Changes shall then be sent to HCD for approval.

10.1. DEFINITION OF EXCEPTION

Any case to which a standard policy or procedure, as stated in the guidelines, does not apply or an applicant treated differently from others of the same class would be an exception.

10.2. PROCEDURES FOR EXCEPTIONAL CIRCUMSTANCES

- A. The Sponsor or its agent may initiate consideration of an exception and prepare a report. This report shall contain a narrative, including the Sponsor's recommended course of action and any written or verbal information supplied by the applicant.
- B. The Sponsor shall make a determination of the exception based on the recommendation of the Program Operator. The request can be presented to the Sponsor's loan committee and/or governing body for a decision.

11.0. DISPUTE RESOLUTION AND APPEALS PROCEDURE

Any applicant denied assistance from the Program has the right to appeal. Complaints concerning the Program should be made to the Program Operator first. If unresolved in this manner, the complaint or appeal must be made in writing and filed with the Sponsor. The Sponsor will then schedule a meeting with the Loan Review Committee. Their written response will be made within thirty (30) working days. If the applicant is not satisfied with the Committee's decision, a request for an appeal may be filed with the Sponsor's governing body. Final appeal must be filed in writing with HCD within one year after denial.

ATTACHMENT A

24 CFR Part 5 ANNUAL INCOME INCLUSIONS AND EXCLUSIONS

Part 5 Inclusions

This table presents the Part 5 income inclusions as stated in the HUD Technical Guide for Determining Income and Allowances for HOME Program (Third Edition; January 2005).

General Category	(Last Modified: January 2005)
1. Income from wages, salaries, tips, etc.	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2. Business Income	The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest & Dividend Income	Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4. Retirement & Insurance Income	The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment (except for certain exclusions, listed in Income Exclusions, number 14).
5. Unemployment & Disability Income	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except for certain exclusions, listed in Income Exclusions, number 3).
6. Welfare Assistance	Welfare Assistance. Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income: <ul style="list-style-type: none"> • Qualify as assistance under the TANF program definition at 45 CFR 260.31; and • Are otherwise excluded from the calculation of annual income per 24 CFR 5.609(c). If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of: <ul style="list-style-type: none"> • the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus: • the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family welfare assistance is reduced from the standard of need by applying a percentage, the amount calculated under 24 CFR 5.609 shall be the amount resulting from one application of the percentage.
7. Alimony, Child Support, & Gift Income	Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. Armed Forces Income	All regular pay, special pay, and allowances of a member of the Armed Forces (except as provided in number 8 of Income Exclusions).

Part 5 exclusions

This table presents the Part 5 income exclusions as stated in the HUD Technical Guide for Determining Income and Allowances for HOME Program (Third Edition; January 2005).

General Category	(Last Modified: January 2005)
1. Income of Children	Income from employment of children (including foster children) under the age of 18 years.
2. Foster Care Payments	Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
3. Inheritance and Insurance Income	Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (except for certain exclusions, listed in Income Inclusions, number 5).
4. Medical Expense Reimbursements	Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of Live-in	Income of a live-in aide (as defined in 24 CFR 5.403).

Aides	
6. Income from a Disabled Member	Certain increase in income of a disabled member of qualified families residing in HOME-assisted housing or receiving HOME tenant-based rental assistance (24 CFR 5.671 (a)).
7. Student Financial Aid	The full amount of student financial assistance paid directly to the student or to the educational institution.
8. "Hostile Fire" Pay	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
9. Self-Sufficiency Program Income	<ol style="list-style-type: none"> a. Amounts received under training programs funded by HUD. b. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS). c. Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program. d. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time. e. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment-training program.
10. Gifts	Temporary, nonrecurring, or sporadic income (including gifts).
11. Reparation Payments	Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
12. Income from Full-time Students	Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household or spouse).
13. Adoption Assistance Payments	Adoption assistance payments in excess of \$480 per adopted child.
14. Social Security & SSI Income	Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.
15. Property Tax Refunds	Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
16. Home Care Assistance	Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.
17. Other Federal Exclusions	<p>Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. The following is a list of income sources that qualify for that exclusion:</p> <ul style="list-style-type: none"> ▶ The value of the allotment provided to an eligible household under the Food Stamp Act of 1977; ▶ Payments to volunteers under the Domestic Volunteer Service Act of 1973 (employment through AmeriCorps, VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions); ▶ Payments received under the Alaskan Native Claims Settlement Act; ▶ Income derived from the disposition of funds to the Grand River Band of Ottawa Indians; ▶ Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes; ▶ Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program. ▶ Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721); ▶ The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands; ▶ Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs; ▶ Payments received from programs funded under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aides, Older American Community Service Employment Program); ▶ Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other

fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

- ▶ Earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;
- ▶ The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990;
- ▶ Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, veterans employment programs, state job training programs and career intern programs, AmeriCorps).
- ▶ Payments by the Indians Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;
- ▶ Allowances, earnings, and payments to AmeriCorps participants under the National and Community Services Act of 1990;
- ▶ Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;
- ▶ Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act; and
- ▶ Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998.

ATTACHMENT B

PART 5 ANNUAL INCOME NET FAMILY ASSET INCLUSIONS AND EXCLUSIONS

This table presents the Part 5 asset inclusions and exclusions as stated in the HUD Technical Guide for Determining Income and Allowances for HOME Program (Third Edition; January 2005).

Statements from 24 CFR Part 5 – Last Modified: January 2005

Inclusions

1. Cash held in savings accounts, checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average 6-month balance. Assets held in foreign countries are considered assets.
2. Cash value of revocable trusts available to the applicant.
3. Equity in rental property or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs (e.g., broker fees) that would be incurred in selling the asset. Under HOME, equity in the family's primary residence is not considered in the calculation of assets for owner-occupied rehabilitation projects.
4. Cash value of stocks, bonds, Treasury bills, certificates of deposit and money market accounts.
5. Individual retirement, 401(K), and Keogh accounts (even though withdrawal would result in a penalty).
6. Retirement and pension funds.
7. Cash value of life insurance policies available to the individual before death (e.g., surrender value of a whole life or universal life policy).
8. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, etc.
9. Lump sum or one-time receipts, such as inheritances, capital gains, lottery winnings, victim's restitution, insurance settlements and other amounts not intended as periodic payments.
10. Mortgages or deeds of trust held by an applicant.

Exclusions

1. Necessary personal property, except as noted in number 8 of Inclusions, such as clothing, furniture, cars and vehicles specially equipped for persons with disabilities.
2. Interest in Indian trust lands.
3. Assets not effectively owned by the applicant. That is, when assets are held in an individual's name, but the assets and any income they earn accrue to the benefit of someone else who is not a member of the household and that other person is responsible for income taxes incurred on income generated by the asset.
4. Equity in cooperatives in which the family lives.
5. Assets not accessible to and that provide no income for the applicant.
6. Term life insurance policies (i.e., where there is no cash value).
7. Assets that are part of an active business. "Business" does not include rental of properties that are held as an investment and not a main occupation.

ATTACHMENT C

MAXIMUM PURCHASE PRICE/AFTER-REHAB VALUE LIMIT FOR SAN JOAQUIN COUNTY

(HOME Value Limits as of 3/29/2012)

COUNTY NAME	One-Family
SAN JOAQUIN	\$362,790

HOME SUBSIDY LIMITS PER UNIT – SECTION 221(d)(3) FOR SAN JOAQUIN COUNTY

(Limits are effective 10/1/10)

COUNTY NAME	O-BDR	1-BDR	2-BDR	3-BDR	4-BDR
SAN JOAQUIN	\$132,814	\$152,251	\$185,136	\$239,506	\$262,903

INCOME LIMITS FOR SAN JOAQUIN COUNTY*

(Limits are effective 06/26/10)

<i>Number of Persons in Household</i>								
	1	2	3	4	5	6	7	8
80% of AMI	\$37,150	\$42,450	\$47,750	\$53,050	\$57,300	\$61,550	\$65,800	\$70,050

*Sponsor will insert the limits for the county in which the Program is located, and will update the income limits annually as HCD provides new information. The link to the official, HCD-maintained, income limits is:

<http://www.hcd.ca.gov/hpd/hrc/rep/state/incNote.html>

ATTACHMENT D

LOAN SERVICING POLICIES AND PROCEDURES FOR THE CITY OF LODI

The City of Lodi, hereafter called “Lender,” has adopted these policies and procedures in order to preserve its financial interest in properties whose “Borrowers” have been assisted with public funds. The Lender will to the greatest extent possible follow these policies and procedures, but each loan will be evaluated and handled on a case-by-case basis. The Lender has formulated this document to comply with state and federal regulations regarding the use of these public funds and any property restrictions, which are associated with them.

The policies and procedures are broken down into the following areas: 1) making required monthly payments or voluntary payments on a loan’s principal and interest; 2) required payment of property taxes and insurance; 3) required Request for Notice of Default on all second mortgages; 4) loans with annual occupancy restrictions and certifications 5) required noticing and limitations on any changes in title or use of property; 6) required noticing and process for requesting a subordination during a refinance; 7) processing of foreclosure in case of default on the loan.

1. Loan Repayments:

The Lender will collect monthly payments from those borrowers who are obligated to do so under Notes which are amortized promissory notes (or Lender will use _____ loan collection Company to collect payments). Late fees will be charged for payments received after the assigned monthly due date.

For Notes which are deferred payment loans, the Lender must accept voluntary payments on the loan. Loan payments will be credited to principal. The borrower may repay the loan balance at any time with no penalty.

2. Payment of Property Taxes and Insurance:

As part of keeping the loan from going into default, borrower must maintain property insurance coverage naming the Lender as loss payee in first position or additional insured if the loan is a junior lien. If borrower fails to maintain the necessary insurance, the Lender may take out force placed insurance to cover the property while the Borrower puts a new insurance policy in place. All costs for installing the necessary insurance will be added to the loan balance at time of installation of Borrower’s new insurance.

When a property is located in a 100-year flood plain, the Borrower will be required to carry the necessary flood insurance. A certificate of insurance for flood and for standard property insurance with an endorsement naming the the City of Lodi as additional insured will be required at close of escrow. The lender will verify the insurance on an annual basis.

Property taxes must be kept current during the term of the loan. If the Borrower fails to maintain payment of property taxes then the lender may pay the taxes current and add the balance of the tax payment plus any penalties to the balance of the loan. Wherever possible, the Lender encourages Borrower to have impound accounts set up with their first mortgagee wherein they pay their taxes and insurance as part of their monthly mortgage payment.

3. Required Request for Notice of Default:

When the Borrower's loan is in second position behind an existing first mortgage, it is the Lender's policy to prepare and record a "Request for Notice of Default" for each senior lien in front of Lender's loan. This document requires any senior lien holder listed in the notice to notify the lender of initiation of a foreclosure action. The Lender will then have time to contact the Borrower and assist them in bringing the first loan current, if possible. The Lender can also monitor the foreclosure process and go through the necessary analysis to determine if the loan can be made whole or preserved. When the Lender is in a third position and receives notification of foreclosure from only one senior lien holder, it is in their best interest to contact any other senior lien holders regarding the status of their loans.

4. Annual Occupancy Restrictions and Certifications:

On owner-occupant loans, the Lender will require that Borrowers submit utility bills and/or other documentation annually to prove occupancy during the term of the loan. Some loans may have income and housing cost evaluations, which require a household to document that they are not able to make amortized loan payments, typically every five years. These loan terms are incorporated in the original Note and Deed of Trust.

5. Required Noticing and Restrictions on Any Changes of Title or Occupancy:

In all cases where there is a change in title or occupancy or use, the Borrower must notify the Lender in writing of any change. Lender and borrower will work together to ensure the property is kept in compliance with the original Program terms and conditions such that it remains available as an affordable home for low-income families. These types of changes are typical when Borrowers do estate planning (adding a relative to title) or if a Borrower dies and property is transferred to heirs or when the property is sold or transferred as part of a business transaction. In some cases the Borrower may move and turn the property into a rental unit without notifying the Lender. Changes in title or occupancy must be in keeping with the objective of benefit to low-income households (below 80 percent of AMI).

Change from owner-occupant to owner-occupant occurs at a sale. When a new owner-occupant is not low-income, the loan is not assumable and the loan balance is immediately due and payable. If the new owner-occupant qualifies as low-income, the purchaser may either pay the loan in full or assume all loan repayment obligations of the original owner-occupant, subject to the approval of the Lender's Loan Committee (depends on the HCD program).

If a transfer of the property occurs through inheritance, the heir (as owner-occupant) may be provided the opportunity to assume the loan at an interest rate based on household size and household income, provided the heir is income eligible. If the heir intends to occupy the property and is not low-income, the balance of the loan is due and payable. If the heir intends to act as an owner-investor, the balance of the loan may be converted to an owner/investor interest rate and loan term and a rent limitation agreement is signed and recorded on title. All such changes are subject to the review and approval of the Lender's Loan Committee.

Change from owner-occupant to owner-investor occurs when an owner-occupant decides to move out and rent the assisted property, or if the property is sold to an investor. If the owner converts any assisted unit from owner-occupied to rental, the loan is due in full.

Conversion to use other than residential use is not allowable where the full use of the property is changed from residential to commercial or other. In some cases, Borrowers may request that the Lender allow for a partial conversion where some of the residence is used for a business but the household still resides in the property. Partial conversions can be allowed if it is reviewed and approved by any and all agencies required by local statute. If the use of the property is converted to a fully non-residential use, the loan balance is due and payable.

6. Requests for Subordinations:

When a Borrower wishes to refinance the property, they must request a subordination request to the Lender. The Lender will subordinate their loan only when there is no "cash out" as part of the refinance. No cash out means that there are no additional charges on the transaction above loan and escrow closing fees. There can be no third-party debt payoffs or additional encumbrance on the property above traditional refinance transaction costs. Furthermore, the refinance should lower the housing cost of the household with a lower interest rate, and the total indebtedness on the property should not exceed the current market value.

Also, provisions of Section 5.0.B and 5.0.C of these guidelines still apply, which state that the loan must:

- a) be fully amortized and have a fixed interest rate that does not exceed the current market rate, as established by an index identified in the most recent NOFA;
- b) not have a temporary interest rate buy-down;
- c) have a term "all due and payable" in no fewer than 30 years; and;
- d) not have a balloon payment due before the maturity date of the Program loan.

Upon receiving the proper documentation from the refinance lender, the request will be considered by the loan committee for review and approval. Upon approval, the escrow company will provide the proper subordination document for execution and recordation by the Lender.

7. Process for Loan Foreclosure:

Upon any condition of loan default: 1) non-payment; 2) lack of insurance or property tax payment; 3) change in title or use without approval; 4) default on senior loans, the Lender will send out a letter to the Borrower notifying them of the default situation. If the default situation continues then the Lender may start a formal process of foreclosure.

When a senior lien holder starts a foreclosure process and the Lender is notified via a Request for Notice of Default, the Lender, who is the junior lien holder, may cancel the foreclosure proceedings by "reinstating" the senior lien holder. The reinstatement amount or payoff amount must be obtained by contacting the senior lien holder. This amount will include all delinquent payments, late charges and fees to date. Lender must confer with Borrower to determine if, upon paying the senior lien holder current, the Borrower can provide future payments. If this is the case then the Lender may cure the foreclosure and add the costs to the balance of the loan with a Notice of Additional Advance on the existing note.

If the Lender determines, based on information on the reinstatement amount and status of borrower, that bringing the loan current will not preserve the loan, then staff must determine if it is cost effective to protect their position by paying off the senior lien holder in total and restructure the debt such that the unit is made affordable to the Borrower. If the Lender does not have sufficient funds to pay the senior lien holder in full, then they may choose to cure the senior lien holder and foreclose on the property themselves. As long as there is sufficient value in the property, the Lender can afford to pay for the foreclosure process and pay off the senior lien holder and retain some or all of their investment.

If the Lender decides to reinstate, the senior lien holder will accept the amount to reinstate the loan up until five (5) days prior to the set "foreclosure sale date." This "foreclosure sale date" usually occurs about four (4) to six (6) months from the date of recording of the "Notice of Default." If the Lender fails to reinstate the senior lien holder before five (5) days prior to the foreclosure sale date, the senior lien holder would then require a full pay off of the balance, plus costs, to cancel foreclosure. If the Lender determines the reinstatement and maintenance of the property not to be cost effective and allows the senior lien holder to complete foreclosure, the Lender's lien may be eliminated due to insufficient sales proceeds.

Lender as Senior Lien holder

When the Lender is first position as a senior lien holder, active collection efforts will begin on any loan that is 31 or more days in arrears. Attempts will be made to assist the homeowner in bringing and keeping the loan current. These attempts will be conveyed in an increasingly urgent manner until loan payments have reached 90 days in arrears, at which time the Lender may consider foreclosure. Lender's staff will consider the following factors before initiating foreclosure:

- 1) Can the loan be cured and can the rates and terms be adjusted to allow for affordable payments such that foreclosure is not necessary?
- 2) Can the Borrower refinance with a private lender and pay off the Lender?
- 3) Can the Borrower sell the property and pay off the Lender?
- 4) Does the balance warrant foreclosure? (If the balance is under \$5,000, the expense to foreclose may not be worth pursuing.)
- 5) Will the sales price of home "as is" cover the principal balance owing, necessary advances, (maintain fire insurance, maintain or bring current delinquent property taxes, monthly yard maintenance, periodic inspections of property to prevent vandalism, etc.) foreclosure, and marketing costs?

If the balance is substantial and all of the above factors have been considered, the Lender may opt to initiate foreclosure. The Borrower must receive, by certified mail, a thirty-day notification of foreclosure initiation. This notification must include the exact amount of funds to be remitted to the Lender to prevent foreclosure (such as, funds to bring a delinquent BMIR current or pay off a DPL).

At the end of thirty days, the Lender should contact a reputable foreclosure service or local title company to prepare and record foreclosure documents and make all necessary notifications to the

owner and junior lien holders. The service will advise the Lender of all required documentation to initiate foreclosure (Note and Deed of Trust usually) and funds required from the owner to cancel foreclosure proceedings. The service will keep the Lender informed of the progress of the foreclosure proceedings.

When the process is completed, and the property has "reverted to the beneficiary" at the foreclosure sale, the Lender could sell the home themselves under a homebuyer program or use it for an affordable rental property managed by a local housing authority or use it for transitional housing facility or other eligible use. The Lender could contract with a local real estate broker to list and sell the home and use those funds for program income eligible uses.

ATTACHMENT E
SELLERS LEAD-BASED PAINT DISCLOSURE
Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards
Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure

- (a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):
- (i) ___ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).
- (ii) ___ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- (b) Records and reports available to the seller (check (i) or (ii) below):
- (i) ___ Seller has provided the purchaser with all available records and reports pertaining to Lead-based paint and/or lead-based paint hazards in the housing (list documents below).
- (ii) ___ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

- (c) ___ Purchaser has received copies of all information listed above.
- (d) ___ Purchaser has received the pamphlet Protect Your Family from Lead in Your Home.
- (e) ___ Purchaser has (check (i) or (ii) below):
- (i) ___ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or
- (ii) ___ waived the opportunity to conduct a risk assessment or inspection for the presence of Lead-based paint and/or lead-based paint hazards (NOT PERMISSIBLE FOR HOME AND CDBG).

Agent's Acknowledgment (initial)

- (f) ___ Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Seller	Date	Seller	Date
Purchaser	Date	Purchaser	Date
Agent	Date	Agent	Date

ATTACHMENT F

Disclosure to Seller with Voluntary, Arm's Length Purchase Offer

DECLARATION

This is to inform you that _____ would like to purchase the property, located at _____, if a satisfactory agreement can be reached. We are prepared to pay \$_____ for a clear title to the property under conditions described in the attached proposed contract of sale.

Because Federal funds may be used in the purchase, however, we are required to disclose to you the following information:

1. The sale is voluntary. If you do not wish to sell, the buyer, _____, thru the agency, _____ will not acquire your property. The buyer does not have the power of eminent domain to acquire your property by condemnation (i.e. eminent domain) and the agency/Sponsor _____ will not use the power of eminent domain to acquire the property.
2. The estimated fair market value of the property is \$_____ and was estimated by _____, to be finally determined by a professional appraiser prior to close of escrow.

Since the purchase would be a voluntary, arms length, transaction you would not be eligible for relocation payments or other relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), or any other law or regulation. Also, as indicated in the contract of sale, this offer is made on the condition that no tenant will be permitted to occupy the property before the sale is completed.

Again, please understand that if you do not wish to sell your property, we will take no further action to acquire it. If you are willing to sell the property under the conditions described in the attached contract of sale, please sign the contract and return it to us at: _____ . If you have any questions about this matter, please contact _____ at _____.

Sincerely,

Title

Buyer

Date

Buyer

Date

Disclosure to Seller with Voluntary, Arm's Length Purchase Offer (Page 2)

Acknowledgement

As the Seller I/we understand that the _____ will inspect the property for health and safety deficiencies. I/we also understand that public funds may be involved in this transaction and, as such, if the property was built before 1978, a lead-based paint disclosure must be signed by both the buyer and seller, and that a Visual Assessment will be conducted to determine the presence of deteriorated paint.

As the Seller, I/we understand that under the City of Lodi's program, the property must be currently owner-occupied, vacant for three months at the time of submission of purchase offer, new (never occupied), or renter purchasing the unit. I/we hereby certify that the property is:

Vacant at least 3 months; Owner-occupied; New; or Being Purchased by Occupant

I/we hereby certify that I have read and understand this "Declaration" and a copy of said Notice was given to me prior to the offer to purchase. If received after presentation of the purchase offer, I/We choose to withdraw or not to withdraw, from the Purchase Agreement.

Seller

Date

Seller

Date

ATTACHMENT G

CITY OF LODI

INSTRUCTIONS TO HOMEBUYER

- A. Participant works with lender of choice to obtain the primary lender's pre-qualification letter.
- B. After consultation with Program Operator regarding approved bedroom and bathroom maximums (always 3 bedrooms and 2 bathrooms unless extenuating circumstances justify more to be approved), participant works with real estate agent to select home. Program disclosures are reviewed with agent for presentation to seller. The HOME Program allows only homes vacant for three months or more prior to the date of the purchase contract, unless the current tenant is purchasing the home.
- C. Participant selects home and enters into a purchase contract (contingent upon receiving Program loan approval). Lender provides the Program Operator with a copy of:
 - real estate sales contract
 - residential loan application and credit report
 - verified income documentation
 - disclosure statement
 - proof of personal funds for participation in program
 - breakdown of closing costs
 - structural pest control clearance
 - appraisal with photos and preliminary title report
- D. Program Operator reviews paperwork to determine program eligibility and financing affordability for participant.
- E. Program Operator staff meets with qualified applicant to provide information relative to the program requirements, the lending process, and homeownership responsibilities.
- F. Program Operator has home inspected to document health & safety and code compliance. Notice of any deficiencies or needed corrections are given to participant's real estate agent, with recommended course of action.
- G. Program Operator requests loan approval from Sponsor's Loan Review Committee. Following loan approval, Program Operator prepares Deed of Trust, Promissory Note, Request for Notice of Default, Grant Agreement, Owner-Occupant Agreement with the City of Lodi, and Escrow Instructions, and requests check and deposits same into escrow.
- H. Escrow company furnishes Program Operator with proof of documents to be recorded, and any escrow closeout information. After receipt of recorded loan documents, Final HUD-1, Insurance Loss Payee Certification and Final Title Insurance Policy (Program Operator) closes out the loan file.

**ATTACHMENT H
LEAD-BASED PAINT**

VISUAL ASSESSMENT, NOTICE OF PRESUMPTION, AND HAZARD REDUCTION FORM

Section 1: Background Information			
Property Address:		No LBP found or LBP exempt <input type="checkbox"/>	
Select one:	Visual Assessment <input type="checkbox"/>	Presumption <input type="checkbox"/>	Hazard Reduction <input type="checkbox"/>

Section 2: Visual Assessment. Fill out Sections 1, 2, and 6. If paint stabilization is performed, also fill out Sections 4 and 5 after the work is completed.	
Visual Assessment Date:	Report Date:
Check if no deteriorated paint found <input type="checkbox"/>	
Attachment A: Summary where deteriorated paint was found.	

Section 3: Notice of Presumption. Fill out Sections 1, 3, 5, and 6. Provide to occupant w/in 15 days of presumption.	
Date of Presumption Notice:	
Lead-based paint is presumed to be present <input type="checkbox"/> and/or Lead-based paint <i>hazards</i> are presumed to be present <input type="checkbox"/>	
Attachment B: Summary of Presumption:	

Section 4: Notice of Lead-Based Paint Hazard Reduction Activity. Fill out Sections 1, 4, 5, and 6. Provide to occupant w/in 15 days of after work completed.	
Date of Hazard Reduction Notice:	
Initial Hazard Reduction Notice? Yes <input type="checkbox"/> No <input type="checkbox"/>	Start & Completion Dates:
If "No", dates of previous Hazard Reduction Activity Notices:	
Attachment C: Activity locations and types.	
Attachment D: Location of building components with <u>lead-based paint remaining</u> in the rooms, spaces or areas where activities were conducted.	
Attachment E: Attach clearance report(s), using DHS form 8552 (and 8551 for abatement activities)	

Section 5: Resident Receipt of Notice for Presumption or Lead-Based Paint Hazard Reduction Activity		
Printed Name:	Signature:	Date:

Section 6: Contact Information		Organization:
Contact Name:		Contact Signature:
Date:	Address:	Phone:

ATTACHMENT I

Homebuyer Program Lead Compliance Document Checklist

The following documents should be in each Homebuyer unit file to document compliance with the lead requirements:

Document Name	Purpose	✓
Lead Safe Housing Rule Screening Sheet	Documents exemptions	
Physical inspection form (HQS or equivalent)	Documents visual assessment results	
Seller Certification	Seller certifies that paint was stabilized by qualified workers and that safe work practices were followed during paint stabilization	
Clearance Report and Clearance Review Worksheet	Documents that unit passed clearance	
Disclosure Form	Documents that buyer received disclosure and pamphlet.	
Lead Hazard Reduction Notice	Documents that buyer received required lead hazard reduction notification.	

This was taken from the HUD Website at:

<http://www.hud.gov/offices/cpd/affordablehousing/training/leadsafe/usefulforms/index.cfm#crosscutting>

ATTACHMENT J

ACQUISITION WITH REHABILITATION CONSTRUCTION CONTRACT

Home Improvement Construction Contract

This Home Improvement Construction Contract is entered into this _____ day of _____, 20____, between the following parties: (Owner(s) Name): _____ and (Contractor's Name and Address): _____

(Notice of Cancellation, see paragraph 28, may be sent to Contractor at the above address).

The parties agree as follows:

1. **Work to be Performed:** Contractor agrees to provide a Schedule of Work, in accordance with the Work Write-up (Attachment 1) and furnish all supervision, technical personnel, labor, materials, tools and equipment necessary to complete the work described in the work write-up attached hereto at the real property commonly described as: _____. Contractor will be responsible for all construction means, methods, techniques, sequences and procedures and for the coordination of all portions of the work under the Contract. All materials shall be new, unless otherwise specified, and of good quality. Owner has a right to require the Contractor to have a performance and payment bond; the expense of the bond may be borne by the Owner.
2. **Contract Price:** Owner agrees to pay Contractor the sum of \$_____ for the work to be performed.
3. **Completion Time:**
 - a. **Approximate Start Date:** The Contractor agrees to file a complete permit application within ten (10) days after receipt of written Notice to Proceed from the Owner. Owner and Contractor agree that the Start Date of construction shall be the date the permits are issued by the City of Lodi. In no event shall the Contractor commence work or place any materials on the site thereof prior to receipt of Notice to Proceed from the Owner.
 - b. **Approximate Completion Date:** Contractor shall prosecute the work diligently and continuously to completion. The work shall be completed within _____ days after the Start Date, subject to such delays as are permissible under paragraph 7 herein below.
4. **Payment:**
 - a. Price will be paid to Contractor in installments based on completion of work tasks and individual item prices on the Work Write-up attached, and any Change Orders.
 - b. Contractor shall submit all required payment forms to Owner for approval of payment. Prior to authorization of payment, the Contractor shall provide lien releases for claims by subcontractors, laborers, and material suppliers involved in the work and/or represented by Contractor's invoices. Owner may also request written guarantees and warranties.
 - c. After approval by Owner, Contractor shall submit payment request forms to the City of Lodi – Community Development Department – Neighborhood Services Division, hereinafter referred to as “Neighborhood Services Division.” Neighborhood Services Division shall then make payment to the Contractor. Neighborhood Services Division may, at its option, inspect the work to ensure that it has been satisfactorily completed in accordance with the Contract requirements. Should Neighborhood Services Division determine that work has

not been performed in accordance with the Contract, **Neighborhood Services Division** may, in its sole discretion, withhold or reduce payment in accordance with the terms of the agreement between Owner and **Neighborhood Services Division**.

- d. At the time the work is completed, the Contractor shall submit the final pay request along with the recorded Notice of Completion, final building inspection report, insulation certificate, any warranties and guarantees, conditional lien releases, and Section 3 report (for contracts over \$100,000).
 - e. An amount equal to ten percent of the total Contract price, including any Change Orders, will be withheld by Owner and shall be paid to Contractor 35 days after notice of completion has been recorded, final inspection by the jurisdiction's building official and approval by Owner, provided that Contractor is not in default under this Contract. Final payment will be subject to withholding any amounts due to Owner for actual costs due to unexcused delays.
 - f. The payment of any progress payment shall not constitute acceptance of defective work or improper material, nor is it a waiver of the warranties or any other remedies to which the Owner may be entitled under the terms of this Contract
5. Relationship of the Parties to CDD: Work to be performed under this Contract is financed by funds from the City of Lodi and administered by the **Neighborhood Services Division**. Owner is solely responsible for monitoring all work performed under this Contract and enforcing the terms of this Contract. The **Neighborhood Services Division** shall inspect all work for the purposes of monitoring loan disbursements in accordance with terms of this Contract and enforcing the terms of the loan agreement. Inspections performed by the **Neighborhood Services Division** are solely for the protection of the lender and solely for the purpose of assuring that the construction is progressing reasonably and that the lender's collateral interest is adequately protected. Owner acknowledges that the **Neighborhood Services Division's** inspections are not for the purpose of assuring Contractor's compliance with applicable building codes. The **Neighborhood Services Division** shall not be liable under any circumstances for its failure to discover or require correction by Contractor of work that fails to comply with applicable building codes or for its failure to discover or require correction of any dangerous condition or defective work by contractor or by any subcontractor.

The **Neighborhood Services Division** shall not, under any circumstances, have any liability either to the Owner or to the Contractor for any disbursement or refusal to approve of any disbursement requested by Contractor.

6. Failure to Commence Work: Failure by the Contractor without lawful excuse to substantially commence work within 20 days from the date specified in the Notice to Proceed is a violation of the Contractors' License Law.
7. Excusable Delays: Contractor shall not be charged with delay in the completion of the work due to: any acts of Owner which cause delay; general strikes; acts of God or the public enemy; unavailability of materials, or casualty beyond Contractor's control, provided, however, that Contractor promptly (within 14 days) notifies Owner, in writing, of the cause of the delay. If the facts show the delays to be excusable under the terms of the Contract, the time for completion shall be extended for a period equal to the amount of time due to such delay.
8. Unexcused Delays: The parties agree that the Owner would incur additional expenses as a result of Contractor's unexcused delays in the completion of the work. "Additional expenses" shall include but not be limited to housing and storage costs incurred by the owner due to the inability to fully occupy the property.

9. Provisions for the Owner: While this Contract is in force, Owner shall permit Contractor the use of existing utilities including light, heat, power, and water, without charge, in order to carry out and complete the work. Owner may continue to occupy the premises during the rehabilitation but shall cooperate with Contractor to facilitate the performance of the work including the abandonment of limited areas as may be essential to the conduct of the work.
10. Compliance with the Law: By signing this contract, the Contractor certifies that it is licensed and in good standing in California, and not listed on the Federal Consolidated List of Debarred, Suspended and Ineligible Contractors. Contractors are regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826. All work shall be completed in strict compliance with the laws, ordinances, rules, regulations and Codes of the State, County, and local governments, whether such applicable laws, ordinances, rules, regulations and codes are mentioned in this Contract or not. Contractor shall obtain, pay for, and provide permits and licenses, as required to complete all work outlined under this Contract.

Where applicable, Contractor agrees to the following provisions:

- a) Standard Contract Language, All Contracts and Subcontracts, pertaining to civil rights, HCD, age discrimination, rehabilitation acts assurance, etc. (see Attachment 2).
- b) By the statement below, Contractor hereby furnishes Owner with Contractor Notice in compliance with California Business and Professions Code Section 7159:

INFORMATION ABOUT THE CONTRACTORS' STATE LICENSE BOARD (CSLB)

CSLB is the state consumer protection agency that licenses and regulates construction contractors.

Contact CSLB for information about the licensed contractor you are considering including information about disclosable complaints, disciplinary actions and civil judgments that are reported to CSLB.

Use only licensed contractors. If you file a complaint against a licensed contractor within the legal deadline (usually four years), CSLB has authority to investigate the complaint. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor's employees.

For more information:

Visit CSLB's Web site at www.cslb.ca.gov

Call CSLB at 800-321-CSLB (2752)

Write CSLB at P. O. Box 26000, Sacramento, CA 95826

- c) The contractor hereby agrees to abide by the requirements of Executive Order 11246 and all implementing regulations of the Department of Labor.

11. Notice to Owner (see Attachment 3).
12. Required Insurance: Contractor shall obtain and keep in effect during the life of this contract, insurance in the following minimum amounts:

Worker's Compensation and Employer's Liability Insurance meeting the statutory requirements of the State of California.

Comprehensive General Liability and Property Damage Insurance with Combined Single Limits of at least \$1,000,000. This insurance shall be on an occurrence basis and shall protect the Contractor against liability arising from: Contractor's operations, operations by subcontractors, products, completed operations or professional liability where applicable and contractual liability assumed under the indemnity provisions above insured. Any Excavation, Collapse and Underground exclusions must be deleted when applicable to operations performed by the Contractor or his subcontractors.

An original certificate of such insurance shall be filed with the City of Lodi. Said certificate shall evidence coverage through the life of this Contract.

13. Safety to Public and Property: Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. In such, Contractor shall provide reasonable protection to prevent damage, injury, and loss to: all employees on the work, all work and materials and equipment to be incorporated therein and other property at the site or adjacent thereto, including trees, shrubs, lawns, pavements, structures, and utilities not designated for removal or replacement under the terms of this Contract.
14. Hold Harmless: With the exception that this Section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify and save harmless Owner and the City of Lodi, including their officers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys fees, losses or liability, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Contractor's operations to be performed under this Agreement for, but not limited to:
 - (a) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to any employees or agents of Owner, the City of Lodi, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Contractor or anyone directly or indirectly employed by Contractor or anyone for whose act Contractor may be liable regardless of whether such injury or damage is caused by a party indemnified hereunder.
 - (b) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or statute, caused by the action or inaction of Contractor.
 - (c) Infringement of any patent rights which may be brought against the City of Lodi or Owner arising out of Contractor's work.
 - (d) Claims and liens for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages resulting to the City of Lodi or Owner from such claims or liens.
 - (e) Contractor's failure to fulfill the covenants set forth in collective bargaining agreement, wage order or any other agreement or regulation concerning labor relations.
 - (f) Failure of Contractor to provide Casualty Insurance.

- (g) Any violation or infraction by Contractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of the City of Lodi's or other's equipment, hoist, elevators, or scaffolds. The indemnification provisions of (a) through (g) above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply regardless of any active and/or passive negligent act or omission of Owner or the City of Lodi or their agents or employees. Contractor, however, shall not be obligated under this Agreement to indemnify Owner or the City of Lodi for Claims arising from the sole negligence or willful misconduct of Owner or the City of Lodi or their agents, employees or independent contractors who are directly responsible to Owner or the City of Lodi, or for defects in design furnished by such persons.
- (h) Contractor shall:
 - i. At Contractor's own costs, expense and risk, defend any claims that may be brought or instituted by third persons, including but not limited to, governmental agencies or employees of Contractor, against the City of Lodi or Owner or their agents or employees or any of them;
 - ii. Pay and satisfy any judgment or decree that may be rendered against the City of Lodi or Owner or their agents or employees, or by any of them, arising out of any such Claim; and/or
 - iii. Reimburse the City of Lodi or Owner or their agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section.
- (i) All work covered by this Agreement done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Contractor exclusively until the completed work is accepted by the City of Lodi.
- (j) The indemnities set forth in this Section shall not be limited by any insurance requirements set forth elsewhere within this agreement.

15. Assignment: Contractor shall not assign or transfer any right or obligation under this Contract without first obtaining the written consent of Owner. Any attempted assignment by Contractor shall be void.

16. Changes in Work to be Performed: No changes shall be made in the work, Contract price or Contract time for completion of work, except by written change order. The change order shall bear the signatures of the parties to this Contract and approved (by signature) as to propriety with funding requirements by the City of Lodi. No claim for an adjustment of Contract work, price or time will be valid unless so ordered. Payment for change orders that bear additional cost shall be made in accordance with paragraph 4, above.

17. Guarantees and Material Warranties: All labor, materials and installation shall be guaranteed for a period of one year from the date of final acceptance by Owner, when subjected to normal use and care, and provided Owner has complied, in full, with the terms and payments and other conditions of this Contract. Upon written notice from Owner, Contractor shall repair or remedy any defect in materials and workmanship within the one-year period specified. Contractor shall furnish Owner with and assign to Owner all manufacturers' and suppliers' written guarantees and warranties covering materials and equipment furnished under this Contract.

18. Surplus Materials and Clean-up of Premises: All materials and equipment removed and not reused as a condition of this Contract shall remain or become the property of Owner, unless otherwise so stated in writing. All surplus materials as well as all rubbish and construction debris resulting from

construction activities shall be removed promptly from the job site by Contractor. Upon completion of the work, Contractor shall leave the building and premises in a "broom-clean" condition.

19. Divisibility: It is intended that each paragraph of this agreement shall be viewed as separate and divisible, and in the event that any paragraph shall be held to be invalid, the remaining paragraphs shall continue to be in full force and effect.
20. Materials Restriction: Lead base paint hazards specified in the work write-up shall be mitigated in accordance with Federal Lead Based Paint regulations listed at 24 CFR 35. All new paint used must be a non-lead based paint.
21. Arbitration:
 - a. Should any controversy arise out of or related to this Contract or the breach thereof, that falls within the provisions of 7085 et seq. of the California Business and Professions Code, other than a controversy based upon your failure to comply with a notice to return to the project under paragraph 23, the parties shall agree to submit the issue to Contractors State License Board (CSLB) arbitration. The decision of the arbitrator is final and binding on both parties. CSLB will pay for the hearing, the arbitrator, and the services of one Board-appointed expert witness per complaint. The parties are responsible for their own attorney fees, if any, and additional expert witnesses, if any.
 - b. Any controversy arising out of or relating to this Contract, or the breach thereof, that does not qualify for CSLB arbitration, or the parties do not agree to CSLB arbitration, shall be submitted to binding arbitration in accordance with the provisions of the California Arbitration Law, Code of Civil Procedure 1280 et seq., and the Rules of the American Arbitration Association. The arbitrator shall have the final authority to order work performed, to order the payment from one party to another, and to order whom shall bear the costs of arbitration. Costs to initiate arbitration shall be paid by the party seeking arbitration. Notwithstanding, the party prevailing in any arbitration proceeding and in any litigation arising out of or relating to this contract shall be entitled to recover from the other all attorneys' fees and costs of arbitration.
22. Mechanics Liens: Contractor shall pay promptly all valid bills and charges for materials, labor or otherwise, in connection with or arising out of the rehabilitation of said property and will hold Owner free and harmless against all of them, filed against the property or any part thereof, and from and against all expense and liability in connection therewith, including but not limited to, court costs and attorneys' fees resulting or arising there from. Should any liens or claim of liens be filed for record against the property, or should Owner receive notice of any unpaid bill or charge in connection with the Contract, Contractor shall forthwith pay and discharge the same and cause the same to be released of record. Contractor authorizes the City of Lodi to issue joint checks as part of any disbursement otherwise payable to Contractor whenever the City of Lodi, in its sole discretion, determines that payment in this fashion is necessary in order to protect the interests of the Lender or the Owner. (See also, Notice to Owner, Attachment 3).
23. Termination of Contract: Should Contractor commit any of the acts specified in this paragraph, the Owner may, give 72 hours' notice in writing thereof to Contractor, to commence and continue thereafter to diligently prosecute the correction thereof, and if contractor fails to do so, then without prejudice to any other rights or remedies given Owner by law or by this contract, Owner may terminate the services of Contractor under this contract; take possession of said project and the premises on which it is located; take possession of all materials, located on such premises; and, complete said project by whatever method Owner may deem expedient. Contractor shall be deemed to have committed an act specified in this paragraph if contractor shall:

- a. refuse or fail to supply enough properly skilled workers or proper materials to complete said project in the time specified in this contract and in the approved time schedule.
- b. fail to make prompt payment to subcontractors, laborers, or material men for labor performed on or materials furnished to said project;
- c. fail to comply with the time schedule for completion of the project;

The preceding notwithstanding, the following actions by the Contractor shall be deemed to be material breaches of the contract which are not subject to cure. Should Contractor commit any of the acts specified in this paragraph, the Owner may, by giving 72 hours' notice in writing thereof to Contractor, without prejudice to any other rights or remedies given Owner by law or by this contract, terminate the services of Contractor under this contract; take possession of said project and the premises on which it is located; take possession of all materials, located on such premises; and complete said project by whatever method owner may deem expedient:

- d. Commence with any proceedings of bankruptcy;
 - e. make a general assignment for the benefit of contractors;
 - f. persist in disregarding any law or ordinance relating to said project or the completion thereof;
 - g. suffer the revocation or suspension of its contractor's license.
24. **Rights on Termination by Owner:** Should Owner terminate the service of Contractor under this contract and complete said project pursuant to Paragraph 10 of this contract, the Contractor shall not be entitled to receive any further payment under this contract until said project is fully completed. On completion of said project by Owner, if the unpaid balance of the contract price exceeds the expenses incurred by Owner in completing said project, including any compensation paid by Owner for managerial, administrative, or supervisory services in completing said project, such excess shall be paid by Owner to Contractor. If the expense incurred by Owner in completion of said project exceeds the unpaid balance of the purchase price, Contractor shall pay such excess to Owner with thirty days following written demand by Owner.
25. **Force Majeure:** Neither Owner nor Contractor shall be deemed to be in default if performance of the improvements required by this contract is delayed or becomes impossible because of any act of God, war, earthquake, fire, civil commotion, epidemic, act of government, its agencies or officers, court order, or any other legitimate cause beyond the control of the party and not caused by the negligent, unreasonable or intentional acts of the party.
26. **Availability of Funds:** In the event the loan or grant of funds upon which this Contract is contingent is not approved, this Contract shall be considered null and void, and shall not create any liability to either Owner or Contractor.
27. **Contract Nullity:** This entire Contract shall be considered null and void if either of the following shall occur:
- a. Owner is not approved for funding to finance the Contract Price;
 - b. Owner chooses not to proceed with the project before construction begins.
28. **Three-Day Right to Cancel:** **“You, the Owner, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the Contractor at the Contractor’s place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of this contract including this notice.**

If you cancel, the Contractor must return any moneys paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the Contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the Contractor's instructions on how to return the goods at the Contractor's expense and risk. If you do make the goods available to the Contractor, and the Contractor does not pick them up within 20 days of the date of your notice of cancellation, you make keep them without any further obligation. If you fail to make the goods available to the Contractor, or if you agree to return the goods to the Contractor and fail to do so, then you remain liable for performance of all obligations under this Contract."

29. "You, the Owner, are entitled to a completely filled in copy of this Contract, signed by both you and the Contractor, before any work may be started."

THE OWNER AND THE CONTRACTOR ACKNOWLEDGE THAT THEY HAVE READ, UNDERSTAND AND AGREE TO ALL PROVISIONS OF THIS CONTRACT INCLUDING ALL ADDITIONAL CONTRACT DOCUMENTS.

OWNER(S): _____

CONTRACTOR: _____

By: _____
Business Name: _____
Title: _____
Address: _____
Telephone: _____
License Number: _____
Tax ID or Soc. Sec. # _____

Attachments:

- 1 – Work Write-up
- 2 – Standard Contract Language
- 3 – Notice to Owner

STANDARD CONTRACT LANGUAGE:
ALL CONTRACTS AND SUBCONTRACTS

1. The Civil Rights, HCD, and Age Discrimination Acts Assurances:

During the performance of this Agreement, the Grantee assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or handicap, under any program or activity funded by this contract, as required by Title VI of the Civil Rights Act of 1964, Title I of the Housing and Community Development Act of 1974, as amended, and the Age Discrimination Act of 1975, and all implementing regulations.

2. Rehabilitation Act of 1973 and the “504 Coordinator”

The Grantee further agrees to implement the Rehabilitation Act of 1973, as amended, and its regulations, 24 CFR Part 8, including, but not limited to, for Grantees with 15 or more permanent full or part time employees, the local designation of a specific person charged with local enforcement of this Act, as the “504 Coordinator”.

3. The Training, Employment and Contracting Opportunities for Business and Lower Income Persons Assurance of Compliance:

a) The grant activity to be performed under this Agreement is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C 1701u. Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of Section 3 covered assistance to Section 3 residents in the order of priority provided in 24 CFR 135.34(a)(2).

b) The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

c) The Grantee will include these Section 3 clauses in every contract and subcontract for Work in connection with the grant activity and will, at the direction of the State, take appropriate action pursuant to the contract or subcontract upon a finding that the Grantee or any contractor or subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135 and, will not let any contract unless the Grantee or contractor or subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

d) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement shall be a condition of the federal financial assistance provided to the project, binding upon the Grantee, its successors and assigns. Failure to fulfill these requirements shall subject the Grantee, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

4. Assurance of Compliance with Requirements Placed on Construction Contracts of \$10,000 or more

The Grantee hereby agrees to place in every contract and subcontract for construction exceeding \$10,000 the Notice of Requirement for Affirmative Action to ensure Equal Employment Opportunity (Executive Order 11246), the Standard Equal Employment Opportunity, and the Construction Contract Specifications. The Grantee furthermore agrees to insert the appropriate Goals and Timetables issued by the U.S. Department of Labor in such contracts and subcontracts.

5. State Nondiscrimination Clause:

a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40) marital status, and denial of family care leave. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Contractors and subcontractors shall comply with the provisions of the Housing Act (Government Code, Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7258 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Regulations, are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b) Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

6. Labor Standards –Federal Labor Standards Provisions

The Grantee shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of:

Davis-Bacon Act (40 USC 276a-276a-5) requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the Department of Labor and are issued in the form of Federal wage decisions for each classification of work. The law applies to most construction, alteration, or repair contracts over \$2,000.

Copeland “Anti-Kickback” Act (47 USC 276(c)) requires that workers be paid at least once a week without any deductions or rebates except permissible deductions.

Contract Work Hours and Safety Standards Act – CWHSSA (40USC 327-333) requires that workers receive “overtime” compensation at a rate of 1-1/2 times their regular hourly wage after they have worked 40 hours in one week.

Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5 are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

NOTICE TO OWNER

"Under the California Mechanics' Lien Law, any contractor, subcontractor, laborer, supplier, or other person or entity who helps to improve your property, but is not paid for his or her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment.

This means that after a court hearing, your home, land, and property could be sold by a court officer and the proceeds of the sale used to satisfy what you owe. This can happen even if you have paid your contractor in full if the contractor's subcontractors, laborers, or suppliers remain unpaid.

To preserve their rights to file a claim or lien against your property, certain claimants such as subcontractors or material suppliers are each required to provide you with a document called a "Preliminary Notice." Contractors and laborers who contract with owners directly do not have to provide such notice since you are aware of their existence as an owner. A preliminary notice is not a lien against your property. Its purpose is to notify you of persons or entities that may have a right to file a lien against your property if they are not paid. In order to perfect their lien rights, a contractor, subcontractor, supplier, or laborer must file a mechanics' lien with the county recorder which then becomes a recorded lien against your property. Generally, the maximum time allowed for filing a mechanics' lien against your property is 90 days after substantial completion of your project.

TO INSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:

(1) Require that your contractor supply you with a payment and performance bond (not a license bond), which provides that the bonding company will either complete the project or pay damages up to the amount of the bond. This payment and performance bond as well as a copy of the construction contract should be filed with the county recorder for your further protection. The payment and performance bond will usually cost from 1 to 5 percent of the contract amount depending on the contractor's bonding ability. If a contractor cannot obtain such bonding, it may indicate his or her financial incapacity.

(2) Require that payments be made directly to subcontractors and material suppliers through a joint control. Funding services may be available, for a fee, in your area which will establish voucher or other means of payment to your contractor. These services may also provide you with lien waivers and other forms of protection. Any joint control agreement should include the addendum approved by the registrar.

(3) Issue joint checks for payment, made out to both your contractor and subcontractors or material suppliers involved in the project. The joint checks should be made payable to the persons or entities which send preliminary notices to you. Those persons or entities have indicated that they may have lien rights on your property; therefore, you need to protect yourself. This will help to insure that all person due are actually paid.

(4) Upon making payment on any completed phase of the project, and before making any further payments, require your contractor to provide you with unconditional "Waiver and Release" forms signed by each material supplier, subcontractor, and laborer involved in that portion of the work for which payment was made. The statutory lien releases are set forth in exact language in Section 3262 of the Civil Code. Most stationery stores will sell the "Waiver and Release" forms if your contractor does not have them. The material suppliers, subcontractors, and laborers that you obtain releases from are those persons or entities who have filed preliminary notices with you. If you are not certain of the material suppliers, subcontractors, and laborers working on your project, you may obtain a list from your contractor. On projects involving improvements to a single-family residence

or a duplex owned by the individuals, the person signing these releases lose the right to file a mechanics' lien claim against your property. In other types of construction, this protection may still be important, but may not be as complete.

To protect yourself under this option, you must be certain that all material suppliers, subcontractors, and laborers have signed the "Waiver and Release" form. If a mechanics' lien has been filed against your property, it can only be voluntarily released by a recorded "Release of Mechanics' Lien" signed by the person or entity that filed the mechanics' lien against your property unless the lawsuit to enforce the lien was not timely filed. You should not make any final payments until any and all such liens are removed. You should consult an attorney if a lien is filed against your property."

Read and acknowledged:

Signature

Dated

Signature

Dated

**ATTACHMENT K
CITY OF LODI**

CONSTRUCTION PAYMENT REQUEST # _____

Date _____

Participant _____ Project _____ Job # _____

Project Address _____

Total Contract Amount \$ _____ Payment Amount \$ _____

Contractor: _____ Construction Supervisor: _____

Items Completed:

I request payment for work in progress on the above property. I certify that the work itemized above has been completed as of this date.

Contractor's Signature

Date

NOTE: Ten percent (10%) of the total contract amount (including all change orders) will be retained by the City of Lodi until 35 days after Notice of Completion is recorded.

The items listed above have been completed satisfactorily. _____ Please release payment to Contractor as requested (or amended). OWNER'S SIGNATURE DATE
--

APPROVED FOR PAYMENT:

CITY OF LODI

DATE

Mail

Pick-up
NOTES:

Distribution: **WHITE:** City of Lodi **YELLOW:** Owner

PINK: Contractor

GOLDENROD: Supervisor

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING PROGRAM GUIDELINES FOR A FIRST TIME HOME BUYER PROGRAM AND AUTHORIZING AN APPLICATION TO THE STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR \$800,000 OF HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDING; AND IF SELECTED, THE EXECUTION OF A STANDARD AGREEMENT, ANY AMENDMENTS THERETO, AND ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE HOME INVESTMENT PARTNERSHIP PROGRAM

WHEREAS, the City of Lodi has historically funded a First Time Home Buyer Program with HOME Investment Partnerships Program (HOME) funds received annually from the U.S. Department of Housing and Urban Development (HUD) as a participating jurisdiction in the San Joaquin Urban County; and

WHEREAS, now as an Entitlement Community the HOME fund allocation from HUD that would have been received through the Urban County is now forwarded to the State of California Housing and Community Development Department (HCD); and

WHEREAS, HOME funds are to be used for the purposes set forth in Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, in federal implementing regulations set forth in Title 24 of the Code of Federal Regulations, part 92, and in Title 25 of the California Code of Regulations commencing with Section 8200;

WHEREAS, HCD is authorized to make those HOME funds available through a competitive application process and on June 1, 2012, HCD issued a 2012 Notice of Funding Availability (NOFA) announcing the availability of funds under the HOME program, and in response to that, the City of Lodi, a municipal corporation, wishes to apply to HCD for, and receive an allocation of, HOME funds.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Program Guidelines, as attached hereto as Exhibit A, for the First Time Home Buyer Program pursuant to the requirements of HCD and authorizes an application to HCD for HOME funds for that program not to exceed \$700,000 for the following activities and/or programs:

- First-time homebuyer down payment assistance to low- and very low-income households for the purchase of qualified homes in the City of Lodi, under both Acquisition-Only and Acquisition with Rehab activities.

BE IT FURTHER RESOLVED, if the application for funding is approved, the City hereby agrees to use HOME funds for eligible activities in the manner presented in the application as approved by HCD in accordance with the statutes and regulations stated above. The City Manager is authorized and may also execute a standard agreement, any amendments thereto, and any and all other documents or instruments necessary or required by HCD for participation in the HOME program.

Dated: August 1, 2012

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the Lodi City Council in a regular meeting held August 1, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Submit an Application with Eden Housing Inc. to the State of California Department of Housing and Community Development for HOME Investment Partnerships Program Funding; and if Selected, the Execution of a Standard Agreement, any Amendments Thereto, and of any Related Documents Necessary to Participate in the HOME Investment Partnerships Program

MEETING DATE: August 1, 2012

PREPARED BY: Community Development Department

RECOMMENDED ACTION: Adopt resolution authorizing the City Manager to submit an application with Eden Housing Inc. to the State of California Department of Housing and Community Development (HCD) for HOME Investment Partnerships Program funding; and if selected, the execution of a Standard Agreement, any amendments thereto, and of any related documents necessary to participate in the HOME Investment Partnerships Program.

BACKGROUND INFORMATION: The City of Lodi has been working with Eden Housing, Inc., and its affiliate, Eden Development, Inc., toward the development of an affordable senior housing project in Lodi, at 2245 Tienda Drive.

As noted during previous presentations to the City Council leading to the selection of the developer for this project, Eden Housing has more than 40 years' experience in the development and management of affordable housing projects. Eden has assisted with the submission of HOME applications for this project in 2009, 2010 and 2011. The project has scored higher every year that we have applied, but the cutoff funding scores have also increased each year, which demonstrates just how competitive these funding programs are. In 2009, 2010 and 2011, the cutoff scores were 1374, 1428 and 1492 respectively. Our corresponding scores for those years were 1270, 1412 and 1415.

In the 2012 Notice of Funding Availability (NOFA) from HCD, there have been some changes in the scoring matrix, as well as proposed changes in both HUD and HCD regulations that could very well have an impact on our ability to score competitively this year. However, the most drastic change is in the fact that HOME funding for 2012 was cut 45 percent from 2011.

Other changes in the realm of affordable housing financing have affected Eden's strategy for funding this project. With the recent dissolution of redevelopment agencies and the resulting legal uncertainty surrounding many of those projects and lack of an ongoing funding source, Eden believes that the 9% Low-Income Housing Tax Credit is a more viable option to fund this project than in previous years and they will be applying accordingly in March of 2013.

APPROVED: _____
Konradt Bartlam, City Manager

Eden is in the process of completing the prerequisite work for the 2012 HOME application packet. Once approved, the authorizing resolution will be included in that packet. Once all supporting documentation has been compiled and incorporated into the application document, it will be submitted to HCD prior to the August 17, 2012 deadline.

The maximum grant amount for HOME Project funds through HCD is \$2 million. In addition to the project funding, HCD allows State recipient agencies to request up to \$100,000 for program administration and project delivery costs. This is an amount above and beyond the requested project funding amount and is intended to cover our costs in administering the project funds and specific project delivery costs. This increases the maximum grant available to \$2.1 million.

While Eden has determined that the City should request \$1 million in State HOME funds for the project, and another \$75,000 for the program administration and project delivery, it is a standard practice and recommended by HCD that the adopted resolution provide for funding up to the maximum grant amount available, which in this case is the \$2.1 million.

FISCAL IMPACT: The City will assume responsibility for administering these funds and has accordingly requested additional program administration and project delivery funding in this application to cover those costs.

FUNDING AVAILABLE: HOME Program funding through State Housing and Community Development

Konradt Bartlam
Community Development Director

KB/jw

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION WITH EDEN HOUSING, INC. TO THE STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR HOME INVESTMENT PARTNERSHIPS PROGRAM FUNDING; AND IF SELECTED, THE EXECUTION OF A STANDARD AGREEMENT, ANY AMENDMENTS THERETO, AND ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE HOME INVESTMENT PARTNERSHIP PROGRAM

WHEREAS, the California Department of Housing and Community Development (the "Department") is authorized to allocate HOME Investment Partnerships Program ("HOME") funds made available from the U.S. Department of Housing and Urban Development ("HUD"). HOME funds are to be used for the purposes set forth in Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, in federal implementing regulations set forth in Title 24 of the Code of Federal Regulations, part 92, and in Title 25 of the California Code of Regulations commencing with section 8200; and

WHEREAS, on June 1, 2012 the Department issued a 2012 Notice of Funding Availability announcing the availability of funds under the HOME program (the "NOFA"). and

WHEREAS, in response to the 2012 NOFA, the City of Lodi, a municipal corporation, and Eden Housing, Inc., a nonprofit corporation (the "Applicants"), wishes to apply to the Department for, and receive an allocation of, HOME funds.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager, in response to the 2012 NOFA, to submit an application with Eden Housing, Inc. to the Department to participate in the HOME program and for an allocation of funds not to exceed Two Million, One Hundred Thousand Dollars (\$2,100,000) for the following activities and/or programs: Development of an affordable senior rental housing project in Lodi, California, and any eligible costs related to the administration of the HOME funds and project delivery.

BE IT FURTHER RESOLVED, if the application for funding is approved, the Applicants hereby agree to use HOME funds for eligible activities in the manner presented in the application as approved by HCD in accordance with the statutes and regulations stated above. The City Manager is authorized and may also execute a standard agreement, any amendments thereto, and any and all other documents or instruments necessary or required by HCD for participation in the HOME program.

Dated: August 1, 2012

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the Lodi City Council in a regular meeting held August 1, 2012, by the following vote:

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

RANDI JOHL
City Clerk



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Adopt Resolution Approving the Side Letter Amending the 2012-2013 Memorandum of Understanding Between the City of Lodi and the Maintenance and Operators Bargaining Unit

MEETING DATE: August 1, 2012

SUBMITTED BY: Human Resources Manager

RECOMMENDED ACTION: Adopt resolution approving the side letter amending the 2012-2013 Memorandum of Understanding Between the City of Lodi and the Maintenance and Operators bargaining unit.

BACKGROUND INFORMATION: This agreement modifies the existing Memorandum of Understanding (MOU) between the City and the Maintenance and Operators bargaining unit. The current MOU is effective January 1, 2012 through December 31, 2013.

The side letter includes an amendment to Article VII – Shift Differential:

- Revise to say – An Operations Premium of 3% will be applied to Wastewater Treatment Plant Operators and Water Treatment Plant Operators for all hours worked during swing shifts. Shift differential pay applies for any regular shift that starts from 12 p.m. to 12 a.m. Shift assignments shall be made by the City at its sole discretion consistent with this MOU.

FISCAL IMPACT: The extension of this provision to Water Treatment Plant Operators shall become effective November 1, 2012. FY 2012/13 impact is \$5,052 2012/13, which is within budget.

FUNDING AVAILABLE: Increased costs will be absorbed within existing appropriations of the Public Works Department.

Jordan Ayers, Deputy City Manager/Internal Services Director

Dean Gualco, Human Resources Manager

APPROVED: _____
Konradt Bartlam, City Manager

**Side Letter Amending the January 1, 2012 – December 31, 2013
Memorandum of Understanding
Between the City of Lodi and the
Maintenance & Operators Unit**

ARTICLE VII – SHIFT DIFFERENTIAL

An Operations Premium of 3% will be applied to Wastewater Treatment Plant Operators and Water Treatment Plant Operators for all hours worked during swing shifts. ~~Swing shifts are those daily work periods regularly scheduled to begin from 2pm to 12am~~ Shift differential pay applies for any regular shift that starts from 12 pm to 12am. Shift assignments shall be made by the City at its sole discretion consistent with this MOU.

A.F.S.C.M.E. COUNCIL 57
LOCAL 146-AFL-CIO

CITY OF LODI
A MUNICIPAL CORPORATION

Nancy Vinson
Chief Negotiator
Date:_____

Konradt Bartlam
City Manager
Date:_____

Sherry Moroz
President
Date:_____

Dean Gualco
Human Resources Manager
Date:_____

Attest:

Randi Johl
City Clerk

APPROVED AS TO FORM:

D. Stephen Schwabauer
City Attorney

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING THE SIDE LETTER AMENDING THE 2012-
2013 MEMORANDUM OF UNDERSTANDING WITH THE
MAINTENANCE AND OPERATORS BARGAINING UNIT

=====

WHEREAS, it is recommended that Council approve the side letter amending the 2012-2013 Memorandum of Understanding (MOU) for Maintenance and Operators,

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the side letter as follows:

Article VII – Shift Differential: An Operations Premium of 3% will be applied to Wastewater Treatment Plant Operator and Water Treatment Plant Operators for all hours worked during the swing shifts. Shift differential pay applies for any regular shift that starts from 12pm to 12am. Shift assignments shall be made by the City at its sole discretion consistent with this MOU; and

BE IT FURTHER RESOLVED that this amendment to the MOU shall take effect November 1, 2012.

Date: August 1, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the Lodi City Council in a regular meeting held August 1, 2012, by the following vote:

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

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving Art Advisory Board Recommendation For Bicycle Rack Placement and Appropriate Art In Public Places Funds (\$11,550)

MEETING DATE: August 1, 2012

PREPARED BY: Parks, Recreation and Cultural Services Interim Director

RECOMMENDED ACTION: Adopt resolution approving Art Advisory Board recommendation for bicycle racks placement and appropriate Art in Public Places Funds in the amount of \$11,550.

BACKGROUND INFORMATION: The Art Advisory Board seeks to use Art in Public Places funds to purchase and install three custom bicycle racks at various City locations.

The locations chosen by the Art Advisory Board will be Kofu Park, Lodi Lake Park and the Salvation Army's North Sacramento Street. The Board secured support letters for these locations from the Salvation Army and Parks Superintendent Steve Dutra.

Request for Proposals will be issued in August with design specifications and site information. Upon receiving proposals, the Art Advisory Board will award the winning designs. The Board estimates the racks will cost up to \$3,500 each, while the appropriation includes another \$350 for installation.

FISCAL IMPACT: \$11,550 from the developer-funded Art in Public Places fund.

FUNDING AVAILABLE: \$168,100 as of August 1, 2012; Art in Public Places Account No. 1214

Jordan Ayers, Deputy City Manager

Jeff Hood
Parks, Recreation and Cultural Services Interim Director

JH/dkb
Attachments

APPROVED: _____
Konradt Bartlam, City Manager



PARKS, RECREATION, AND CULTURAL SERVICES
DEPARTMENT
Creating Community through People, Parks, and Programs

May 30, 2012

Art Advisory Board
Art in public Schools
125 S Hutchins Street
Lodi, California 95240

Members of the Advisory Board;

Parks Division is glad to welcome the bike rack project into two of our parks. Our staff is looking forward to working with you to finalize specific locations within Kofu Park at 1145 S. Ham Lane and also Lodi Lake Park at 1101 W. Turner Road.

We appreciate your interest in donating your efforts to the City of Lodi and look forward to working with you in the future.

Sincerely,

Steve Dutra

Parks Superintendent

SD:vw

City of Lodi – parks and recreation
125 N Stockton Street
Lodi, Ca 95240
209) 368-1012 phone
(209) 333-6153 Fax



*The Salvation Army A Center of Hope
&
The Hope Harbor Family Service Center*

**General William &
Catherine Booth**

Founders

General

Linda Bond

International Leader

Commissioner

James Knagg

Territorial Commander

Major Bill Dickinson

Major Lisa Dickinson

Divisional Commanders

Captain Dan Williams

Captain Kim Williams

Corps Officers

Advisory Board

Pat Patrick

Chair

Pam Kludt

Vice Chair

Marilee Ginoulis

Secretary

Doug Chinn

Steve Cottrell

Wayne Diede

Patricia Fehling

Don Fletcher

Linda Greenlee

Mike Harmon

Annette Murdaca

Phil Pennino

Walter Reiss, M.D.

Don Roek

Reed Rosenberg

Janice Roth

Gerry Schook

Mona Shulman

Curt Speaks

Dawn Speaks

Clint Waring

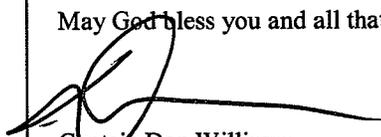
May 14, 2012

Art Advisory Board
Art in Public Places
125 S. Hutchins Street
Lodi, CA 95240

Dear Art Advisory Board:

This letter is to confirm that we agree to allow you to include the bike rack project at The Salvation Army Hope Harbor Family Service Center, located at 622 N. Sacramento Street, Lodi, California.

May God bless you and all that you do!


Captain Dan Williams
Corps Officer – Lodi Corps



Karen West
Shelter Director, Hope Harbor

525 W. Lockeford St. ~ P.O. Box 1388 ~ Lodi, California 95240 ~ Office: (209) 369-5896 ~ Fax: (209) 369-2724

HOPE HARBOR FAMILY SERVICE CENTER

622 N. Sacramento St. Lodi, CA 95240 ~ Office: (209) 367-9560 ~ Fax: (209) 367-1260

1. AA# _____
 2. JV# _____

**CITY OF LODI
 APPROPRIATION ADJUSTMENT REQUEST**

TO: Internal Services Dept. - Budget Division
 3. FROM: PRCS Interim Director 5. DATE: 7/23/12
 4. DEPARTMENT/DIVISION: Parks, Recreation & Cultural Services

6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW					
	FUND #	BUS. UNIT #	ACCOUNT #	ACCOUNT TITLE	AMOUNT
A. SOURCE OF FINANCING	1214	N/A	3205	Fund balance	\$11,550
B. USE OF FINANCING	1214	1214015	1820	Bicycle Rack Project	\$11,550

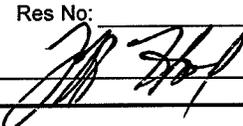
7. REQUEST IS MADE TO FUND THE FOLLOWING PROJECT NOT INCLUDED IN THE CURRENT BUDGET

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.

At the recommendation of the Art Advisory Board, Art in Public Places funds will be used to construct and install three artistically designed bicycle racks at various City locations. The budget is \$3,500 per rack (\$10,500), plus \$350 per rack (\$1,050) for installation for a total of \$11,550. The Art Advisory Board will issue a request for proposals in August following City Council appropriation.

If Council has authorized the appropriation adjustment, complete the following:

Meeting Date: _____ Res No: _____ Attach copy of resolution to this form.

Department Head Signature:  _____

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. 2012-_____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING THE ART ADVISORY BOARD
RECOMMENDATION FOR BICYCLE RACKS
PLACEMENT AND APPROPRIATING ART IN PUBLIC
PLACES FUNDS (\$11,550)

=====

WHEREAS, public displays of art enhance a community and improve the quality of life for its residents; and

WHEREAS, the Art Advisory Board seeks to use Art in Public Places funds to purchase and install three custom bicycle racks at Kofu Park, Lodi Lake Park and at the Salvation Army on North Sacramento Street; and

WHEREAS, the Art in Public Places Fund is funded through development impact fees and not General Fund dollars.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that funds in the amount of \$11,550 be appropriated from the Art in Public Places Fund to purchase and install three artistic bicycle racks at the Salvation Army, Kofu Park and Lodi Lake Park.

Dated: August 1, 2012

=====

I hereby certify that Resolution No. 2012-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 1, 2012 by the following vote:

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

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Arts Grants for Fiscal Year 2012/13 (\$34,000)

MEETING DATE: August 1, 2012

PREPARED BY: Parks, Recreation and Cultural Services Interim Director

RECOMMENDED ACTION: Approve arts grants for Fiscal Year 2012/13 in the amount of \$34,000.

BACKGROUND INFORMATION: The City Council appropriated \$36,500 for arts grants in the 2012/13 fiscal year. The Lodi Arts Commission, which manages the arts grant program for the City, accepted grant applications for FY 2012/13 through May 1, 2012.

Eleven grant applications were submitted. A Lodi Arts Commission review panel screened and scored the applications, which were then reviewed by the entire commission. At its July 11, 2012 meeting, the Arts Commission voted to recommends the City Council approve the following 10 arts grants in the amount of \$34,000 (details attached):

- Central Valley Youth Symphony, \$5,500
- Changing Faces Theater Company, \$10,000
- Lodi Arts Foundation, \$1,000
- Lodi Community Art Center (three grants), \$5,500
- Lodi Public Library Foundation, \$1,000
- Sandhill Crane Association, \$1,500
- Red Circle, \$4,500
- Stockton Symphony Association, \$5,000

The Arts Commission will fund mini-grants with the remaining \$2,500 throughout the fiscal year.

FISCAL IMPACT: Funding of \$36,500 appropriated in FY 2012/13 budget.

FUNDING AVAILABLE: 100431.8021.7 Donations-Arts Grants

Jordan Ayers, Deputy City Manager/Internal Services Manager

Jeff Hood
Interim Director of Parks, Recreation and Cultural Services

APPROVED: _____
Konradt Bartlam, City Manager

**LODI ARTS COMMISSION PROJECT GRANTS
2012 - 13 PROGRAM CYCLE
SUMMARY OF GRANT APPLICATIONS**

Group Name: Central Valley Youth Symphony Association (CVYSA)

Art Form(s): Music

Grant Request: \$7,000

Project Expenses: \$ 14,500.00

Previous Funding: 2001/02 - \$10,000.00; 2004/05 - \$5,000.00;
2004/2005 - \$1,500.00 (Mini Grant); 2005/06 - \$5,120.00; 2007/08 - \$6,336.00;
2008/09 - \$6,048.00; 2009/10 - \$6,336.00; 2010/11 - \$5,000; 2011/12 \$5,000.00

Recommended for Funding 2012/13: YES Award: \$5,500

Project Name: “Young Musicians Celebrate an American Classic”

Project Description: CVYSA collaborating with the Lodi Children’s Chorus will perform selections from the Rodgers and Hammerstein American Classic, Oklahoma. The concert will be free to all 18/under with invitations to Lodi schools, preschools and others who offer children’s activities.

Benefit to the Community: This planned concert will give all of the members of our Lodi community a chance to enjoy symphonic and Broadway music performed by a symphony orchestra with vocals. This grant proposal will also make this music available free of charge to all those 18 years and under....This project gives an opportunity to our young musicians to give to their community and to inspire other young musicians.

Group Name: Changing Faces Theater Co. (CFTC)

Art Form(s): Theatre

Grant Request: \$12,000.00

Project Expenses: \$71,100.00

Previous Funding: 2006/07 - \$9,671.00; 2007/08 - \$12,000.00; 2008/09 - \$16,952.00;
2009/10 - \$4,250.00; 2010/2011 - \$7,500; 2011/12 - \$9,000.00

Recommended for Funding for 2012/13: YES Award: \$10,000.00

Project Name: “A Midsummer Night’s Dream”

Project Description: Changing Faces Theater Company will stage an outdoor production of Shakespeare’s *A Midsummer Night’s Dream*, with a cast and crew of approximately 80 students from elementary school through college, in 2013.

Benefit to the Community: CFTC is immensely excited about the choice of *A Midsummer Night’s Dream*. It is one of Shakespeare’s most accessible to young performers and audiences of all ages. Many students and adults are wary of Shakespeare, believing his plays to be “boring” or “too hard” – the result, often, of a too-academic introduction to his works. Onstage, his fascinating characters, skillful storytelling, and beautiful language are mesmerizing, and CFTC is eager to share this extraordinary playwright and this lively play with its audiences.

Group Name: The Lodi Arts Foundation

Art Form(s): Visual Art

Grant Request: \$2,300.00

Project Expenses: \$6,320.00

Previous Funding: 2010/11 - \$1,500.00; 2011/12 - \$1,000.00

Recommended for Funding 2012/13: YES Award: \$1,000.00

Project Name: First Friday Art Hop

Project Description: This is a free monthly citywide art walk that provides opportunities for artists to exhibit their work to new and diverse audiences. The public can “hop” from location to location, meet the artists, socialize and enjoy the refreshments. Live music may be provided. This grant will be used to provide brochures for all of the participants in the Art Hop which is currently at 11.

Benefit to the Community: This project provides a significant value to the community and to the artists by bringing diverse groups together and providing a sense of community and identity to Lodi. Through art we have a universal “language” that allows us to communicate ideas within and between cultures, nourishes creativity and is a pathway to success in other aspects of life. Supporting the artists and the participating businesses helps to invigorate the local economy for the benefit of our collective future.

Group Name: Lodi Community Art Center

Art Form(s): Visual Art

Grant Request: \$5,000

Project Expenses: \$13,000.00

Previous Funding: 2005/06 - \$2,080.00; 2006/07 - \$2,273.00; 2007/08 - \$4,650.00; 2009/10 - \$3,400.00; 2010/11 - \$5,000.00 (various grants); 2011/12 \$4,000.00

Recommended for Funding for 2012/13: YES Award: \$3,000.00

Project Name: 2013 Lodi Spring Art Show Preview Night Benefit

Project Description: Our Spring Art Show will have a Preview Night Benefit with all proceeds from ticket sales dedicated to benefit our local (LUSD) public High Schools’ art programs, classroom materials, and supplies.

Benefit to the Community: Keeping art classes available to our kids helps develop new artists and thereby generating more art for our society. The more public awareness and support for our kids we can generate, the more our community will value the art produced here. Keeping our local businesses aware of art will help improve their interest in art in promoting Lodi itself. We strongly believe in promoting public and private art is important all communities.

Group Name: Lodi Community Art Center

Art Form(s): Visual Art

Grant Request: \$1,000.00

Project Expenses: \$1,800.00

Previous Funding: 2009/10 - \$2,150.00; 2010/11 - \$5,000.00 (various grants); 2011/12 - \$4,000.00

Recommended for Funding for 2012/13: YES Award: \$1,000.00

Project Name: Paint Lodi 2012

Project Description: LCAC will sponsor an event for local artists to paint scenes of Lodi during the last week of September 2012. Cash and merchandise prizes will be awarded to winners at a September 30 display and public judging event.

Benefit to the Community: Through local media, contacts with schools and local artists, we think we can get a lot of people painting scenes of Lodi and will display them at our Gallery during October, which is free to the public. We will try to get involvement of local businesses through the Lodi Chamber of Commerce and Downtown Lodi Business partnership to help spread the word and promote public art activity. We will involve young artists through our publicity with schools. By artists of all levels from beginner to professional, we will create an event that is enjoyable for participants and the public, since they will choose the prize winners. Our fees will be modest - \$10.00 for adults per entry and \$1 for those under 18.

Group Name: Lodi Community Art Center

Art Form(s): Visual Art

Grant Request: \$4,000.00

Project Expenses: \$4,000.00

Previous Funding: 2009/10 - \$4,250.00; 2010/11 - \$5,000.00 (various grants) 2011/12 - \$4,000.00

Art Form(s): Visual Fine Arts

Recommended for Funding for 2012/13: YES Award: \$1,500.00

Project Name: Student Gallery and Scholarships

Project Description: "The LCAC Student Gallery provides a venue for local high school students to exhibit their work for a month. We provide awards for each month for 1st, 2nd and 3rd place winners. We also provide scholarships for graduating student in local high schools.

Benefit to the Community: "By displaying student work, we remind the public of the value of art training. We work to encourage support of art programs in our schools. By encouraging art students, we are helping to keep art alive in our communities and also help insure future artistic creations from which we all benefit. Through our publicity efforts, we bring people in contact with our young artists.

Group Name: Lodi Public Library Foundation

Art Form(s): Theatre

Grant Request: \$1,000.00

Project Expenses: \$1,000.00

Previous Funding: 2010/2011 - \$2,000.00; 2011/2012 - \$1,500.00

Recommended for Funding for 2012/13: YES Award: \$1,000.00

Project Name: Lodi Public Library Adult Readers' Theater Troupe

Project Description: The project will create an Adult Readers' Theater Troupe that provides dramatic programming to audiences in and outside the library. The programs will feature stories from children's literature and promote the library and reading throughout the community.

Benefit to the Community: The project will introduce the dramatic form of readers' theater to the community. The performances at the library story times will be free to the public. Performances at various nursing homes and schools will expose seniors, school children and their relatives to the art form. Exposure to new and different art forms is broadening. Copies of the scripts will be added to the library's collection of readers' theater scripts available for checkout by library card holders.

Group Name: Lodi Sandhill Crane Association (LSCA)

Art Form(s): Visual Art

Grant Request: \$1,500.00

Project Expenses: \$1,500.00

Previous Funding: 2009/10 - \$1,700.00; 2010/11- \$1,500.00; 2011/12 - \$1,000.00

Recommended for Funding for 2012/13: YES Award: \$1,500.00

Project Name: Sandhill Crane Festival Art Show

Project Description: The Lodi Sandhill Crane Association is requesting a Lodi Arts Commission Arts Grant to provide support for the 2012 Sandhill Crane Festival Art Show. The Art show will display approximately 90 entered pieces and student art from 2 local classrooms.

Benefit to the Community: The Art Show provides members of the community an opportunity to view artwork from well-known and talented local artists, at no charge. The Art Show is also an opportunity for community members to learn about and appreciate Sandhill Cranes and other local wildlife through art. Attendees can experience and benefit from art in other forms at the Festival.....We typically have strong sales from the Art Show, which encourages and helps support the artists.

Group Name: Red Circle

Art Form(s): Dance

Grant Request: \$10,000.00

Project Expenses: \$12,710.00

Previous Funding: 2009/10 - \$8,500.00; 2010/11 - \$5,000.00

Recommended for Funding for 2012/13: YES Award: \$4,500.00

Project Name: Father's Day Powwow

Project Description: The purpose of this project is to produce a 1 day Native American Powwow to educate and promote our culture and preserve our traditions. This event is open to the public.

Benefit to the Community: Funds raised this year at the Powwow as they have in the past, have allowed us to travel to schools, and other events to perform our Native dances for schools and Cultural Days that could not afford them.

Group Name: Stockton Symphony Association

Art Form(s): Music

Grant Request: \$5,000.00

Project Expenses: \$ 20,553.00

Previous Funding: 2001/02 - \$9,542.00; 2003/04 - \$4,006.00; 2004/05 - \$7,000.00; 2005/06 - \$1,000.00; 2008/09 - \$2,500.00; 2009/10 - \$2,500.00; 2010/11 - \$5,000.00; 2011/12 - \$5,000.00

Project Name: Dancin' in Your Seats – Steppin' Out Concerts

Recommended for funding for 2012/13: YES Award: \$5,000.00

Project Description: The Stockton Symphony performs two one-hour concerts in Lodi for 4th and 5th grade students who are bused to Hutchins Street Square – the culminating event of an inter-active music education program that introduces students to classical music and the symphony.

Benefit to the Community: Due to the recession and the fiscal crisis in San Joaquin schools, school music programs have been cut and students have fewer opportunities to be exposed to classical music or to study a musical instrument or play in a band or orchestra. The Steppin' Out concerts can help to fill the gap and keep music alive for the students—allowing them to see music in action, to hear symphonic repertoire, and to experience a live concert in a real concert hall. Students go home and talk about their experience with their parents helping to increase interest in and participation in the arts.

Comments by the public on non-agenda items

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

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

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

Comments by the City Council Members on non-agenda items



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Continue Public Hearing to August 15, 2012, to Consider the Following Actions:

- A. Adopt Resolution Certifying the Negative Declaration as Adequate Environmental Documentation for the Master Plans for Water, Wastewater, Storm Drainage and Bicycle
- B. Adopt Resolution Approving Master Plans for Water, Wastewater, Storm Drainage and Bicycle; Approving Impact Mitigation Fee Program Report and Schedule of Fees; and Approving Impact Mitigation Fee Program Schedule of Reduced Fees

MEETING DATE: August 1, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Continue public hearing to August 15, 2012, consider the following actions:

- A. Adopt resolution certifying the negative declaration as adequate environmental documentation for the master plans for water, wastewater, storm drainage and bicycle
- B. Adopt resolution approving master plans for water, wastewater, storm drainage and bicycle; approving Impact Mitigation Fee Program report and schedule of fees; and approving Impact Mitigation Fee Program schedule of reduced fees

BACKGROUND INFORMATION: In order to provide additional time for preparation of the final report, staff is requesting the public hearing be continued to August 15, 2012.

FISCAL IMPACT: IMFP revenues support the implementation of infrastructure to serve new development without which other City revenues would be utilized.

FUNDING AVAILABLE: Not applicable.

F. Wally Sandelin
Public Works Director

FWS/pmf

APPROVED: _____
Konradt Bartlam, City Manager



**Please immediately confirm receipt
of this fax by calling 333-6702**

CITY OF LODI
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

ADVERTISING INSTRUCTIONS

SUBJECT: PUBLIC HEARING TO CONSIDER:
A) RESOLUTION APPROVING MASTER PLANS FOR WATER, WASTEWATER, STORM DRAINAGE, AND BICYCLE; B) CERTIFYING THE NEGATIVE DECLARATION AS ADEQUATE ENVIRONMENTAL DOCUMENTATION FOR THE MASTER PLANS FOR THE WATER, WASTEWATER, STORM DRAINAGE, AND BICYCLE; C) RESOLUTION APPROVING IMPACT MITIGATION FEE PROGRAM REPORT; AND D) RESOLUTION APPROVING IMPACT MITIGATION FEE PROGRAM SCHEDULE OF FEES

PUBLISH DATE: SATURDAY, JUNE 30, 2012

LEGAL AD

TEAR SHEETS WANTED: One (1) please

**SEND AFFIDAVIT AND BILL TO:
LNS ACCT. #0510052**

RANDI JOHL, CITY CLERK
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: TUESDAY, JUNE 26, 2012

**ORDERED BY: RANDI JOHL
CITY CLERK**


JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

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

LNS Faxed to the Sentinel at 369-1084 at _____ (time) on _____ (date) _____ (pages)
Phoned to confirm receipt of all pages at _____ (time) _____ CF _____ MB _____ JMR (initials)



DECLARATION OF POSTING

PUBLIC HEARING TO CONSIDER:

A) RESOLUTION APPROVING MASTER PLANS FOR WATER, WASTEWATER, STORM DRAINAGE, AND BICYCLE; B) CERTIFYING THE NEGATIVE DECLARATION AS ADEQUATE ENVIRONMENTAL DOCUMENTATION FOR THE MASTER PLANS FOR THE WATER, WASTEWATER, STORM DRAINAGE, AND BICYCLE; C) RESOLUTION APPROVING IMPACT MITIGATION FEE PROGRAM REPORT; AND D) RESOLUTION APPROVING IMPACT MITIGATION FEE PROGRAM SCHEDULE OF FEES

On Tuesday, June 26, 2012, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider: a) Resolution approving Master Plans for Water, Wastewater, Storm Drainage, and Bicycle; b) Certifying the Negative Declaration as adequate environmental documentation for the Master Plans for the Water, Wastewater, Storm Drainage, and Bicycle; c) Resolution approving Impact Mitigation Fee Program Report; and d) Resolution approving Impact Mitigation Fee Program Schedule of Fees (attached and marked as Exhibit A) was posted at the following locations:

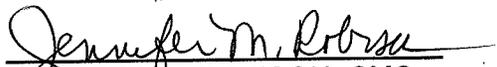
Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

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

Executed on June 26, 2012, at Lodi, California.

ORDERED BY:

**RANDI JOHL
CITY CLERK**



JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



DECLARATION OF MAILING

PUBLIC HEARING TO CONSIDER:

A) RESOLUTION APPROVING MASTER PLANS FOR WATER, WASTEWATER, STORM DRAINAGE, AND BICYCLE; B) CERTIFYING THE NEGATIVE DECLARATION AS ADEQUATE ENVIRONMENTAL DOCUMENTATION FOR THE MASTER PLANS FOR THE WATER, WASTEWATER, STORM DRAINAGE, AND BICYCLE; C) RESOLUTION APPROVING IMPACT MITIGATION FEE PROGRAM REPORT; AND D) RESOLUTION APPROVING IMPACT MITIGATION FEE PROGRAM SCHEDULE OF FEES

On Tuesday, June 26, 2012, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing Notice of Public Hearing to consider: a) Resolution approving Master Plans for Water, Wastewater, Storm Drainage, and Bicycle; b) Certifying the Negative Declaration as adequate environmental documentation for the Master Plans for the Water, Wastewater, Storm Drainage, and Bicycle; c) Resolution approving Impact Mitigation Fee Program Report; and d) Resolution approving Impact Mitigation Fee Program Schedule of Fees, attached hereto marked Exhibit A. The mailing list for said matter is attached hereto, marked Exhibit B.

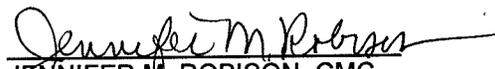
There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

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

Executed on June 26, 2012, at Lodi, California.

ORDERED BY:

**RANDI JOHL
CITY CLERK, CITY OF LODI**


JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING

Date: August 1, 2012

Time: 7:00 p.m.

For information regarding this notice please contact:

Randi Johl,

City Clerk

Telephone: (209) 333-6702

EXHIBIT A

NOTICE OF PUBLIC HEARING

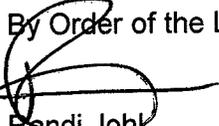
NOTICE IS HEREBY GIVEN that on **Wednesday, August 1, 2012**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

- a) **Resolution approving Master Plans for Water, Wastewater, Storm Drainage, and Bicycle;**
- b) **Certifying the Negative Declaration as adequate environmental documentation for the Master Plans for the Water, Wastewater, Storm Drainage, and Bicycle;**
- c) **Resolution approving Impact Mitigation Fee Program Report; and**
- d) **Resolution approving Impact Mitigation Fee Program Schedule of Fees.**

Information regarding this item may be obtained in the Public Works Department, 221 West Pine Street, Lodi, (209) 333-6706. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2nd Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

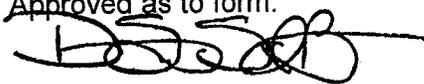
If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:


Randi Johl
City Clerk

Dated: June 20, 2012

Approved as to form:



D. Stephen Schwabauer
City Attorney

Public Hearing to Consider: a) Resolution approving Master Plans for Water, Wastewater, Storm Drainage, and Bicycle; b) Certifying Negative Declaration as adequate environmental documentation for the Master Plans for Water, Wastewater, Storm Drainage, and Bicycle; c) Resolution approving Impact Mitigation Fee Program Schedule of Fees; and d) Resolution approving Impact Mitigation Fee Program Schedule of Fees

EXHIBIT B

NAME	ADDRESS
A FRED BAKER	PO BOX 1510 LODI CA 95241-1510
DELMAR BATCH	11174 N DAVIS RD LODI CA 95242
STEVE SINNOCK KJELDSSEN SINNOCK & NEUDECK	PO BOX 844 STOCKTON CA 95201-0844
LOWELL FLEMMER KATZAKIAN WILLIAMS SHERMAN	777 S HAM LN STE A LODI CA 95242
JOHN GIANNONI GIANNONI DEVELOPMENT	1500 W EL CAMINO AVE STE 192 SACRAMENTO CA 95833
JEFFREY KIRST TOKAY DEVELOPMENT INC	PO BOX 1259 WOODBIDGE CA 95258
LUSD	1305 E VINE ST LODI CA 95240
BAUMBACH & PIAZZA STEVE PECHIN	323 W ELM ST LODI CA 95240
DARRELL SASAKI DRS REAL ESTATE APPRAISALS INC	1806 W KETTLEMAN LN STE G LODI CA 95242
RON THOMAS R THOMAS DEVELOPMENT INC	1209 W TOKAY LODI CA 95240
LEX CORALES SIEGFRIED & ASSOCIATES	4045 CORONADO AVE STOCKTON CA 95204
WENTLAND SNIDER MCINTOSH	301 S HAM LN STE A LODI CA 95242
TOM DAVIS LEE & ASSOCIATES	241 FRANK WEST CIR STE 300 STOCKTON CA 95206
SAN JOAQUIN PARTNERSHIP	2800 W MARCH LN STE 470 STOCKTON CA 95219
PAT PATRICK LODI DISTRICT CHAMBER OF COMMERCE	35 S SCHOOL ST LODI CA 95240
MARK CHANDLER EXEC DIRECTOR LODI WOODBRIDGE WINEGRAPE COMMISSION	2545 W TURNER RD LODI CA 95242
HARRIS & ASSOCIATES ALISON BOULEY	2315 ORCHARD PKWY STE 120 TRACY CA 95377
GOODWIN CONSULTING GROUP VICTOR IRZYK	555 UNIVERSITY AVE STE 280 SACRAMENTO CA 95825
FEHR & PEERS JULIE MORGAN	100 PRINGLE AVE STE 600 WALNUT CREEK CA 94596
VALLIER DESIGN ASSOCIATES INC MARCIA VALLIER	210 WASHINGTON AVE STE G POINT RICHMOND CA 94801
BENNETT HOMES DENNIS BENNETT/RODNEY BOVEE	1610 W KETTLEMAN LN STE A LODI CA 95242
TOKAY DEVELOPMENT JEFFREY KIRST/KRYSTAL KIRST	222 W LOCKEFORD ST STE 1 LODI CA 95240
BROWMAN DEVELOPMENT COMPANY DARRYL BROWMAN/VIC DE MELO	1556 PARKSIDE DR WALNUT CREEK CA 94596

DILLON & MURPHY	PO BOX 2180 LODI CA 95241
DGP REAL ESTATE MICHAEL CAROUBA	1420 S MILLS AVE STE K LODI CA 95242
RPM COMPANY DALE GILLESPIE	1420 S MILLS AVE STE M LODI CA 95242
BIA OF THE DELTA JOHN BECKMAN	315 N SAN JOAQUIN ST STE 202 STOCKTON CA 95202
FCB HOMES TOM DOUCETTE	10100 TRINITY PKWY STE 420 STOCKTON CA 95219
MUNSON CONSTRUCTION TIM MUNSON/RUSS MUNSON	PO BOX 643 WOODBIDGE CA 95258
JBT PROPERTY MGMT MATT DOBBINS	1901 W KETTLEMAN LN STE 102 LODI CA 95242
HESELTIME REALTY	312 S CRESCENT AVE LODI CA 95240



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Continue the Public Hearing to August 15, 2012, Regarding Termination of Southwest Gateway and Westside Project Development Agreements with Frontier Community Builders, Inc.

MEETING DATE: August 1, 2012

PREPARED BY: City Manager

RECOMMENDED ACTION: Continue the Public Hearing to August 15, 2012, regarding termination of Southwest Gateway and Westside Project Development Agreements with Frontier Community Builders, Inc.

BACKGROUND INFORMATION: Staff is requesting that this item scheduled for Public Hearing be continued to the August 15, 2012 meeting.

In December of 2006, the City entered into the first of two Development Agreements with Frontier Community Builders, Inc. The first for the Southwest Gateway project and in April, 2007 for the Westside project. Since that time, the only activity which has taken place for both of these projects has been their annexation into the City. These took place shortly after the original approvals.

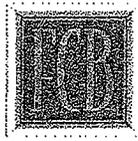
FCB Homes has provided the City with the attached letter requesting that the Agreements be terminated. The letter explains the circumstances which have taken place that have led to this point. Clearly, the real estate market collapse is the primary cause. As noted by Mr. Doucette, the economics of 2006 are not the same as the realities today. Simply put, the projects cannot be built as originally contemplated under the terms and conditions of the Agreements.

FISCAL IMPACT: None.

Konradt Bartlam
City Manager

Attachment

APPROVED: _____
Konradt Bartlam, City Manager



FCB HOMES

May 16, 2012

Mr. Rad Bartlem
City Manager
City of Lodi
221 West Pine Street
Lodi, CA 95240

Re: Westside and Southwest Gateway Development Agreements --
Request for Termination

Dear Rad,

Last April, 2011, I sent you a letter formally requesting termination of the Westside and Southwest Gateway Development Agreements (see attached). The letter followed nearly ten months of regular meetings with City Staff and their consultants working on Lodi's Impact Mitigation Fee Program (IMFP) update. We were convinced then that the Westside and Southwest Gateway properties should be included in the IMFP and the Development Agreements terminated. Now, over a year later, the IMFP update is nearly complete, and the Westside and Southwest Gateway properties are an integral part of the updated IMFP. Clearly, then, it is time to move forward to cancel the old Westside and Southwest Gateway Development Agreements and establish an economic framework for residential development to proceed within the current City limits.

At your request, I will outline below the main reasons we feel the Development Agreements should be cancelled.

1. The Development Agreements did not address the actual impacts resulting from new residential development.

When the Westside and Southwest Gateway projects were moving through the entitlement process, the City's existing impact fee program - originally adopted in 1991 - had not been updated for 15 years. While the fees had been periodically increased over time, many of the underlying assumptions about program funding had changed and it was those old fee programs that provided the basis for the Agreements. Furthermore, other fees were included in the Agreements, some of which bore little or no relationship to growth impacts from the Westside and Gateway projects.



10100 TRINITY PARKWAY, SUITE 420 STOCKTON, CALIFORNIA 95219
209-957-8112 FAX 209-957-3618 WWW.FCBHOMES.COM



Now, nearly six years later, the City has the cumulative benefit of precise plans for the Westside and Southwest Gateway and a new General Plan. The City's Staff is also approaching the end of a two year comprehensive study of growth impacts via the IMFP which include the Westside and Southwest Gateway properties. Their work, along with the Council's ultimate approval, will result in an updated, tailored IMFP. The new IMFP will be a far better and more accurate way to mitigate impacts from both the Westside and Gateway projects in comparison to the mitigation sought by the Agreements.

2. The Development Agreements have a fifteen year term, were never implemented and cannot be completed before they expire.

The national, state and local housing markets were at historic levels when the Development Agreements were approved in 2006. The fifteen year term of the Agreements seemed reasonable at the time given the active market conditions. However, the market has since plummeted to historic lows. Furthermore, City Staff, consultants, and developers are not expecting new residential development to even begin for another two to three years. By that time, the Development Agreements will only have approximately seven years remaining before they expire. This is less than half the time that was deemed appropriate under the best of market conditions and will simply not be sufficient time to complete these projects. At a minimum, the Development Agreements need to be renegotiated to account for this fact alone. However, as noted, it would be more accurate and efficient to put the entire City under one (updated) IMFP. Having to renegotiate the Development Agreements, regularly monitor compliance, and account for all funds and programs separate from the IMFP would be time consuming and an unnecessary financial burden for everyone involved.

3. The Development Agreements required predetermined lump sum payments for certain fees that cannot be financed without a robust and consistent housing market.

Historically, the City's IMFP has been designed to be a "pay-as-you-go" system. This allowed the pace of development to mirror the acceleration or decline of the housing market. The proposed updated IMFP will likewise operate on a "pay-as-you-go" basis. This is a more sustainable way to manage growth, particularly in a community like Lodi - where the long term residential growth rate is relatively slow. Development in Westside and Southwest Gateway will likely occur in phases by multiple development interests. While this is consistent with how development in Lodi has occurred for many years, it makes the payment of large, lump sums on a predetermined schedule virtually impossible to finance.

Development Agreements with lump sum payments work best on large scale projects expected to be completed in a predictable fashion. They can even work effectively on small projects when the completion can be reasonably forecasted. However, in a community like Lodi, this structure will not work effectively on larger scale areas of development over longer (less economically predictable) periods of time.

Summary

While the issues outlined above are not exhaustive, they highlight several important factors which underscore the need to terminate the Westside and Southwest Gateway Development Agreements. Alternatively, these Development Agreements could be renegotiated, but that should be weighed against the inclusion of these projects in the updated IMFP program.

The Agreements were executed during an unprecedented "Housing Bubble" fueled by the "Irrational Exuberance" of a dysfunctional financial system. These dynamics no longer exist and will not return in our lifetime. The housing market, as well as the overall economy, is struggling to find its footing following one of the worst recessions in history. Fortunately, the City has moved on and set a course to plan for sustainable future growth base on realistic assumptions.

The Westside and Southwest Gateway projects will be a major component of the City's planned growth plans for the next ten to fifteen years. With this in mind, it is our belief that it will be more efficient, balanced and productive to utilize the updated IMFP for the Westside and Southwest Gateway projects once it is adopted by the City Council.

Sincerely,

A handwritten signature in black ink that reads "Tom Doucette". The signature is written in a cursive style with a large, prominent initial "T".

Thomas P. Doucette
President



**Please immediately confirm receipt
of this fax by calling 333-6702**

CITY OF LODI
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

ADVERTISING INSTRUCTIONS

SUBJECT: PUBLIC HEARING TO CONSIDER TERMINATION OF SOUTHWEST GATEWAY AND WESTSIDE PROJECT DEVELOPMENT AGREEMENTS WITH FRONTIER COMMUNITY BUILDERS, INC.

PUBLISH DATE: SATURDAY, JUNE 30, 2012

LEGAL AD

TEAR SHEETS WANTED: Three (3) please

SEND AFFIDAVIT AND BILL TO: RANDI JOHL, CITY CLERK
LNS ACCT. #0510052 City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: TUESDAY, JUNE 26, 2012

ORDERED BY: RANDI JOHL
CITY CLERK

Jennifer M. Robison
JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

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

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



DECLARATION OF POSTING

PUBLIC HEARING TO CONSIDER TERMINATION OF SOUTHWEST GATEWAY AND WESTSIDE PROJECT DEVELOPMENT AGREEMENTS WITH FRONTIER COMMUNITY BUILDERS, INC.

On Tuesday, June 26, 2012, in the City of Lodi, San Joaquin County, California, a Public Hearing Notice to consider termination of Southwest Gateway and Westside Project Development Agreements with Frontier Community Builders, Inc. (attached and marked as Exhibit A) was posted at the following locations:

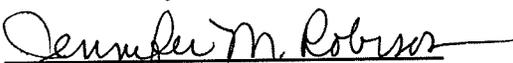
Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

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

Executed on June 26, 2012, at Lodi, California.

ORDERED BY:

**RANDI JOHL
CITY CLERK**


JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



DECLARATION OF MAILING

PUBLIC HEARING TO CONSIDER TERMINATION OF SOUTHWEST GATEWAY AND WESTSIDE PROJECT DEVELOPMENT AGREEMENTS WITH FRONTIER COMMUNITY BUILDERS, INC.

On ~~June 28, 2012~~, ^{July 12, 2012} in the City of Lodi, San Joaquin County, California, I deposited in the United States mail envelopes with first-class postage prepaid thereon containing a Notice of Public Hearing to consider termination of Southwest Gateway and Westside Project Development Agreements with Frontier Community Builders, Inc., attached hereto marked Exhibit A. The mailing list for said matter is attached hereto marked Exhibit B.

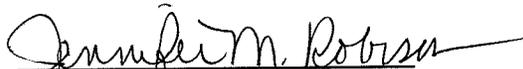
There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

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

Executed on ~~June 28, 2012~~, ^{July 12, 2012} at Lodi, California.

ORDERED BY:

**RANDI JOHL
CITY CLERK, CITY OF LODI**


JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING

Date: August 1, 2012

Time: 7:00 p.m.

For information regarding this notice please contact:

Randi Johl

City Clerk

Telephone: (209) 333-6702

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, August 1, 2012**, 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) **Termination of Southwest Gateway and Westside Project Development Agreements with Frontier Community Builders, Inc.**

Information regarding this item may be obtained in the City Manager's Office, 221 West Pine Street, Lodi, (209) 333-6700. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2nd Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

Randi Johl
City Clerk

Dated: **June 20, 2012**

Approved as to form:

D. Stephen Schwabauer
City Attorney

PH Mailing List for Southwest Gateway Development Agreement Termination

EXHIBIT B

APN	OWNER NAME	CARE OF	OWNER STREET	OWNER CITY	OWNER STATE	OWNER ZIP5	OWNER ZIP4
2703012	MAXINE CHRISTESEN FAMILY LP	MAXINE CHRISTESEN	179 E TAYLOR RD	LODI	CA	95242	0
2705015	DOLLINGER, DAVID L BROWN, BOB K & JUDITH E TR		101 E HWY 12	LODI	CA	95240	0
2705016	DOLLINGER, LEROY L & GLADYS D		35 E HWY 12	LODI	CA	95242	0
2705018	HEDRICK, LAMAR A & JOANN A TR		101 E HWY 12	LODI	CA	95242	0
2705019	HEDRICK, LAMAR A & JOANN A TR		209 E HWY 12	LODI	CA	95242	0
2705020	HEDRICK, LAMAR A & JOANN A TR		209 E HWY 12	LODI	CA	95242	0
2705021	GEWEKE FAMILY LTD PTP		1139 E KETTLEMAN LN SUITE 200	LODI	CA	95240	6427
2742001	GEWEKE VIII LP		PO BOX 1420	LODI	CA	95241	0
5802005	VAN RUITEN RANCH LP		PO BOX 520	WOODBIDGE	CA	95258	0
5802013	VAN RUITEN RANCH LP		PO BOX 520	WOODBIDGE	CA	95258	0
5802018	EHLERS, VIOLET TR ETAL		530 S MILLS AVE	LODI	CA	95242	3428
5803004	LODI LSR PROPERTIES LLC		10100 TRINITY PKWY STE 420	STOCKTON	CA	95219	7241
5803006	HOWARD INVESTMENTS LLC ETAL	MATTEUCCI	2522 GRAND CANAL BLVD STE 15	STOCKTON	CA	95207	8213
5803009	REICHMUTH, ANDREW T ETAL	VICTORIA L BOCK TR	424 DAISY AVE	LODI	CA	95240	1010
5803010	LODI CITY OF	CITY CLERK	PO BOX 3006	LODI	CA	95241	1910
5803011	BDC LODI III LP	BROWMAN DEVELOPMENT COMPANY	100 SWAN WAY SUITE 206	OAKLAND	CA	94621	1459
5803012	WAL MART REAL EST BUSINESS TRU	RE PROPERTY TAX DEPT	MAIL STOP 0555	BENTONVILLE	AR	72716	555
5803013	BDC LODI III LP	BROWMAN DEVELOPMENT CO	100 SWAN WAY STE 206	OAKLAND	CA	94621	0
5803014	VAN RUITEN RANCH LP		463 W TURNER RD	LODI	CA	95242	9642
5803015	VAN RUITEN RANCH LP		PO BOX 520	WOODBIDGE	CA	95258	0

PH Mailing List for Southwest Gateway Development Agreement Termination

5803016	LODI LSR PROPERTIES LLC	10100 TRINITY PKWY STE 420	STOCKTON	CA	95219	7241
5803017	VAN RUITEN RANCH LP	PO BOX 520	WOODBIDGE	CA	95258	0
5803018	VAN RUITEN RANCH LP	PO BOX 520	WOODBIDGE	CA	95258	0
5804001	SCHUMACHER, WELDON & BONNIE TR	1303 RIVERGATE DR	LODI	CA	95240	549
5804002	SCHUMACHER, WELDON & BONNIE TR	1303 RIVERGATE DR	LODI	CA	95240	549
5804004	SCHUMACHER, WELDON & BONNIE TR	1303 RIVERGATE DR	LODI	CA	95240	549
5804005	SCHUMACHER, WELDON & BONNIE TR	1303 RIVERGATE DR	LODI	CA	95240	549
5804006	RIEGER, EARL & NAOMI	395 E HARNEY LN	LODI	CA	95242	0
5804007	WELLS, LARRY D & D R	427 E HARNEY LN	LODI	CA	95240	6832
5804008	DIETRICH, NORENE	463 E HARNEY LN	LODI	CA	95240	0
5804009	MASTEL, PHYLLIS TR	499 E HARNEY LN	LODI	CA	95240	0
5804010	ALVAREZ, JOE L ETAL	533 E HARNEY LN	LODI	CA	95242	0
5804011	PINNELL, ROBERT S & LETHA J	PO BOX 155	VICTOR	CA	95253	155
5804012	HALL, FRANK	2613 W HARNEY LN	LODI	CA	95242	9570
5804013	W L INVESTORS LP	10100 TRINITY PKWY STE 420	STOCKTON	CA	95219	7241
5804014	TAMURA, JOEY TR	788 W ARMSTRONG RD	LODI	CA	95242	9544
5804015	VAN RUITEN, ROBERT TR	PO BOX 548	WOODBIDGE	CA	95258	0
5805001	BRADEN, RONALD B & A	36 E HARNEY LN	LODI	CA	95240	0
5805002	BECERRA, VALENTIN & ELVIRA	102 E HARNEY LN	LODI	CA	95242	0
5805003	BADYAL, JASBIR ETAL	184 E HARNEY LN	LODI	CA	95242	9503
5807007	HAYN, BRIAN S	810 E HARNEY LN	LODI	CA	95242	9534
5807008	BELL, LYNDELE A TR	814 E HARNEY LN	LODI	CA	95242	0
5807010	PANOS, PETE N & PENNY TR	13420 SHATTUCK TRACT RD	LODI	CA	95242	0
5808022	FUNAMURA, GARY M TR	PO BOX 255824	SACRAMENTO	CA	95865	5824
5808020	ARMSTRONG, THOMAS & RACHEL	582 SPRINGER LN	LODI	CA	95240	0
5808017	CHAMPLIN, THERESA A	13401 N EXTENSION RD	LODI	CA	95242	9249
5808018	COOK, MARK T	590 SPRINGER LN	LODI	CA	95240	0

PH Mailing List for Southwest Gateway Development Agreement Termination

5808016	HAKALA, HARRY & MICHELLE L TR	13421 EXTENSION CT	LODI	CA	95242	0
5808005	HAGELIE, BERDEAN TR	501 SPRINGER LN	LODI	CA	95242	9224
5808007	HUCKINS, RAY S	527 SPRINGER LN	LODI	CA	95242	9224
5808014	RODRIGUEZ, SERGIO & MARIA A	13447 N LOWER SAC RD	LODI	CA	95242	0
5808015	BYRUM, PHYLLIS S LF EST	598 SPRINGER LN	LODI	CA	95242	9224
5808008	KIRSCHENMAN, JOHN & RHONDA	13145 N LOWER SACRAMENTO RD	LODI	CA	95242	9284
5808010	DYAS, JASON L	569 SPRINGER LN	LODI	CA	95242	0
5807005	WILLIAMS, BARBARA L TR	692 E HARNEY LN	LODI	CA	95242	9588
5807004	HERNANDEZ, STEVEN & MICHELLE L	668 E HARNEY LN	LODI	CA	95240	0
5807003	GEIST, CLIFFORD & M D	650 W HARNEY LANE	LODI	CA	95240	0
5808013	SANCHEZ, LUIS & ANGELA	634 E HARNEY LN	LODI	CA	95242	9588
5808012	CHRISTOPHERSON, EDWARD & CASSA	29 N ALLEN DR	LODI	CA	95242	2808
5808011	DAIS, KATHLEEN C TR	270 E THIRD AVE	CHICO	CA	95926	0
5808009	GATES, DAVID L & BETTY L TR	540 E HARNEY LN	LODI	CA	95242	0
5808006	QUEZADA, JAVIER & MARIA TERESA	502 E HARNEY LN	LODI	CA	95242	0
5808004	GRELLE, JERRY B & CATHRYN B	490 E HARNEY LN	LODI	CA	95242	0
5807001	RICE, LESLEY M	13480 N EXTENSION RD	LODI	CA	95242	9249
5805005	LODI UNIFIED, SCHOOL DIST				0	0
5805004	URIZ, FAUSTINO & MARIA C TR	202 E HARNEY LN	LODI	CA	95240	0
5814006	HERRMANN, CHARLENE K TR ETAL	330 S FAIRMONT AVE #3	LODI	CA	95240	3843
5814007	DEL RIO, SANTIAGO M & RAMONA T	15315 N HOERL RD	LODI	CA	95240	9493
5814012	PETERSON, M BILL	PO BOX 473	LOCKEFORD	CA	95237	0
5814014	PETERSON, RUTH SUSAN TR	PO BOX 331	SUTTER CREEK	CA	95685	0
5814051	LODI CITY OF	PO BOX 3006	LODI	CA	95241	0

PH Mailing List for Southwest Gateway Development Agreement Termination

5814052	PETERSON, M BILL		PO BOX 473	LOCKEFORD	CA	95237	0
5822001	MARTIN, JOHN L & MARILYN A TR		791 KRISTEN CT	LODI	CA	95242	9554
5822002	VAUGHN, FREDDIE L & KRISTINA		805 KRISTEN CT	LODI	CA	95242	0
5822003	ROSEN, MARTY & KIMI		833 KRISTEN CT	LODI	CA	95242	9554
5822011	LANGWORTHY, ELMER D & S M		13710 HARTLEY LN	LODI	CA	95240	0
5822012	LEAR, WOODBURN L & CLAIRE L TR		13696 HARTLEY LN	LODI	CA	95242	9552
5822019	SHAHZAD, KHURRAM		830 TEHAMA DR	LODI	CA	95242	9553
5822020	WISENOR, GERALD L & LAUREL M T		808 TEHAMA DR	LODI	CA	95242	9553
5822021	SAN JOAQUIN, COUNTY OF					0	0
5822022	LUU, NHI & MINH H		13625 HARTLEY LN	LODI	CA	95242	0
5822023	CAGLE, FRED R & BARBARA J		2289 DEER OAK WAY	DANVILLE	CA	94506	0
5822024	SAN JOAQUIN, COUNTY OF					0	0
5823004	KUBOTA, TSUGIO TR ETAL		1500 VISTA DR	LODI	CA	95242	0
5823010	SCHUMACHER, WELDON D & BONNIE		1303 RIVERGATE DR	LODI	CA	95240	549
5823023	LODI, CITY OF		CITY HALL	LODI	CA	95240	0
5823024	LODI, CITY OF		PO BOX 3006	LODI	CA	95241	1910
5806010	SIDHU, NACHHATAR S & RUSE V		5360 GLADSTONE DR	STOCKTON	CA	95219	7129
5864001	TOKAY DEVELOPMENT INC		PO BOX 1259	WOODBIDGE	CA	95258	0
5864002	IM, CHONG A TR		2431 VINTAGE OAKS CT	LODI	CA	95242	9347
5864012	VALLEJO, ROSEMARY O		2428 VINTAGE OAKS CT	LODI	CA	95242	9347
5864013	THIARA, SUKHVINDER TR		PO BOX 599	LODI	CA	95241	0
5864014	KIRST, J JEFFREY & CAROL A		PO BOX 1259	WOODBIDGE	CA	95258	0
5864015	KIRST, CRYSTAL ANN TR		2448 VINTAGE OAKS CT	LODI	CA	95242	9347
5864016	GERLACK, JOHN D & BARBARA A TR		2449 VINTAGE OAKS CT	LODI	CA	95242	9347

PH Mailing List for Southwest Gateway Development Agreement Termination

5864017	GERLACK, JOHN D & B TRS	2449 VINTAGE OAKS CT	LODI	CA	95242	9347
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PH Mailing List for Westside Development Agreement Termination

APN	OWNER NAME	CARE OF	OWNER STREET	OWNER CITY	OWNER STATE	OWNER ZIP5	OWNER ZIP4
2703008	TRAVERSO, JEFFREY VIRGIL ETAL	MICHAEL L MANNA RANCH INC	PO BOX 247	ACAMPO	CA	95220	5321
2703022	FUKUNAGA, R MICHAEL		14704 N BECKMAN RD	LODI	CA	95240	0
2705001	MAXINE CHRISTESEN FAMILY LP	MAXINE CHRISTESEN	179 E TAYLOR RD	LODI	CA	95242	0
2705002	MAXINE CHRISTESEN FAMILY LP	MAXINE CHRISTESEN	179 E TAYLOR RD	LODI	CA	95242	0
2705022	MINER JOAQUIN BUILDING CORP		301 E MINER AVE	STOCKTON	CA	95202	2501
2724001	TEMPLE, BONNIE J TR		6929 BISMARCK DR	N HIGHLANDS	CA	95660	0
2724002	HALE, RAYMOND L		309 LELAND CT	LODI	CA	95242	0
2724009	LIEBIG, GIDEON J TR		317 LELAND CT	LODI	CA	95242	0
2740001	TRAVERSO, JEFFREY VIRGIL ETAL	MICHAEL L MANNA RANCH INC	PO BOX 247	ACAMPO	CA	95220	5321
2740002	DHKS DEV CO		621 EVERGREEN DR	LODI	CA	95242	4683
2740004	KRISTMONT WEST		7700 COLLEGE TOWN DR #111	SACRAMENTO	CA	95826	0
2740005	WESTGATE SHOPPING CENTER LLC	AKT DEVELOPMENT INC	7700 COLLEGE TOWN DR #101	SACRAMENTO	CA	95826	0
2740006	KRISTMONT WEST		7700 COLLEGE TOWN DR #111	SACRAMENTO	CA	95826	0
2740009	KRISTMONT WEST		7700 COLLEGE TOWN DR #111	SACRAMENTO	CA	95826	0
2740011	KRISTMONT, WEST		7700 COLLEGE TOWN DR #111	SACRAMENTO	CA	95826	0
2740012	TEMPLE BAPTIST CHURCH OF LODI		801 S LOWER SAC RD	LODI	CA	95242	0
2740015	LODI WESTSIDE PROPERTIES LLC		10100 TRINITY PKWY STE 420	STOCKTON	CA	95219	7241
2740016	LODI UNIFIED SCHOOL DISTRICT	FACILITY PLANNING DEPT	1350 E VINE ST	LODI	CA	95240	3148
2902020	PERROTT, PATRICK ANDREW ETAL		17560 HIGHLAND BLVD	SONOMA	CA	95476	0

PH Mailing List for Westside Development Agreement Termination

2902021	PERROTT, PATRICK ANDREW ETAL		17560 HIGHLAND BLVD	SONOMA	CA	95476	0
2902022	JUNGEBLUT, ROSEMARY TR ETAL		859 TILDEN DR	LODI	CA	95242	0
2938005	PERLEGOS, GEORGIA ETAL		PO BOX 1823	LODI	CA	95241	0
2943035	HEINSELMAN, BRENT & JENNIFER		29 PARADISE DR	LODI	CA	95242	8328
2943034	DESCHAMP, DAVID		2920 APPLEWOOD DR	LODI	CA	95242	8318
2943033	HANSEN, LAWRENCE DONALD & LIND		2928 APPLEWOOD DR	LODI	CA	95242	0
2943032	HERYFORD, WILLIAM P & TINA C W		2936 APPLEWOOD DR	LODI	CA	95242	8318
2943031	KORT, DALLAS & JONI ELLEN TR		2944 APPLEWOOD DR	LODI	CA	95242	8318
2943030	BATCH, ROBERT II & AMBER		2952 APPLEWOOD DR	LODI	CA	95242	8318
2943029	GIANNONI, KERRY M SPALETTA, JASON & JENNIFER		2960 APPLEWOOD DR	LODI	CA	95242	0
2943028	SPALETTA, JASON & JENNIFER		45 APPLEWOOD DR	LODI	CA	95242	0
2943011	BRAND, RICKY L & LEILA M TR		2931 APPLEWOOD DR	LODI	CA	95242	8318
2943012	TURNER, RICHARD & MARGARITA		2943 APPLEWOOD DR	LODI	CA	95242	8318
2943027	MILLER, RICKY D & JULIE A GARIBALDI, RONALD		55 APPLEWOOD DR	LODI	CA	95242	8319
2943013	ANDREW & SHA SHERMAN, PATRICK H & JANET R T		52 APPLEWOOD DR	LODI	CA	95242	8319
2943026	JANET R T		63 APPLEWOOD DR	LODI	CA	95242	8319
2952043	LODI CITY OF	CITY CLERK	PO BOX 3006	LODI	CA	95241	1910
2952029	MYERS, JERRY L		142 BOXWOOD CT	LODI	CA	95242	0
2952030	NICHOLS, DENNIS L BURKS, PHILLIP C & LINDSEY E		136 BOXWOOD CT	LODI	CA	95242	0
2952028	LINDSEY E		139 BOXWOOD CT	LODI	CA	95242	8343
2952031	ODOM, DENISE A		130 BOXWOOD CT	LODI	CA	95242	0
2952027	MATTHEWS, DALE K		127 BOXWOOD CT	LODI	CA	95242	0

PH Mailing List for Westside Development Agreement Termination

2952020	O DONNELL, ZACHARY R & KELLY J	130 FIELDSTONE CT	LODI	CA	95242	0
2952032	WILSON, TERRIE ETAL	124 BOXWOOD CT	LODI	CA	95242	8343
2952026	WENTZ, RYAN J	121 BOXWOOD CT	LODI	CA	95242	8343
2952021	SOUTHERN, MARK L & VICKIE L TR	120 FIELDSTONE CT	LODI	CA	95242	8342
2952025	HALEY, TRUDY L	115 BOXWOOD CT	LODI	CA	95242	8343
2952022	HAPPEL, DEAN A ETAL	114 FIELDSTONE CT	LODI	CA	95242	0
2952019	AMERICAN LENDER SERVICING LLC	3240 N AD ART RD STE A4	STOCKTON	CA	95215	2257
2952024	MCGOWAN, DENNIS J	107 BOXWOOD CT	LODI	CA	95242	0
2952023	LARRABEE, GARY M & KELLY L	108 FIELDSTONE CT	LODI	CA	95242	0
2952018	WEBB, BRADLEY B & BRONWYN A	109 FIELDSTONE CT	LODI	CA	95242	8342
2952017	MAGEE, JERRY K & AZIZA A	2640 CREEKSIDE DR	LODI	CA	95242	8341
2952010	OSENGA, DENNIS J & PATRICIA J	2615 CREEKSIDE DR	LODI	CA	95242	0
2952011	LINCZ, FRANK	2621 CREEKSIDE DR	LODI	CA	95242	8341
2952012	WILSON, ROBERT G & NANCY A TR	2627 CREEKSIDE DR	LODI	CA	95242	8341
2952013	CHANG, CHE MING TR	2633 CREEKSIDE DR	LODI	CA	95242	8341
2952014	LIEBELT, BRIAN D & MARLIES N	2639 CREEKSIDE DR	LODI	CA	95242	0
2952015	SINGH, MOHINDER P & RAJDEEP	2643 CREEKSIDE DR	LODI	CA	95242	8341
2952016	PERLEGOS, JEFF ETAL	PO BOX 1823	LODI	CA	95241	0
2952004	BYRD, RICHARD & TRACI	2618 PARADISE DR	LODI	CA	95242	8327
2952003	ROMERO, ANTHONY J & MELISSA M	2622 PARADISE DR	LODI	CA	95242	0
2952002	HARRISON, PATRICIA A	2628 PARADISE DR	LODI	CA	95242	8327
2952001	PERLEGOS, GEORGIA	PO BOX 1823	LODI	CA	95241	0
2950019	PERGERSON, MATTHEW T & GINA E	2640 PARADISE DR	LODI	CA	95242	0
2950018	WOODS, STEVEN P & DENISE L	2646 PARADISE DR	LODI	CA	95242	8327

PH Mailing List for Westside Development Agreement Termination

2950017	HURST, SHARON D TR		2652 PARADISE DR	LODI	CA	95242	0
2950007	MILLER, JAMES D JR & LARELLE L		2658 PARADISE DR	LODI	CA	95242	0
2950006	MARTINEZ, ERASMO JR & ELAINA L		2664 PARADISE DR	LODI	CA	95242	8327
2950005	LUNDQUIST, JOAN TR		2670 PARADISE DR	LODI	CA	95242	8327
2950009	DHALIWAL, JASBIR & HARBINDER T		2647 PARADISE DR	LODI	CA	95242	8327
2950004	NORTON, RONALD G & NAOMI JOYCE		2676 PARADISE DR	LODI	CA	95242	0
2950010	BRUNO, JEFFERY P & KATHLEEN M		2655 PARADISE DR	LODI	CA	95242	0
2950003	WATSON, STEVEN D & IVA M		2682 PARADISE DR	LODI	CA	95242	0
2950011	BALL, DOUGLAS		2661 PARADISE DR	LODI	CA	95242	0
2950002	UYEMURA, DELMER T & JULIE K		2688 PARADISE DR	LODI	CA	95242	8327
2950012	TWITTY, MIKE W & JILL M		2667 PARADISE DR	LODI	CA	95242	0
2950001	ROJAS, RICHARD M & GAYLE A TR		2695 PARADISE DR	LODI	CA	95242	8327
2950013	MAYERS, FREDERICK R TR ETAL		2673 PARADISE DR	LODI	CA	95242	0
2949022	CURL, JASON & JENNIFER K		2704 PARADISE DR	LODI	CA	95242	8306
2950014	DAVIS, ROGER E & PATRICIA A TR		2679 PARADISE DR	LODI	CA	95242	8327
2949021	CRANFORD, STEVE P & LISA C		2712 PARADISE DR	LODI	CA	95242	8306
2950015	LEWIS, MARTHA E		935 INTERLAKEN DR	LODI	CA	95242	0
2949020	HEBERLE, FREDERICK J & JUDY D		2720 PARADISE DR	LODI	CA	95242	8306
2950016	SHANKLES, WILLIAM D & JANICE J		2691 PARADISE DR	LODI	CA	95242	0
2949019	DEMPSEY, LLOYD B & MARCIA M TR		2728 PARADISE DR	LODI	CA	95242	8306
2949023	MCMILLEN, LARRY K & JEANNE L		2715 PARADISE DR	LODI	CA	95242	8306

PH Mailing List for Westside Development Agreement Termination

2949018	CHRISTENSEN, ANDERS & JOAN	2804 PARADISE DR	LODI	CA	95242	0
2949017	MACBETH, KATHY L	2812 PARADISE DR	LODI	CA	95242	0
2949024	MAGDANZ, KENNETH G SR & NAOMI	4 EVERGREEN DR	LODI	CA	95242	8307
2949016	KESSLER, JOAN M TR	2820 PARADISE DR	LODI	CA	95242	8330
2949015	BUTORAC, JOHN P TR	2828 PARADISE DR	LODI	CA	95242	0
2949004	ARCHULETA, JORDAN A	2811 PARADISE DR	LODI	CA	95242	0
2949014	STURMAN, JOSHUA J & LAUREN M	2836 PARADISE DR	LODI	CA	95242	8330
2949013	HALL, LYNN E TR ETAL	2844 PARADISE DR	LODI	CA	95242	8330
2949012	HERRICK, BRADLEY C & BEVERLY F	2852 PARADISE DR	LODI	CA	95242	0
2949011	PEARSON, SUSAN P TR	2860 PARADISE DR	LODI	CA	95242	8330
2949005	SHEPARD, ROBERT L JR & ANGELA	2819 PARADISE DR	LODI	CA	95242	8330
2949006	JACKSON, KENNETH L & MARY L TR	8235 BELLA VINA	LODI	CA	95240	9534
2949007	REITZ, MICHAEL DONALD & DIANA	2833 PARADISE DR	LODI	CA	95242	8330
2949010	GATSCHET, TIMOTHY W & DONNA LE	2868 PARADISE DR	LODI	CA	95242	8330
2949008	CRIVELLI, STEVEN & JULIE A	2841 PARADISE DR	LODI	CA	95242	0
2949009	BATCH, ROBERT II TR	2952 APPLEWOOD DR	LODI	CA	95242	8318
2932001	DOLLINGER, VIOLA TR	2537 CENTRAL PARK DR	LODI	CA	95242	3211
2932002	GRIFFANTI, NANCY L TR	2541 CENTRAL PARK DR	LODI	CA	95242	3211
2932003	WESTERBACK, EDWIN & DENISE TR	2545 CENTRAL PARK DR	LODI	CA	95242	3211
2932004	MCFARLAND, JAMES R & ELNA	2549 CENTRAL PARK DR	LODI	CA	95242	3211
2932005	UPDEGRAFT, BARBARA D TR ETAL	2553 CENTRAL PARK DR	LODI	CA	95242	0
2932006	WRIGHT, JOAN F	2557 CENTRAL PARK DR	LODI	CA	95242	3211

PH Mailing List for Westside Development Agreement Termination

2932007	BARTHOLOMEW, ESTHER L TR ETAL		2561 CENTRAL PARK DR	LODI	CA	95242	3211
2932008	ROSEBERRY, CAROL R TR MCMAHON, MARY ELLEN TR		2565 CENTRAL PARK DR	LODI	CA	95242	0
2932009	CAVEY, NOLAND B & SANDRA J TR		2569 CENTRAL PARK DR	LODI	CA	95242	0
2932010	BONNER, CHERYL		8079 CARIBBEAN WAY	SACRAMENTO	CA	95826	0
2932011	BENTZ, BEVERLY TR ETAL		2577 CENTRAL PARK DR	LODI	CA	95242	3211
2932012	MORIWAKI, SUGA ANN		2581 CENTRAL PARK DR	LODI	CA	95242	0
2932013	GARIBALDI, WILMA J TR FIELD, MARILYN E TR		2585 CENTRAL PARK DR	LODI	CA	95242	0
2932014	MCINTOSH, MARGARET R TR		2589 CENTRAL PARK DR	LODI	CA	95242	0
2932015	PARKIN, PATRICIA LEA		624 PALM AVE	LODI	CA	95240	920
2932016	COONEY, LOLA M TR		2339 HYDE PARK CIR	LODI	CA	95242	3249
2932017	WHITE, WARNER & DONNA GRANT, JAMES R III & KATHRYN		2343 HYDE PARK CIR	LODI	CA	95240	0
2932018	PARK, CHUNIL & SOONJA LEONARD, BARBARA JEAN TR		2347 W HYDE PARK CIR	LODI	CA	95242	0
2932019	MACOMBER, ROY C & ADELAIDE TR		5185 CONGRESSIONAL ST	CHOWCHILLA	CA	93610	8402
2932020	BANK OF STOCKTON TRUST DEPT TR		2355 HYDE PARK CIR	LODI	CA	95242	3249
2932021	THOMAS, STEVEN J SWEENEY, JAMES M TR ETAL		1316 BONITA AVE #6	BERKELEY	CA	94709	1965
2932022			2363 HYDE PARK CIR	LODI	CA	95242	3249
2932023			2367 HYDE PARK CIR	LODI	CA	95242	3249
2932024	ATTN LU ANNE LEWIS AVP TRUST O		PO BOX 201014	STOCKTON	CA	95201	0
2932025			2375 HYDE PARK CIR	LODI	CA	95242	3251
2932026			1930 EDGEWOOD DR	LODI	CA	95242	2305

PH Mailing List for Westside Development Agreement Termination

2932027	DURHAM, JUDITH J TR		2383 HYDE PARK CIR	LODI	CA	95242	0
2932028	FARRELL, COLETTE L TR		2330 MEDALLION WAY	LODI	CA	95242	4749
2932029	STARRICK, RAYMOND & EUSTOLIA		2388 HYDE PARK CIR	LODI	CA	95242	3250
2932030	SEIBEL, DONALD J TR		2384 HYDE PARK CIR	LODI	CA	95242	3250
2932031	SWEIGARD, VIRGINIA I TR		2376 HYDE PARK CIR	LODI	CA	95242	3250
2932032	WALKER, STEPHEN U & JUDY ANN T		2348 HYDE PARK CIR	LODI	CA	95242	0
2932033	EUSTIS, MARY JO		2342 HYDE PARK CIR	LODI	CA	95242	3239
2932034	MCLEAN, MARGARET C TR		2338 HYDE PARK CIR	LODI	CA	95242	3239
2932035	PARKISON, MARJORIE L TR		2334 HYDE PARK CIR	LODI	CA	95242	0
2932036	SCHMIDT, WALTER TR	JEAN SCHMIDT	208 GRAMERCY PARK DR	LODI	CA	95242	3254
2932037	REISS, W & C COTRS ETL		204 GRAMERCY PARK DR	LODI	CA	95242	0
2932038	MITCHELL, CHERYL R TR		200 GRAMERCY PARK DR	LODI	CA	95242	0
2932039	HUGO, JERRY ETAL	MICHAEL JOHN & KATHERINE HUGO	166 LINDHOLM LN	BAYSIDE	CA	95524	0
2932040	BUNNELL, DOLORES A TR		2491 MACARTHUR PKWY	LODI	CA	95242	0
2932041	ROSENAU, LELAND A & D ARLENE R		15625 N DAVIS RD	LODI	CA	95242	0
2932042	SWOFFORD, DIANE		2483 MACARTHUR PKWY	LODI	CA	95242	3253
2932043	SMITH, DONALD R & LILA F TR		2479 MACARTHUR PKWY	LODI	CA	95242	0
2932044	SHERIDAN, KATHLEEN M	KATHLEEN THOMPSON	2475 MACARTHUR PKWY	LODI	CA	95242	0
2932045	DEMSKI, STANLEY L TR ETAL		2471 MACARTHUR PKWY	LODI	CA	95242	0
2932046	BOSSALLER, ANDREW P & KIM M		2467 MACARTHUR PKWY	LODI	CA	95242	3253
2932047	ORGON, ANNA TR		2463 MACARTHUR PKWY	LODI	CA	95242	3253

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2932048	KUEHNE, LLOYD D TR ETAL		2459 MACARTHUR PKWY	LODI	CA	95242	0
2932049	MCINTOSH, GREGORY JAMES & LORI		PO BOX 414	PACIFIC PALISAD	CA	90272	0
2932050	PAIGE, JAMES M		2451 MACARTHUR PKWY	LODI	CA	95242	3252
2932051	FORE, MILLARD L & NORMA J TR		2447 MACARTHUR PKWY	LODI	CA	95242	0
2932052	GLENN, JERRY L & SUSAN Y		2443 MACARTHUR PARKWAY	LODI	CA	95242	0
2932053	FELL, DOUGLAS E TR		222 E CARRILLO ST STE 400	SANTA BARBARA	CA	93101	0
2932054	GABRIELSON, CURTIS G & BEVERLY		2435 MACARTHUR PKWY	LODI	CA	95242	3252
2932055	HONEY, RAYMOND L & JANET K		2431 MACARTHUR PKWY	LODI	CA	95242	3252
2932056	ROBINSON, DEAN N & JANET F TR		1114 HEIDELBERG WAY	LODI	CA	95242	9142
2932057	SALISBURY, STACEY TR		1324 DEERFIELD CT	LODI	CA	95242	4537
2932058	ANDERSON, DONALD K & LORETTA S		725 FAIRVIEW BLVD #17	INCLINE VILLAGE	NV	89451	0
2932059	DANIELS, VIRGINIA T TR ETAL		2406 CENTRAL PARK DR	LODI	CA	95242	3205
2932060	GROVE, BARBARA W TR		2410 CENTRAL PARK DR	LODI	CA	95242	3205
2932061	YACOPETTI, MARJORIE J		PO BOX 2152	LODI	CA	95241	2152
2932062	APPLING, DONALD R TR		PO BOX 1555	WOODBIDGE	CA	95258	0
2932063	HARO, SAL JAMES TR & EMILY M T		2401 CENTRAL PARK DR	LODI	CA	95242	3206
2932064	FORNEY, CHARLES A & MAVIS B TR		2397 CENTRAL PARK DR	LODI	CA	95242	0
2932065	HANDEL, LEON E TR ETAL		10155 E KETTLEMAN LN	LODI	CA	95240	0
2932066	SCHULENBURG, ROBERT W TR		15740 MOORE RD	LODI	CA	95242	9262
2932067	KERNER, MARLO L & HAZEL M TR		2430 CENTRAL PARK DR	LODI	CA	95242	3205

PH Mailing List for Westside Development Agreement Termination

2932068	BAUSERMAN, GEORGE L & CAROL K		2434 CENTRAL PARK DR	LODI	CA	95242	3205
2932069	KRONEMANN, LINDA L TR		2438 CENTRAL PARK DR	LODI	CA	95242	3205
2932070	HUKILL, ANNETTE M TR	GEORGE S CHALMERS	1234 HEARTWOOD DR	ROHNERT PARK	CA	94928	0
2932071	PHILLIPS, LESLIE TR	HERMANOTTER REV TRUST	2446 CENTRAL PARK DR	LODI	CA	95242	3205
2932072	WILLIAMS, ELIZABETH N TR ETAL		PO BOX 1064	WOODBIDGE	CA	95258	0
2932073	EMLER, LYDIA M TR		2462 CENTRAL PARK DR	LODI	CA	95242	3207
2932074	THOMASON, BOB M & DONNA D TR		2466 CENTRAL PARK DR	LODI	CA	95242	0
2932075	MERRILL, H L TR		2470 CENTRAL PARK DR	LODI	CA	95242	0
2932076	MOREHEAD, SKIP R ETAL		2474 CENTRAL PARK DR	LODI	CA	95242	3207
2932077	BLAUFUS, JOHN L & LAURIE M		2478 CENTRAL PARK DR	LODI	CA	95242	3207
2932078	ARMKNECHT, JANETTE TR		5595 SAN ANTONIO ST	PLEASANTON	CA	94566	0
2932079	DUNCAN, HAROLD W & NONA E TR		2486 CENTRAL PARK DR	LODI	CA	95242	0
2932080	EWOLDT, DONALD D & ETHEL L		2490 CENTRAL PARK DR	LODI	CA	95242	3209
2932081	BEWLEY, JOSEPH & MONIQUE		2494 CENTRAL PARK DR	LODI	CA	95242	3209
2932082	SOLARI, ANNETTA M TR ETAL		2498 CENTRAL PARK DR	LODI	CA	95242	0
2932083	CONN, JANET L TR		PO BOX 738	LODI	CA	95241	0
2932084	POLLARD, ROBERT E & CORINNE C		2485 CENTRAL PARK DR	LODI	CA	95242	3208
2932085	GARVEY, SHARON A TR		2481 CENTRAL PARK DR	LODI	CA	95242	3208
2932086	PEABODY, DERRIL E & LINDA L		2477 CENTRAL PARK DR	LODI	CA	95242	3208

PH Mailing List for Westside Development Agreement Termination

2932087	SWIFT, SYLVIA L TR	SYLVIA L SWIFT FAMILY TRUST	PO BOX 1977	MINDEN	NV	89423	0
2932088	HOPE, BETTY L TR KING, NORMAN D & LAQUITA J TR		2469 CENTRAL PARK DR	LODI	CA	95242	3208
2932089	BRUSA, SELDON C & ELIZABETH TR		2465 CENTRAL PARK DR	LODI	CA	95242	0
2932090	PARKVIEW TERRACE HOMEOWNER ASS		2461 CENTRAL PARK DR	LODI	CA	95242	3208
2932091			2346 CENTRAL PARK DR	LODI	CA	95242	0



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Appointments to the Greater Lodi Area Youth Commission, Library Board of Trustees, Lodi Animal Advisory Commission, Lodi Arts Commission, Planning Commission, and the San Joaquin County Commission on Aging and Re-Post for the Remaining Vacancies on the Lodi Arts Commission

MEETING DATE: August 1, 2012

PREPARED BY: City Clerk

RECOMMENDED ACTION: Concur with the Mayor’s appointments to the Greater Lodi Area Youth Commission, Library Board of Trustees, Lodi Animal Advisory Commission, Lodi Arts Commission, Planning Commission, and the San Joaquin County Commission on Aging and direct City Clerk to re-post for the remaining vacancies on the Lodi Arts Commission.

BACKGROUND INFORMATION: Previously, the City Council directed the City Clerk to post for expiring terms and vacancies on various boards and commissions. The Mayor reviewed the applications, conducted interviews, and recommends that the City Council concur with the following appointments. In addition, it is recommended that Council direct the City Clerk to re-post for the remaining two vacancies on the Lodi Arts Commission.

APPOINTMENTS:

Greater Lodi Area Youth Commission

Adult Advisors:

John Chapman	Term to expire May 31, 2015
Elizabeth Mazzeo	Term to expire May 31, 2015
Cynthia Rodriguez	Term to expire May 31, 2015

Student Appointees:

Emma Brink	Term to expire May 31, 2013
Michael Kinane	Term to expire May 31, 2013
Jessinia Ahrens	Term to expire May 31, 2014
Madison Litton	Term to expire May 31, 2014
Manjot Sidhu	Term to expire May 31, 2014
Anthony Sorbera	Term to expire May 31, 2014
Emily Yamane	Term to expire May 31, 2014

NOTE: **ADULTS:** Three applicants (one seeking reappointment and two new applications);

STUDENTS: Ten applicants (seven new applications and three on file); posting ordered 4/4/12 and 6/6/12; application deadline 6/25/12

Library Board of Trustees

Caitlin Casey	Term to expire June 30, 2015
Frankie Paul Kooger	Term to expire June 30, 2015

NOTE: Three applicants (two seeking reappointment and one new application); posting ordered 5/2/12; application deadline 6/4/12

APPROVED: _____
Konradt Bartlam, City Manager

Lodi Animal Advisory Commission

Linda Castelanelli Term to expire December 31, 2013

NOTE: Two applicants (two new applications); posting ordered 3/7/12 and 5/2/12; application deadline 6/4/12

Lodi Arts Commission

Ben Burgess Term to expire July 1, 2015

Nancy Carey Term to expire July 1, 2015

Sandi Walker-Tansley Term to expire July 1, 2015

NOTE: Three applicants (three seeking reappointment); posting ordered 5/2/12; application deadline 6/4/12

Planning Commission

Wendel Kiser Term to expire June 30, 2016

Randall Heinitz Term to expire June 30, 2016

NOTE: Three applicants (two seeking reappointment and one application on file); posting ordered 5/2/12; application deadline 6/4/12

San Joaquin County Commission on Aging

Terri Whitmire Term to expire June 30, 2015

NOTE: One applicant (one seeking reappointment); posting ordered 5/2/12; application deadline 6/4/12

POSTING:

Lodi Arts Commission

One Vacancy (Turrentine) Term to expire July 1, 2013

One Vacancy (Flores-Alcaraz) Term to expire July 1, 2015

Government Code Section 54970 et seq. requires that the City Clerk post for vacancies to allow citizens interested in serving to submit an application.

FISCAL IMPACT: None.

FUNDING AVAILABLE: Not applicable.

Randi Johl
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Designate the Overhead Grade Separation and Embankment Design as the Exclusive Alternative for the Harney Lane Grade Separation Project

MEETING DATE: August 1, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Designate the overhead grade separation and embankment design as the exclusive alternative for the Harney Lane grade separation project.

BACKGROUND INFORMATION: At the June 17, 2009 City Council meeting, a resolution was adopted establishing the Harney Lane grade separation as the City's preferred project for the Measure K Railroad Grade Separation Program. On August 10, 2010, a feasibility study report was completed by Mark Thomas & Company (MT&C) that established four alternative designs for the Harney Lane grade separation. In November 2011, the San Joaquin Council of Governments Board designated \$12,100,000 in funding for this project in the 2012 Regional Transportation Improvement Program (RTIP). In March 2012, the California Transportation Commission approved the funding program in the RTIP.

On October 5, 2011, City Council approved a professional services agreement with MT&C to prepare environmental, right-of-way and construction documents for the Harney Lane grade separation. At the March 17, 2012 Shirtsleeve meeting, MT&C presented four alternatives design concepts to the Council. The first alternative, the exclusive alternative, is an overhead structure with side embankments. Alternative 2 is an overhead structure with mechanically stabilized earth (MSE) walls on both sides of the roadway; Alternative 3 is an undercrossing with retaining walls; and Alternative 4 is an undercrossing with side slopes.

Environmental review of the project must comply with both the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA). Under CEQA, the project is statutorily exempt and no environmental review is required. Under NEPA, the environmental review can be processed under the Categorical Exemption criteria if the Council selects the project alternative at this time. Federal guidelines require that all alternatives be reviewed at a comparable level. In the case of the grade separation project, the differences in the environmental impacts for each alternative are insignificant. For example, the number of lanes and traffic operations are the same and, therefore, the air quality impacts will be the same for each alternative. Also, the area of disturbance is the same for each alternative and, therefore, the natural environment impacts will be the same. Finally, each alternative has associated visual and noise impacts that can all be mitigated to less than significant levels.

Staff is requesting Council to designate the overhead grade separation with embankment design as the exclusive alternative for this project. Justifications for this action are provided below. Cost comparisons, sketches, typical cross section, and approximate right-of-way requirements for the four alternatives are presented in Exhibit 1.

APPROVED: _____
Konradt Bartlam, City Manager

Designate the Overhead Grade Separation and Embankment Design as the Exclusive Alternative for the Harney Lane Grade Separation Project

August 1, 2012

Page 2

1. **Project Cost** – The estimated cost for the overhead design of \$18,060,000 is the least expensive of the four alternatives, and the cost is within the project budget of \$20,339,000. The other three alternatives are not affordable in the foreseeable future.
2. **Utility Relocation** – The Kinder Morgan fuel line and AT&T's fiber optic cables existing along the railroad tracks must be relocated for an undercrossing. The cost of these relocations is a significant project expense and will add several months to the project schedule. Overhead wire utility relocations are comparable for each alternative and are paid by the individual utility companies.
3. **Noise** – The embankment design will shield existing and future residents from train noise. Also, the grade separated crossing will eliminate the requirement for trains to sound horns as they cross the intersection.
4. **Maintenance** – The undercrossing alternatives, because they require a storm drainage pump station, have the relative greatest maintenance cost. Not only will the pump station require maintenance but, also, UPR requires the steel undercrossing structure to be made of steel and the City is required to maintain the structure.
5. **Land/Right-of-Way Requirements** – The overhead with side embankments alternative requires the greatest area of right-of-way to be acquired at 5.67 acres but it is \$7.6 million less expensive than the next higher cost alternative, overhead with retaining walls. The right-of-way required for the other alternatives ranges from 3.38 acres (overhead with retaining walls) to 4.06 acres (underpass with retaining walls) to 4.83 acres (underpass with slopes). The greater right-of-way requirement for the underpass alternatives is due to the right-of-way required to re-route Harney Lane around the construction area. Exhibit 2 includes diagrams presenting the right-of-way requirements for each alternative.
6. **Time and Coordination** – Construction of the overhead alternative requires less time and the construction phasing is most easily coordinated. Overall, an overhead crossing takes six to 10 months less to construct than an undercrossing. The following provides several examples of this:
 - 6.1. The undercrossing alternative requires Harney Lane and the railroad to be re-routed around the construction area. This adds approximately five months to the construction schedule and significant cost to the project.
 - 6.2. At the new railroad crossing of re-routed Harney Lane new crossing protection is required. This is subject to the Public Utility Commission and Union Pacific Railroad (UPRR) approval processes and adds six months project design period and significant additional cost.
 - 6.3. The existing Kinder Morgan fuel and AT&T fiber optic lines will have to be replaced by the affected utility that is separate from the project schedule.
 - 6.4. The undercrossing alternative requires a structure supporting the railroad that is compliant with UPR requirements. Approximately six months is added to the design phase associated with UPR review and approvals and three months to the construction phase for this type of construction.
7. **Harney Lane Open to Traffic** – The overhead with embankments alternative allows Harney Lane to stay open during construction without incurring significant added cost. The overhead alternative will be constructed in two segments, utilizing the existing roadway during the construction of the first segment then detouring traffic to the new overhead structure while completing construction of the second segment.

Mark Thomas & Company and City staff had one-on-one meetings with each of the affected property owners along the grade separation project boundaries. Staff also held an open workshop public meeting on July 17, 2012. Approximately 20 persons attended this public meeting. Invitations were mailed to 1,287 stakeholders and notices of the meeting were published in the *Lodi News Sentinel*. A copy of the public meeting report is provided as Exhibit 2.

Staff received concerns and comments at these meetings and has strived to comply with each of the issues raised. The issues and resolutions worked out with the various stakeholders are summarized below. It should be expected that additional issues will arise as the project moves closer to construction.

Source	Issues	Resolution
Valley Iron Works	Truck circulation, driveway access, laydown and work areas	Modified access, driveway and circulation plan
Varner Household	Traffic noise and landscape boulders	Sound wall and landscape improvements
Costa Family Farms	Packing house operations, orchard operations, access and property acquisition	Full signalized intersection and driveway access on Harney Lane
Tsutsumi Vineyard	Vineyard operations and property acquisition	Full take of property probable
Reynolds Ranch	Retail operations impacted by road closure	Harney Lane to remain open to traffic
Homeowner	Screening views of backyard from overhead	Construct masonry block wall behind sidewalk

Public Works staff concurs with these points and requests City Council to approve the overhead with side slopes grade separation alternative.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.

F. Wally Sandelin
 Public Works Director

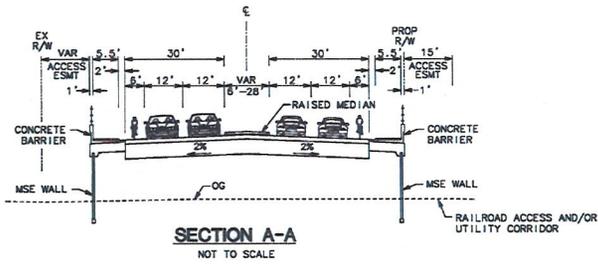
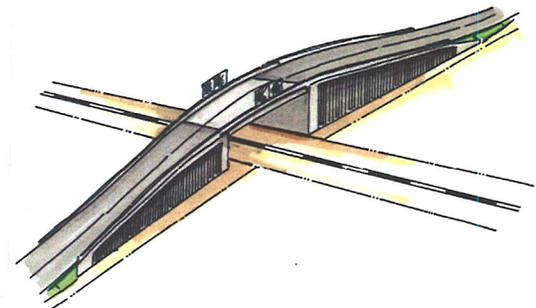
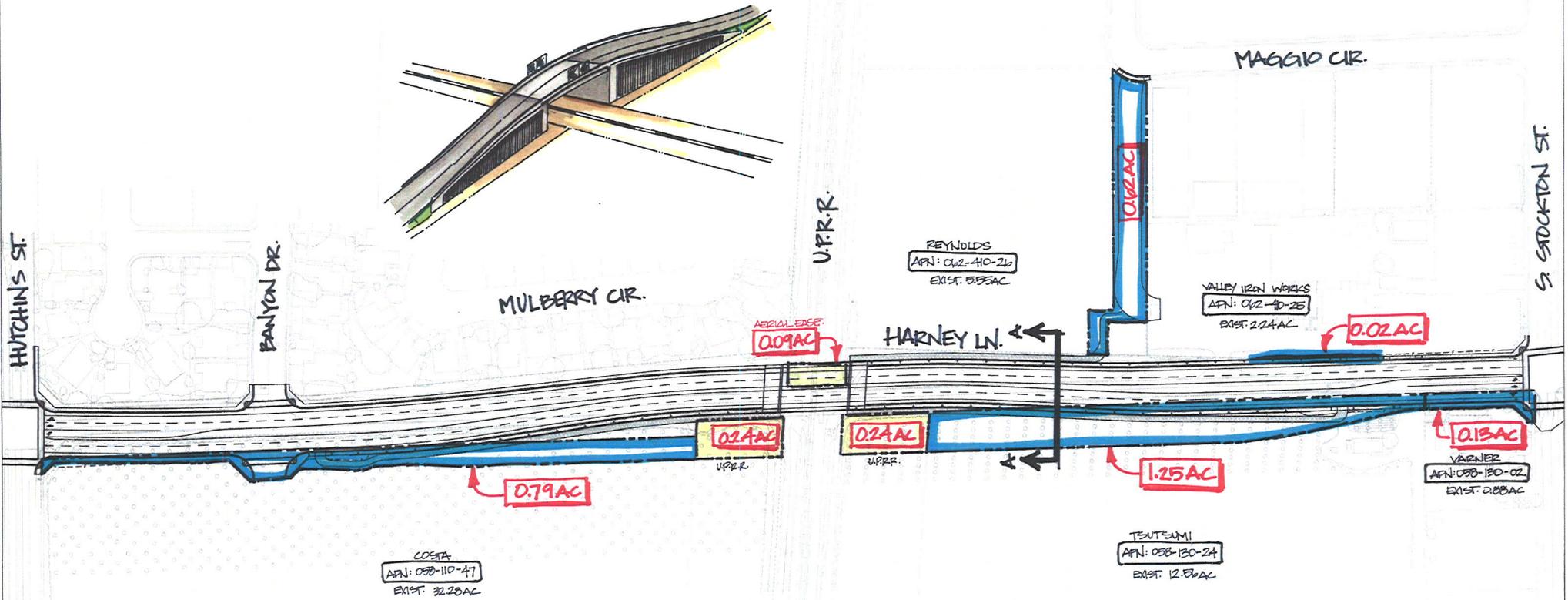
Prepared by Chris Boyer, Assistant Engineer
 FWS/CB/pmf
 Attachments

HARNEY LANE/UPRR GRADE SEPARATION

	ALTERNATIVE #1 Harney Lane / UPRR Overhead (Sloped Embankments)		ALTERNATIVE #2 Harney Lane / UPRR Overhead (MSE Walls)		ALTERNATIVE #3 Harney Lane / UPRR Underpass (Retaining Walls)		ALTERNATIVE #4 Harney Lane / UPRR Underpass (Slopes)	
Roadway Items	\$	6,000,000	\$	6,000,000	\$	6,400,000	\$	6,200,000
Structure Items	\$	3,500,000	\$	3,500,000	\$	5,000,000	\$	5,200,000
Retaining Walls	\$	-	\$	5,000,000	\$	2,500,000	\$	800,000
Sound Walls	\$	246,000	\$	223,000	\$	240,000	\$	220,000
Railroad/Detour Items	\$	300,000	\$	1,400,000	\$	2,300,000	\$	2,900,000
Mobilization (10%)	\$	1,005,000	\$	1,613,000	\$	1,644,000	\$	1,532,000
Contingency (25%)	\$	2,512,000	\$	4,031,000	\$	4,110,000	\$	3,830,000
Construction Subtotal	\$	13,563,000	\$	21,767,000	\$	22,194,000	\$	20,682,000
Right of Way	\$	1,500,000	\$	1,000,000	\$	1,100,000	\$	1,600,000
Utility Relocation	\$	300,000	\$	300,000	\$	1,500,000	\$	1,500,000
Environmental Fees/Permits	\$	300,000	\$	200,000	\$	200,000	\$	300,000
Capital Cost Subtotal	\$	2,100,000	\$	1,500,000	\$	2,800,000	\$	3,400,000
Environmental/Design	\$	1,530,000	\$	1,530,000	\$	1,530,000	\$	1,530,000
Construction Mgmt	\$	1,500,000	\$	1,500,000	\$	1,800,000	\$	1,800,000
Construction Staking	\$	200,000	\$	200,000	\$	250,000	\$	250,000
Project Development Subtotal	\$	3,230,000	\$	3,230,000	\$	3,580,000	\$	3,580,000
Grand Total	\$	18,893,000	\$	26,497,000	\$	28,574,000	\$	27,662,000

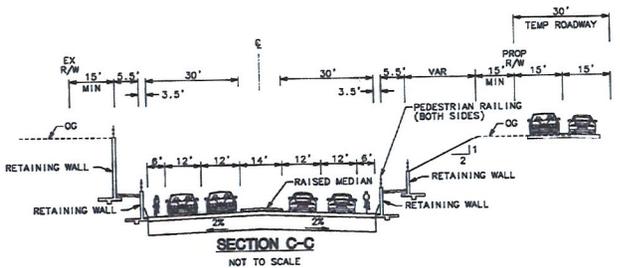
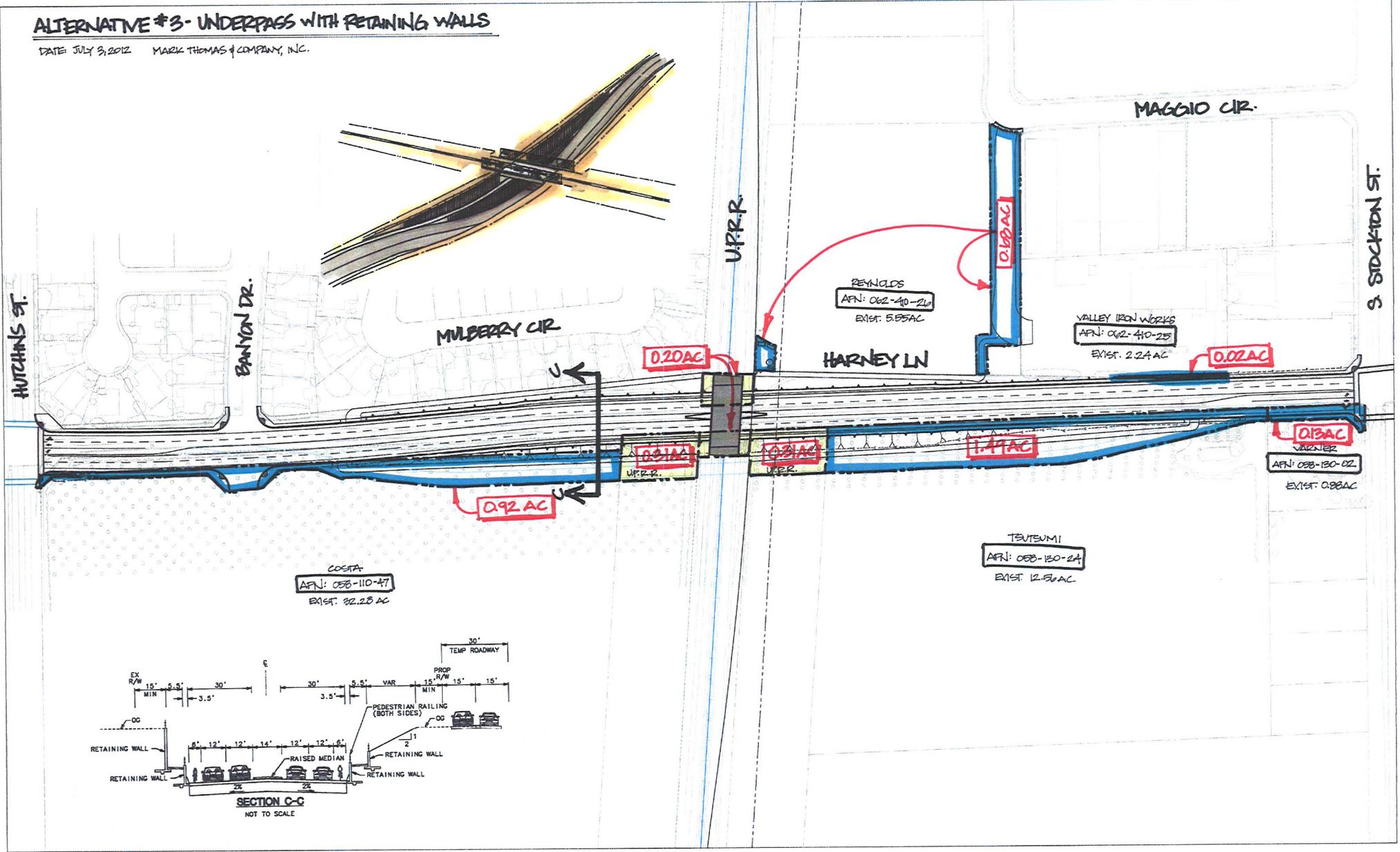
ALTERNATIVE #2 - OVERHEAD WITH MSE WALLS

DATE: JULY 3, 2012 MARK THOMAS & COMPANY, INC.



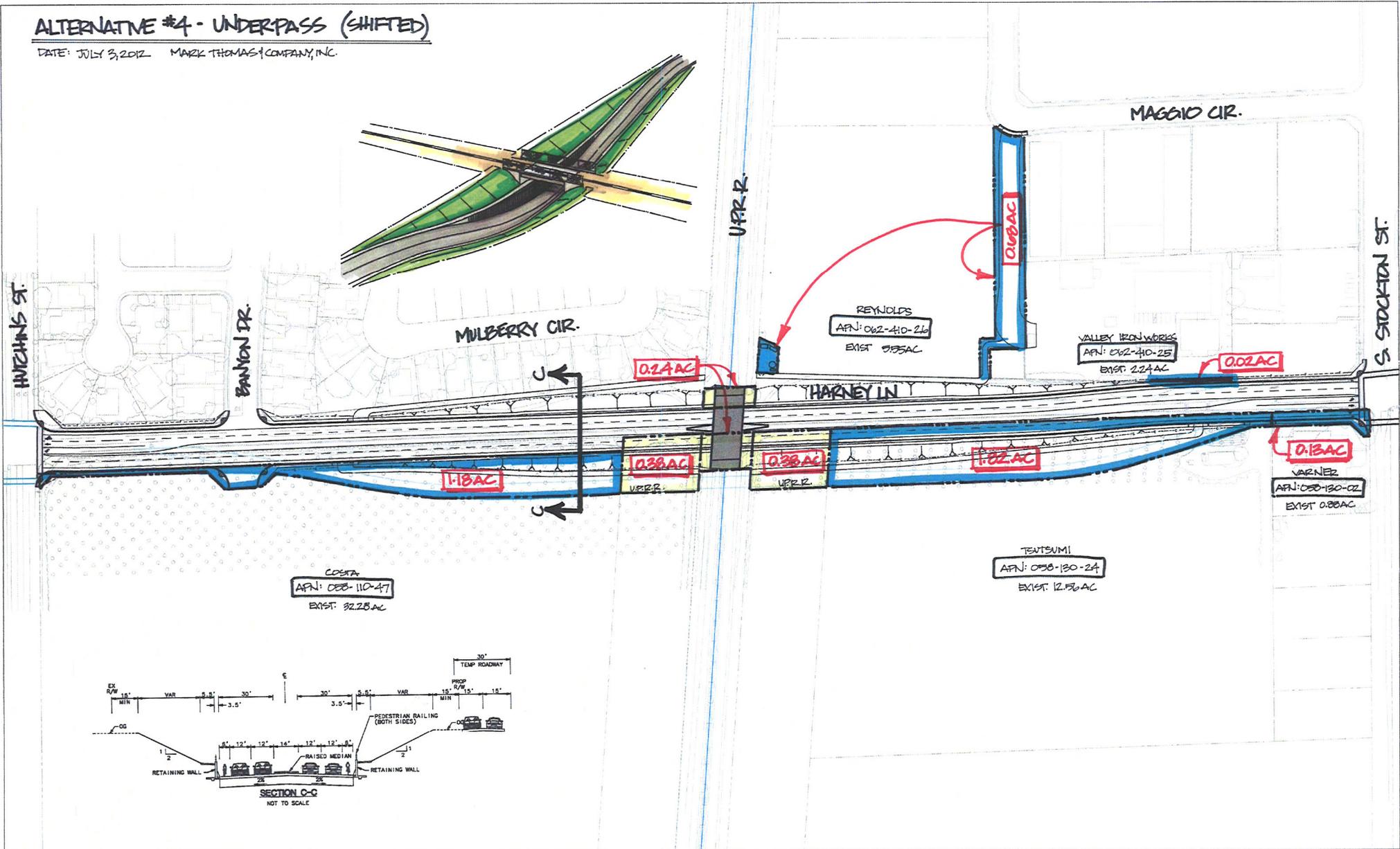
ALTERNATIVE #3 - UNDERPASS WITH RETAINING WALLS

DATE: JULY 3, 2012 MARK THOMAS & COMPANY, INC.



ALTERNATIVE #4 - UNDERPASS (SHIFTED)

DATE: JULY 3, 2012 MARK THOMAS COMPANY, INC.





Draft
**Public Information Meeting
Summary Report**

Tuesday, July 17, 2012
6:00 p.m. – 7:30 p.m.

Carnegie Forum
305 West Pine Street
Lodi, California

Prepared by Judith Buethe Communications



General Information about This Document

What is in this document?

This document is a summary report of a Public Information Meeting for the Harney Lane Grade Separation Project, Lodi, California. This document describes what occurred at the meeting.

What should you do?

- ◆ Please read this summary report.
- ◆ If you have any concerns about the summary report or questions about the proposed project, please contact Judith Buehe, (209) 464-8707, Ext. 101; judith@buehecommunications.com or P.O. Box 773, Lodi, CA 95201-0773.

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Chapter 1: Introduction

1.1: A Public Information Meeting Was Held

The City of Lodi Department of Public Works held a Public Information Meeting for the Harney Lane Grade Separation Project at the following date, time, and place:

Tuesday, July 17, 2012
6:00 p.m. – 8:30 p.m.
Carnegie Forum
305 West Pine Street
Lodi, Calif.

The City of Lodi held the meeting to present the Harney Lane Grade Separation Project alternatives and the estimated costs of each alternative being considered. This Public Information Meeting was an opportunity to provide comments or concerns about the project at a public meeting.

1.2: Announcements of the Public Information Meeting

The project team planned and implemented the Public Information Meeting to invite members of the public, businesses, agencies, and other potentially interested parties to learn more about the project and to discuss individual concerns with representatives from the City of Lodi Public Works Department, along with other specialists in engineering and planning.

The meeting was publicized through a jumbo postcard invitation that was sent by first-class U.S. mail to a mailing list of approximately 1,286 property owners, residents, and stakeholders such as local, state, and federal agencies; emergency responders; civic and community groups, the Lodi District Chamber of Commerce and other business groups; environmental groups; and other potentially interested individuals and organizations.

A news release was sent to print and broadcast media (mainstream and alternative) that serve the project area. The news releases were sent to the following mainstream and alternative media outlets: *The Record*, *Lodi News-Sentinel*, Citadel Broadcasting, Clear Channel, San Joaquin Hispanic Chamber of Commerce, Lodi District Chamber of Commerce, Asian-Pacific Chamber of Commerce, African-American Chamber of Commerce, KANM/KBUL, KAT Country 103, KCBC-770 AM, KCIV-99.9 FM; KCSO Telemundo 33, KCSS-FM, KHKK 104.1 The Hawk, KHOP, KJAX 1280, KJSN, KVFX, KKME, KQOD, KMRQ, KOSO, KRVR, KUYL, KVIN, *San Joaquin Farm Bureau News*, Builders Exchange, Business Council, Inc., and San Joaquin Partnership.

1.3: Purpose and Goals of the Public Information Meeting

The purpose of the Public Information Meeting was to provide an opportunity for the community to review the Harney Lane Grade Separation Project, learn about the proposed alternatives for consideration and construction, and provide individual comments or concerns about the project and the plans.

1.4: Format of the Public Information Meeting

Thirty people signed attendance sheets at the Public Information Meeting--21 members of the public and nine project team members. The meeting was held in the Carnegie Forum, where the City Council meetings are routinely held. At the door, the Public Outreach representative welcomed attendees, explained the evening's format, asked attendees to sign in, and distributed a comment sheet and a print program to each. The Public Outreach staff also introduced attendees to technical members of the project team and answered questions of a general nature.

The meeting was conducted as an open house/map showing with a presentation, followed by a question-and-answer session. This interactive format provided an opportunity for individual members of the public to ask questions of and direct comments to members of the project team—or to ask questions and make comments in a group setting. Attendees were encouraged to submit written comments.

Project team members were available throughout the evening to explain the displays, answer questions, and receive public input.

A brief presentation was made at 6:20 p.m. After housekeeping remarks by Judith Bueth, Public Outreach Coordinator, Rob Himes, P.E., Principal, Mark Thomas & Company, Inc. addressed the group with a PowerPoint presentation, providing project background, progress, alternatives being considered, cost, and schedule. Mr. Himes' presentation was followed by a question-and-answer period. [A copy of the PowerPoint presentation can be found in Appendix G.]

1.5: Summary of Concerns Expressed

The overall feedback from attendees about the breadth and depth of the information provided and the accessibility of project team members was positive. One comment sheet was received at the meeting. A list of dominant concerns or comments given at the meeting can be found in Chapter 4, "Outcome of the Public Information Meeting."

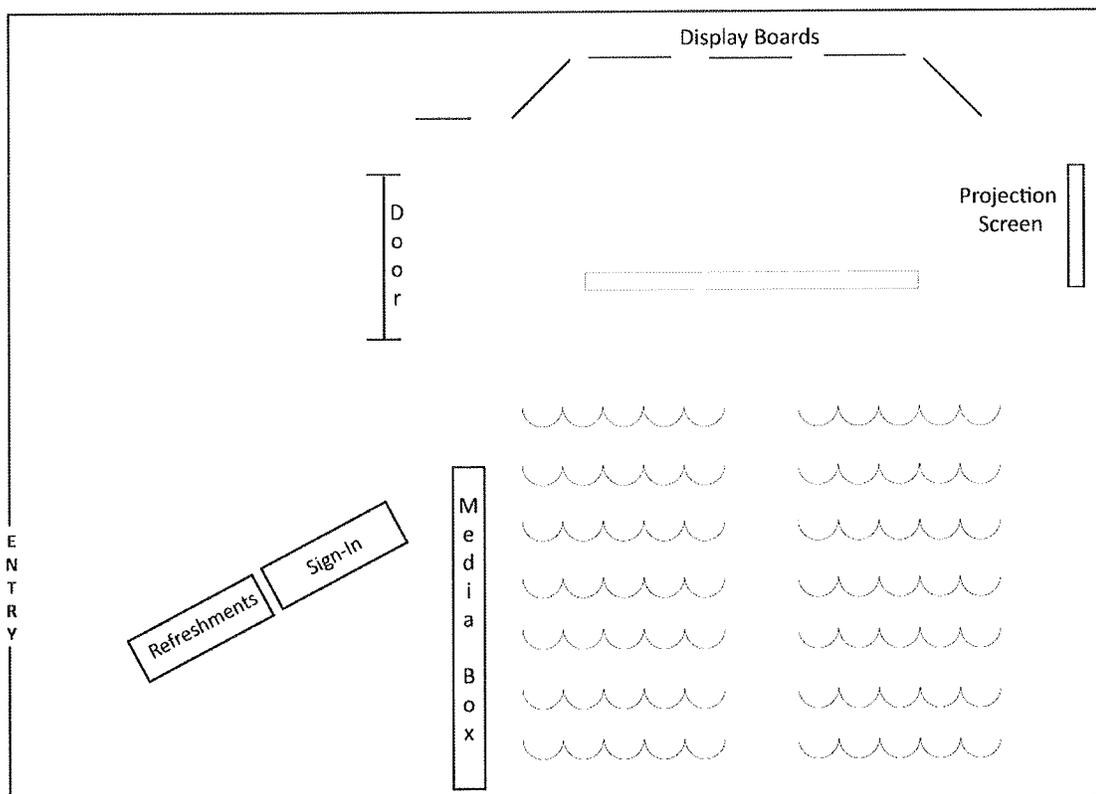
Chapter 2: Meeting Proceedings

2.1: Welcome

The room set-up at the Public Information Meeting was developed according to the layout shown below:

Harney Lane Grade Separation Project
Public Information Meeting

Tuesday, July 17, 2012
Carnegie Forum
305 West Pine Street
Lodi, California



2.2: Displays and Exhibits

The informational display boards, exhibits and maps at the Public Information Meeting are explained below. (Reduced copies of the informational display boards and graphics are included in Appendix B.)

Station 1: Welcome Board and Sign-in Tables

A welcome board greeted attendees as they entered the meeting room. Attendees were asked to sign in to maintain an attendance record and to ensure that all interested parties would be added to the project mailing list. [See Appendix ___ for the attendee list.] The Public Outreach representative gave each attendee a print program with the logos of the City of Lodi, San Joaquin Council of Governments (SJCOG), and Measure K. The print program welcomed attendees to the public meeting, stated the evening's agenda, and provided the project purpose and project description, funding, a project map, and information on how attendees could comment and stay involved. The print program provided contact information for future questions, concerns, or comments. The print program also included information on two pertinent upcoming meetings—a Lodi City Council Shirtsleeve Session and a hearing before the Lodi City Council. [See Appendix A.] Comment sheets provided space for comments and/or concerns and asked attendees if they wished to be added to mailing lists for the projects. The Public Outreach representative explained the format of the meeting and encouraged attendees to ask questions of and make comments to the project team members who were present.

Station 2: Displays and Exhibits

Maps of the construction alternatives were displayed across the front of the City Council chambers.

Station 3: Comment Station

A receptacle at the Welcome table was provided for comment sheets. One written comment sheet was submitted during the Public Information Meeting. [See Appendix E.]

2.3: Personnel on Hand

The following personnel set up and conducted the meeting and were available to answer questions from the public. Working at the direction of City of Lodi personnel, the persons in charge of the meeting were Rob Himes, P.E., Principal, Mark Thomas & Company, Inc.; Phillip Vulliet, P.E., Project Manager, Mark Thomas & Company, Inc.; and Judith Buethe, Judith Buethe Communications.

2.3.1: City of Lodi Staff

Chris Boyer, P.E., Assistant Engineer

Wally Sandelin, P.E., Public Works Director

Charlie Swimley, City Engineer/Deputy Public Works Director

2.3.4: Consultants

Mark Thomas & Company, Inc.

Rob Himes, P.E., Principal

Phillip Vulliet, P.E., Project Manager

Judith Buethe Communications

Judith Buethe, Owner

Loreen Huey, Administrative Assistant

2.3.5: Elected Officials and Other Agencies

Lodi City Council

Phil Katzakian

San Joaquin Council of Governments

Donald Mascardo

San Joaquin County

Jeffrey Levers, Public Works Department

Chapter 3: Presentation

At 6:20 p.m., after introductions and housekeeping remarks by Judith Buethe, Public Outreach Coordinator, Rob Himes, Principal, Mark Thomas & Company, Inc. gave a PowerPoint presentation that included the project development process, purpose and goals of the meeting, existing conditions at the sight, the proposed project, project constraints alternatives—over and under, alternatives being considered, a set of criteria for evaluating whether to build an underpass or overhead structure, what experts say about underpasses vs. overhead structures, visual impacts of the alternatives, cost, and the remaining project schedule. [See Appendix G for a copy of the full PowerPoint presentation.]

Following is a list of the subsequent questions and comments by members of the audience.

PUBLIC QUESTIONS AND COMMENTS

1. *What is the projected number of lanes west of Hutchins Street?*
2. *Why four lanes from Hutchins Street to Lower Sacramento Road?*
3. *Could we cut trucks out from using the road?*
4. *What kind of separation do you anticipate building between the overpass and pedestrian sidewalk?*
5. *Are you concerned someone could fall into the roadway?*
6. *Will sidewalks be built on both sides of the structure or just one?*
7. *I'm still not understanding why there is no bypass road being considered with the Alternative One overhead proposal.*
8. *Do you have any to-scale cross-section drawings of how big this thing is projected to be?*
9. *Arguments for the overhead alternative because of cost advantages are persuasive, but your diagrams are not to scale.*
10. *I would like more detail to get a better appreciation for what it will look like.*
11. *Who made the decision to go under when Kettleman was built?*
12. *On an overpass, how will water runoff be collected and sent to ponds?*
13. *From digging to opening, how long will construction last?*
14. *How much of a shorter time if the whole road were to be closed?*
 - a. 1.5 years.
15. *Graffiti problems are everywhere. How accessible are the walls on the back side to allow cleaning?*
16. *Do costs include access roads to the metal company?*
17. *What is the estimated traffic count on Maggio Circle?*
18. *What sort of roads do you project building at the base of the embankment for maintenance and safety?*
19. *How much area is on both sides of the railroad?*
20. *How can the project keep campers or transients from lingering under the structure?*

[End of question-and-answer period]

Chapter 4: Public Input

Public input was received in three ways: 1) written comments received at the Public Information Meeting, 2) oral comments received by the project team staff members, and 3) questions, comments, and concerns expressed during the question-and-answer session.

3.1: Written Comments Received at the Public Information Meeting

3.1.1: Listing of Comment Sheets and Correspondence Received at the Public Information Meeting

Jack Dunn

2232 Newbury

Lodi, CA

(209) 334-6754

Jack.sheila@mac.com

Clear, consist, well run meeting.

A copy of the original written comment sheet received at the meeting is included in Appendix E.

Chapter 5: Outcome of the Public Information Meeting

The overall feedback about the breadth, depth, and usefulness of the information provided at the Public Information Meeting was very positive. Dominant concerns, questions, or comments expressed by attendees were the following:

- Number of lanes planned for the grade separation structure.
- Safety
- Sidewalks
- Desire for to-scale cross-section drawings.
- Water runoff
- Length of construction; other construction impacts
- Maintenance; potential graffiti
- Access roads to Valley Iron Works
- Potential impacts on Maggio Circle
- Breadth of area directly impacted by the proposed structure

Appendices

Appendix A: Handouts

Meeting
Agenda

For Your Calendar

7:00 a.m. – 8:00 a.m.
Tuesday, July 24, 2012
Shirtsleeve Session
Lodi City Council
Carnegie Forum

7:00 p.m.
Wednesday August 1, 2012
Public Hearing during City Council Meeting
Lodi City Council
Carnegie Forum

For More Information

Judith Bueth
Public Outreach Coordinator
Harney Lane Grade Separation Project
P.O. Box 773, Stockton, CA 95201-0773
Hotline: (209) 464-4350
Hotline@buethcommunications.com

*Thank you for attending this evening's
Public Information Meeting.*

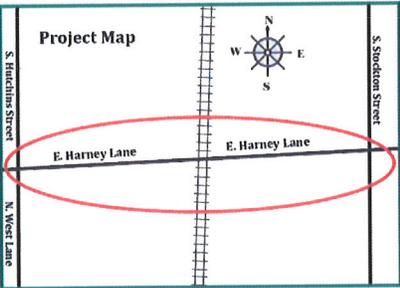


**Welcome to the
Public Information Meeting**

Tuesday, July 17, 2012
6:00 p.m. – 7:30 p.m.
Carnegie Forum
305 West Pine Street, Lodi



Project Map



Project Background

Harney Lane is a two-lane, east-west urban collector near the City of Lodi's southern city limit. Harney Lane intersects the Union Pacific Railroad (UPRR) approximately ¼ mile west of State Route 99. Traffic on Harney Lane is expected to increase as the City continues to grow. Keeping the existing at-grade railroad crossing on Harney Lane would cause significant traffic congestion on Harney Lane, the surrounding intersections, and the State Route 99/Harney Lane Interchange. The City's General Plan includes a railroad grade separation at the UPRR crossing.

Project Alternatives

Two types of project alternatives are being considered—an underpass below the UPRR tracks and an overhead about the UPRR tracks. The grade separation will ultimately have four lanes.



Tonight's Agenda
July 17, 2012

6:00 p.m. – 6:30 p.m.
Open House—Exhibits and Refreshments

6:30 p.m.
Welcome, Introductions, Agenda Overview
Judith Bueth
Public Outreach Coordinator

Project Overview
Philip Vulliet, P.E., Project Manager
Mark Thomas & Company

Questions/Comments
Audience

Open House Continues Until 7:30 p.m.

Sign-in
Sheet

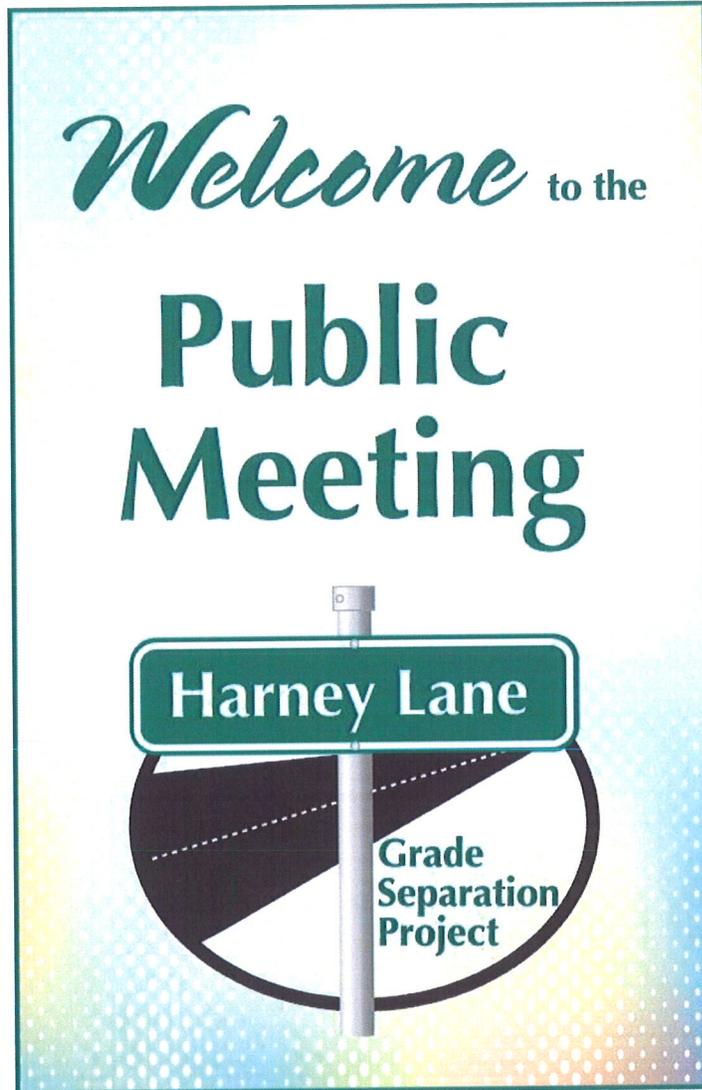


Date: Tuesday, July 17, 2012

<i>Please Print Your Name</i>	<i>Organization, if any</i>	<i>Address, City and Zip</i>	<i>E-mail</i>	<i>Phone</i>

Thank you for attending. Gracias por su asistencia.

Appendix B: Display and Exhibit Materials



Appendix C: Public Notices and Invitations

Public Meeting Postcard Invitation



**You Are Cordially Invited to a
Public Information Meeting**

**Tuesday, July 17, 2012
6:00 p.m. - 7:30 p.m.**

Carnegie Forum
305 West Pine Street, Lodi, Calif.





Public Outreach Coordinator
Harney Lane Grade Separation Project
P.O. Box 773
Stockton, CA 95201-077

July 17, 2012

Project Background
Harney Lane is a two-lane, east-west urban collector near the City of Lodi's southern city limit. Harney Lane intersects the Union Pacific Railroad (UPRR) approximately ¼ mile west of State Route 99. Traffic on Harney Lane is expected to increase as the City continues to grow. Keeping the existing at-grade railroad crossing on Harney Lane would cause significant traffic congestion on Harney Lane, the surrounding intersections, and the State Route 99/Harney Lane Interchange. The City's General Plan includes a railroad grade separation at the UPRR crossing.

Project Alternatives
Two types of project alternatives are being considered—an underpass below the UPRR Tracks and an overhead above the UPRR tracks. The grade separation will ultimately have four lanes.

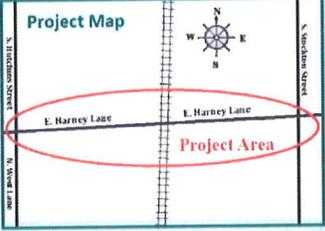
What Will Happen at the Public Information Meeting?
At the public meeting on July 17, the project manager for the design team will present the project alternatives and the estimated costs of each alternative being considered. The Project Manager will also discuss how the construction may be staged to have the least impact on surrounding properties, businesses, and the traveling public.

Members of the public will have an opportunity to ask questions and make comments on the project.

For Your Calendar
At the Shirtsleeve Session on July 24, 2012, the Lodi City Council will review the alternatives and the results of the public information meeting and receive the design team's recommended alternative.

At the City Council meeting on August 1, 2012, the City Council will review the alternatives, receive public comments, and select the alternative for the project.

For More Information
Call the Hotline at (209) 464-4350, Ext. 101, or e-mail Hotline@buethcommunications.com. You are also welcome to mail your written comments and inquiries about the project to Public Outreach Coordinator, Harney Lane Specific Plan, P.O. Box 773, Stockton, CA 95201-0773.

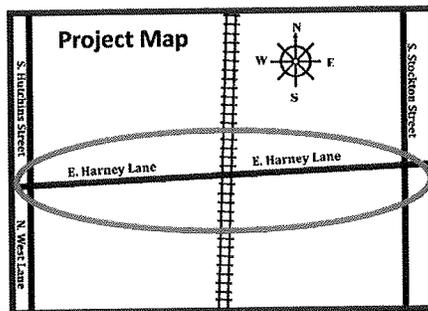



Published in
the Lodi
News-Sentinel
on Thursday,
July 5, 2012

You Are Cordially Invited to a Public Information Meeting

**Tuesday, July 17, 2012
6:00 p.m. - 7:30 p.m.**

**Carnegie Forum
305 West Pine Street
Lodi, California**



Project Background

Harney Lane is a two-lane, east-west urban collector near the City of Lodi's southern city limit. Harney Lane intersects the Union Pacific Railroad (UPRR) approximately ¼ mile west of State Route 99. Traffic on Harney Lane is expected to increase as the City continues to grow. Keeping the existing at-grade railroad crossing on Harney Lane would cause significant traffic congestion on Harney Lane, the surrounding intersections, and the State Route 99/Harney Lane Interchange. The City's General Plan includes a railroad grade separation at the UPRR crossing.

Project Alternatives

Two types of project alternatives are being considered—an underpass below the UPRR Tracks and an overhead above the UPRR tracks. The grade separation will ultimately have four lanes.

What Will Happen at the Public Information Meeting?

At the public meeting on July 17, 2012, the project manager for the design team will present the project alternatives and the estimated costs of each alternative being considered. The Project Manager will also discuss how the construction may be staged to have the least impact on surrounding properties, businesses, and the traveling public.

Members of the public will have an opportunity to ask questions and make comments on the project.

For Your Calendar

At a Shirtsleeve Session on July 24, 2012, the Lodi City Council will review the alternatives and the results of the public information meeting and receive the design team's preferred alternative.

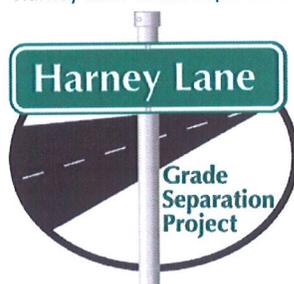
At the City Council meeting on August 1, 2012, the City Council will review the alternatives, receive public comments, and select the alternative for the project.

For More Information

Call the Hotline at (209) 464-4350, Ext. 101, or e-mail Hotline@buethecommunications.com. You are also welcome to mail your written comments and inquiries about the project to Public Outreach Coordinator, Harney Lane Grade Separation Project, P.O. Box 773, Stockton, CA 95201-0773.



Press
Release



CONTACT: Judith Buethe
(209) 464-8707, Ext. 101

FOR IMMEDIATE RELEASE:
July 5, 2012

PUBLIC INFORMATION MEETING TO BE HELD ON JULY 17 FOR HARNEY LANE GRADE SEPARATION PROJECT

(Lodi, Calif.)—Members of the public are invited to a public information meeting on Tuesday, July 17, 2012, to learn about and comment on the Harney Lane Grade Separation Project. The meeting will be held from 6:00 p.m. – 7:30 p.m. at the Carnegie Forum, 305 West Pine Street, Lodi, California.

At the public information meeting on July 17, the project manager for the design team will present the project alternatives and the estimated costs of each alternative being considered. The project manager will also discuss how the construction may be staged to have the least impact on surrounding properties, businesses, and the traveling public. Members of the public will have an opportunity to ask questions and make comments on the project.

Project Background and Alternatives

Harney Lane is a two-lane, east-west urban collector near the City of Lodi's southern city limit. Harney Lane intersects the Union Pacific Railroad (UPRR) approximately $\frac{3}{4}$ mile west of State Route 99. Traffic on Harney Lane is expected to increase as the City continues to grow. Keeping the existing at-grade railroad crossing on Harney Lane would cause significant traffic congestion on Harney Lane, the surrounding intersections, and the State Route 99/Harney Lane Interchange. The City's General Plan includes a railroad grade separation at the UPRR crossing.

Two types of project alternatives are being considered—an underpass below the UPRR tracks and an overhead above the UPRR tracks. The grade separation will ultimately have four lanes.

For Calendars

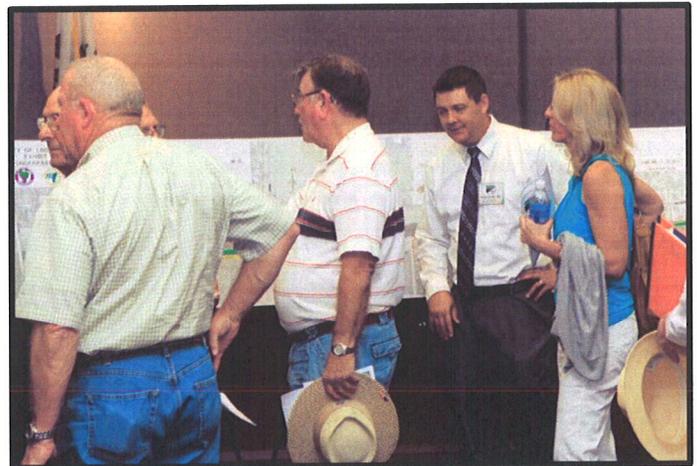
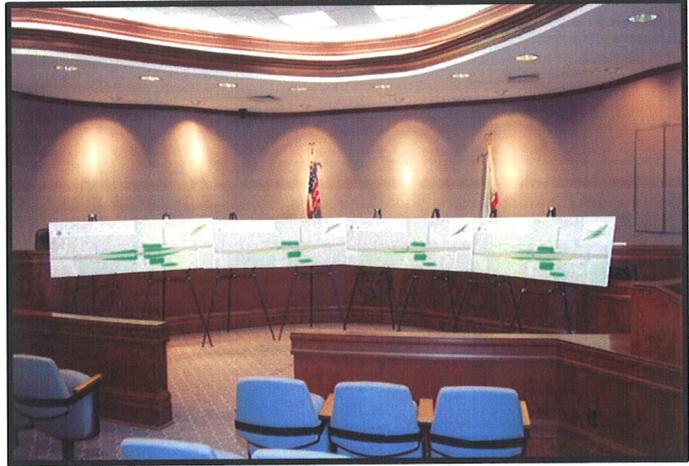
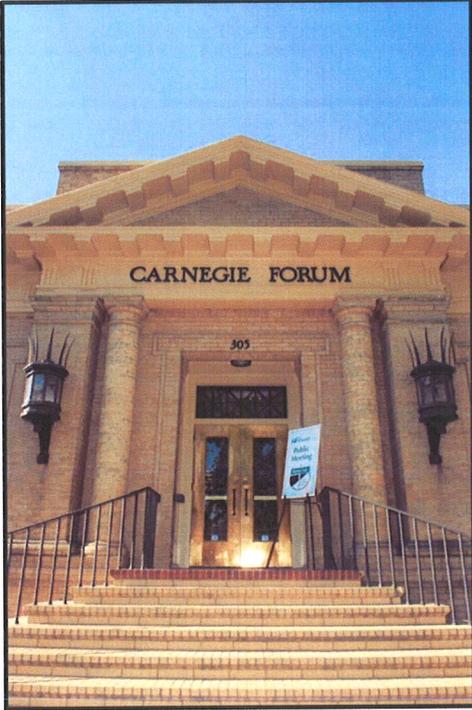
At a Shirtsleeve Session at 7:00 a.m. on July 24, 2012, the Lodi City Council will review the project alternatives and the results of the public information meeting and receive the design team's preferred alternative.

At the City Council meeting on August 1, 2012, the City Council will review the alternatives, receive public comments, and select the alternative for the project.

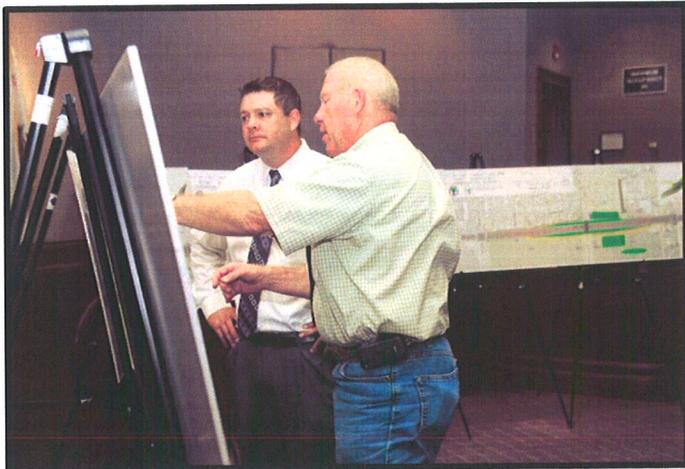
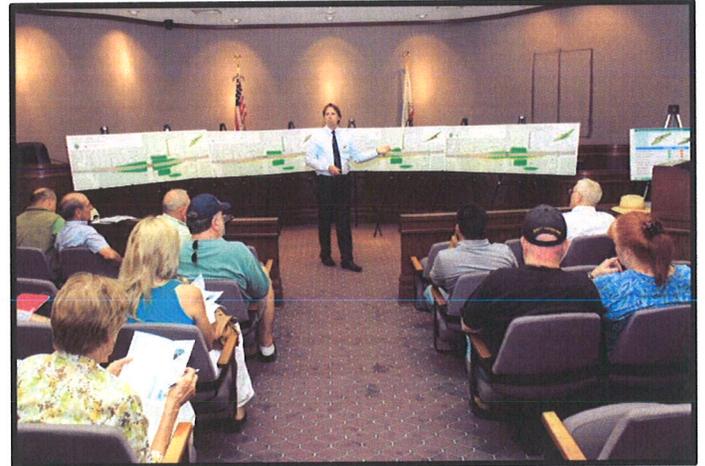
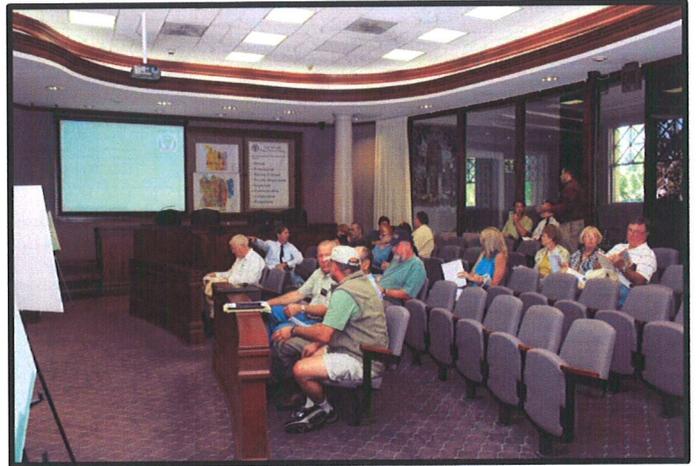
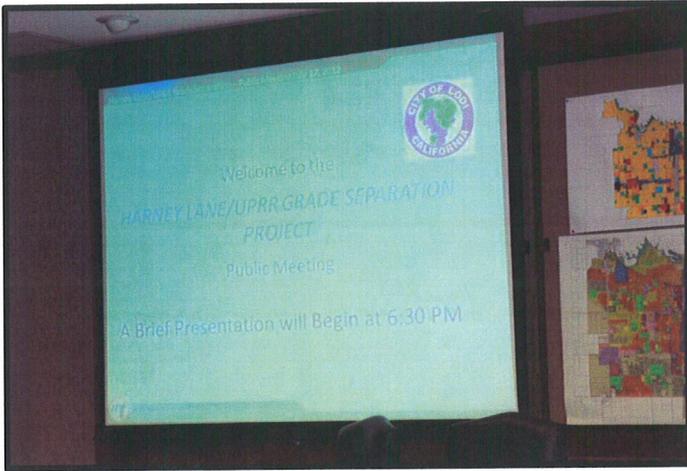
For More Information

Hotline: (209) 464-4350, Ext. 101
Email: Hotline@buethecommunications.com

Appendix D: Photographs at the Meeting



Harney Lane Grade Separation Project Public Information Meeting Summary Report



Appendix E: Public Comments



Comment Sheet

Name (Please print): Jack Dunn Date: 7-17
Mailing address: 2232 Newbury Court
Resident, Business, Organization, etc.: Resident
Phone: 334-6754 Email: jack.sheila@mac.com
Comments: Clear, concise, well run meeting

Project Hotline: (209) 464-8707, ext. 101 or toll-free (877) 464-4350
Email: Hotline@buethecommunications.com
Write: Public Outreach Coordinator
Harney Lane Grade Separation Project
P.O. Box 773
Stockton, CA 95201-0773



Date: Tuesday, July 17, 2012

Please Print Your Name	Organization, if any	Address, City and Zip	E-mail	Phone
Mary Mabee		2073 Henderson Way ^{Lodi}	m.mabee@slcglobal.net	209-368-3971
Paul Olvera	Parsons Brinckerhoff	1529 N. Posey Way	olverap@pbworld.com	209-815-2025
Mark Wilcox		1007 S. Orange Ave	mark.w@WholeGrainCorp.com	540 460 4434
Joe Coabel	Valley Iron Works	127 E HARNEY LN	jco@valleyironworks.com	
Donald Mascardo	San Joaquin County of Government	555 E Weber Ave Stockton CA 95204	mascardo@sjug.org	219-235-0952
Brian Young	Resident	1056 Bradford Circle Lodi	byoung@lodinet.com	334-6028
Jon TRAXER	VALLEY IRON WORKS	127 E. HARNEY		
TERRY L Fry		12495 N. West Lane	JerryFry@mhrfry.com	334-3808
Katherine Mikilas		812 Westwind Dr	quyhx4@hotmail.com	3694071
Gary & Denise Wiman	City of Lodi	210 S Sunset Lodi	gwiman@lodi.gov dwiman@lodi.gov	

Thank you for attending. Gracias por su asistencia.

Appendix F: Meeting Sign-in Sheets



Date: Tuesday, July 17, 2012

Please Print Your Name	Organization, if any	Address, City and Zip	E-mail	Phone
Jim & Susan Pilcher		239 Mulberry Cir. Lodi 95240	cobra95240@att.net	369-7858
Pete + Linda Wick		2506 Maggio Cir. Lodi	petewick@pwshop.net	369-9678
Debra Heine		275 Mulberry Circle	giraffe34@comcast.net	663-9723
P. KATZAKIAN		48 RIVER PT. CIR		
GREG COSTA		13160 N. WEST LANE LODI 95240	fgands@lodinet.com	993-2982
FELIX COSTA	F.C.S	" "		
WALLY SANDLIN	C.O.L			
Sheila & Jack Dunn		2232 Newbury Cir Lodi Ca 95240	jack.sheila@mac.com	334-6754
JEFFREY LEVERS	SAN JOAQUIN CO.		jlevers@sjgov.org	953-7631
BOB PENNEN		245 MULBERRY CIR	RLRENNJR@ATT.NET	369-7998

Thank you for attending. Gracias por su asistencia.



Date: Tuesday, July 17, 2012

<i>Please Print Your Name</i>	<i>Organization, if any</i>	<i>Address, City and Zip</i>	<i>E-mail</i>	<i>Phone</i>
Chris Boyer	C.O.L.			
Judith Bueche	JBC			
Loreen Huey	JBC			
Rob Himes	M T Co.			
Phillip Vulliet	M T Co.			

Thank you for attending. Gracias por su asistencia.

Appendix G: PowerPoint Presentation



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolutions and Approve Documents and Actions Regarding Refinancing 2002 Certificates of Participation (COPS) and 2004 COPS:

2002 COPS

- (a) Adopt Resolution of the City Council Approving Documents and Actions Related to the Refinancing of 2002 Certificates of Participation and the City's Related General Fund Lease Obligation, and
- (b) Adopt Resolution of the Lodi Public Financing Authority Authorizing the Issuance and Sale of 2012 Refunding Lease Revenue Bonds to Refinance Outstanding 2002 Certificates of Participation and the City's Related General Fund Lease Obligation and Approving Related Documents and Official Actions; and

2004 COPS

- (c) Adopt Resolution of the City Council Approving Documents and Actions Related to the Refinancing of 2004 Wastewater Certificates of Participation and the City's Related Wastewater Revenue Installment Payment Obligation, and
- (d) Adopt Resolution of the Lodi Public Financing Authority Authorizing the Issuance and Sale of 2012 Refunding Wastewater Revenue Bonds to Refinance the 2004 Wastewater Certificates of Participation and the City's Related Wastewater Revenue Installment Payment Obligation, and Approving Related Documents and Official Actions

MEETING DATE: August 1, 2012

PREPARED BY: City Attorney

RECOMMENDED ACTION: Adopt Resolutions of the City Council and the Lodi Public Financing Authority to approve the refinancing of: 1) the 2002 Certificates of Participation and the City's related General Fund lease obligation in an amount not to exceed \$20 million; and 2) the 2004 Wastewater Certificates of Participation and the City's related wastewater system installment payment obligation in an amount not to exceed \$22 million; all in order to secure market interest savings.

BACKGROUND INFORMATION: The City previously caused execution and delivery of its 2002 Certificates of Participation to refinance debt associated with the construction of improvements to Lodi's downtown, Hutchins Street

APPROVED: _____
Konradt Bartlam, City Manager

Square and the new Public Safety Building. The 2002 Certificates of Participation securitized lease payments made by the City from its General Fund.

The City previously caused execution and delivery of its 2004 Wastewater Certificates of Participation to finance construction of improvements to the Wastewater System. The 2004 Wastewater System Certificates of Participation securitized installment payments made by the City from its Wastewater Fund.

Favorable market conditions have reduced prevailing interest rates and made it attractive for the City to refinance the 2002 Certificates of Participation and the 2004 Wastewater Certificates of Participation.

SUMMARY OF DOCUMENTS: In order to complete the General Fund Lease and Wastewater refinancings, the City and the Lodi Public Financing Authority ("PFA") are required to approve and execute several key legal documents. The key documents are summarized below.

Resolutions: The Resolutions of the City and the PFA approve the issuance of the two sets of proposed bonds, the execution of the proposed legal documents and the distribution of the Official Statements to investors. While the documents are in near-to-final form, the Resolutions authorize certain officers of the City and the PFA to make amendments, as necessary. The Resolutions specify the maximum principal amount for the bonds, maximum borrowing cost and maximum underwriter's discount.

Official Statements: These documents, approved and signed by the City and PFA, most importantly describe (i) the term of the bonds, (ii) the security for the bonds, (iii) the refinancing plan, (iv) the City's Wastewater System, which is the source of repayment for the 2012 Refunding Wastewater Revenue Bonds, and the City's General Fund, which is the source of repayment for the 2012 Refunding Lease Revenue Bonds (v) potential risks to prospective investors ("RISK FACTORS"), (vi) tax status of interest on the bonds ("TAX MATTERS") and (vii) economic and demographic characteristics of the City (Appendix C). The Preliminary Official Statements (often referred to as the "POS") are distributed by the underwriter to prospective investors prior to the bond sale so that investors can make informed purchase decisions. They are the equivalent of a prospectus in the private sector. Final Official Statements are sent to purchasers after the terms of the sales are finalized.

The distribution of a POS is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the POS to include all facts that would be material to an investor in the bonds. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the bonds.

The Securities and Exchange Commission (the "SEC"), the agency with regulatory authority over the City and the PFA's compliance with the federal securities laws, has issued guidance as to the duties of the City Council and the PFA's Board of Directors with respect to their approval of the POS. In its "Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors" (Release No. 36761 / January 24, 1996) (the "Release"), the SEC stated that, if a member of the City Council/Board of Directors has knowledge of any facts or circumstances that an investor would want to know about prior to investing in the bonds, whether relating to their repayment, tax-exempt status, undisclosed conflicts of interest with interested parties, or otherwise, he or she should endeavor to discover whether such facts are adequately disclosed in the POS. In the Release, the SEC stated that the steps that a member of the City Council/Board of Directors could take include becoming familiar with the POS and questioning staff and consultants about the disclosure of such facts.

Continuing Disclosure Certificates: These certificates, attached as an appendix of the Official Statement, obligate the City to provide updated information to the bond markets on an ongoing basis. Disclosure is required annually, and on an exceptional basis for any major "material" developments.

Bond Purchase Contracts: These contracts are executed among the City, the PFA and the Underwriters on the day of the bond sale. They specify the actual principal amounts, interest rates and prices at which the bonds will be sold. Within the contract, the underwriters commit to purchase the bonds at closing and the PFA commits to sell the bonds at the agreed upon prices and amounts subject to certain closing conditions. Closing conditions generally relate to the execution and validity of all the required documents and the absence of material changes in the nature of the security, etc.

Installment Purchase Agreement: The PFA's 2012 Refunding Wastewater Revenue Bonds will be payable from installment payments made by the City to the PFA under an Installment Purchase Agreement. The scheduled installment payments will be equal in amount to debt service on the 2012 Refunding Wastewater Revenue Bonds. The Installment Purchase Agreement documents the key financial obligations of the Wastewater System, which are consistent with existing obligations of the Wastewater System related to 2003 and 2007 financings. The PFA assigns its right to receive these installment payments to the trustee for the 2012 Refunding Wastewater Revenue Bonds pursuant to the Indenture of Trust described below.

The Installment Sale Agreement will specify:

- the net revenues of the Wastewater System specifically pledged to the installment payments (the City is not obligated to make the installment payments from any other City funds)
- the uses of the Wastewater System's gross revenues: briefly, gross revenues are first used to pay operation and maintenance expenses and then to pay the installment payments, similar 2003 and 2007 installment payment obligations and any future debt
- the promise of the City to charge sufficient rates to Wastewater System customers to pay operation and maintenance expenses, the 2003/2007/2012 installment payments and any future debt with a sufficient coverage cushion (the "rate covenant")
- the terms under which additional Wastewater System debt can be issued to finance additional capital improvements to the Wastewater System

Lease Agreement: The PFA's 2012 Refunding Lease Revenue Bonds will be payable from lease payments made by the City to the PFA under a Lease Agreement for the lease of certain real property and improvements (the "Leased Property"). The PFA assigns its right to receive these lease payments to the trustee for the 2012 Refunding Lease Revenue Bonds pursuant to the Indenture of Trust described below. The scheduled lease payments will be equal in amount to debt service on the 2012 Refunding Lease Revenue Bonds. The City agrees in the Lease Agreement to budget and appropriate from its General Fund for the lease payments on an annual basis. In order to facilitate the lease of the Leased Property by the PFA to the City under the Lease Agreement, the City and the PFA will concurrently enter into a Site Lease, under which the City will lease the Leased Property to the PFA.

Indentures of Trust: These are the legal documents between the PFA and a corporate bank (as trustee for the bond owners) that lays out the terms of the bonds. It will specify:

- the payment dates and maturities of the bonds
- the pledge of installment sale revenues and lease revenues to the respective series of bonds
- the default and remedy provisions (in the event the City failed to make the installment payments under the Installment Purchase Agreement or lease payments under the Lease Agreement)
- redemption and defeasance provisions, in the event that interest rates allow the City to refinance these bonds in the future.

In general, the PFA is a conduit for the installment payments and lease payments paid by the City to the bond owners. The PFA has no obligation to pay debt service on the bonds from any source of funds other than the installment payments and lease payments made by the City.

Escrow Deposit and Trust Agreements: These are the agreements between the City and the trustees for the 2002 and 2004 Certificates that document the deposit, investment and application of funds to refinance the 2002 and 2004 Certificates.

FISCAL IMPACT: The estimated net present value savings (i.e., after deducting the costs of the refinancing) for these two refinancings are \$1.69 million for the General Fund and \$1.3 million for the Wastewater Fund. The wastewater utility also has debt obligations from 2003 with the original issue amount of \$5 million and 2007 with original issue amount of \$30,320,000. The General Fund has no other long-term obligations. Neither fund has any upcoming anticipated financings.

FUNDING AVAILABLE: The debt service for this refinancing is by definition already provided for in the City's budget, albeit at higher interest rates.

Jordan Ayers
Deputy City Manager/Internal Services Director

D. Stephen Schwabauer
City Attorney

Attachments: Draft City Council Resolutions
Draft Lodi Public Financing Authority Resolutions
Preliminary Official Statement relating to the 2012 Refunding Lease Revenue Bonds
Preliminary Official Statement relating to the 2012 Refunding Wastewater Revenue Bonds

RESOLUTION NO. 2012-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI
APPROVING DOCUMENTS AND ACTIONS RELATING TO THE
REFINANCING OF 2002 CERTIFICATES OF PARTICIPATION

=====

WHEREAS, the City of Lodi (the "City") has previously entered into a Trust Agreement dated as of January 1, 2002, with the Lodi Public Improvement Corporation and U.S. Bank National Association, as successor trustee, under which \$26,745,000 aggregate principal amount of Certificates of Participation (2002 Public Improvement Financing Project) (the "2002 Certificates") were executed and delivered for the purpose of financing and refinancing various municipal facilities of the City; and

WHEREAS, in order to take advantage of prevailing bond market conditions, the City Council wishes to authorize the refinancing of the 2002 Certificates; and

WHEREAS, to that end, the City has proposed to lease the real property constituting its new police building and Carnegie Forum, including land and improvements (the "Leased Property") to the Lodi Public Financing Authority (the "Authority") in consideration of the payment by the Authority of an upfront rental payment which is sufficient to provide funds to refinance the 2002 Certificates; and

WHEREAS, in order to raise funds for such purpose, the Authority proposes to issue and sell its Lodi Public Financing Authority 2012 Refunding Lease Revenue Bonds in the aggregate principal amount of not to exceed \$20,000,000 (the "Refunding Bonds") under Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law"); and

WHEREAS, in order to secure the payments of principal of and interest on the Refunding Bonds, the Authority proposes to lease the Leased Property back to the City under a Lease Agreement (the "Lease Agreement"), under which the City is obligated to pay semiannual lease payments as rental for the Leased Property, and the Authority will assign substantially all of its rights under the Lease Agreement to U.S. Bank National Association, as trustee for the Refunding Bonds; and

WHEREAS, the City Council wishes at this time to approve all proceedings to which it is a party relating to the issuance and sale of the Refunding Bonds and the refinancing of the 2002 Certificates;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi as follows:

SECTION 1. Issuance of Refunding Bonds. The City Council hereby approves the issuance of the Refunding Bonds by the Authority under the Bond Law in the maximum principal amount of \$20,000,000, for the purpose of providing funds to refinance the 2002 Certificates.

SECTION 2. Approval of Related Financing Agreements. The City Council hereby approves each of the following agreements required for the issuance and sale of the Refunding Bonds and the refinancing of the 2002 Certificates, in substantially the respective forms on file with the City Clerk together with any changes therein or

additions thereto deemed advisable by the City Manager, the Deputy City Manager/Internal Services Director or the City Attorney (each, an "Authorized Officer"), whose execution thereof shall be conclusive evidence of the approval of any such changes or additions. An Authorized Officer is hereby authorized and directed for and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest, the final form of each such agreement, as follows:

- Site Lease, between the City as lessor and the Authority as lessee, under which the City leases the Leased Property to the Authority in consideration of the payment of an amount which will be applied by the City to refinance the 2002 Certificates.
- Lease Agreement, between the Authority as lessor and the City as lessee, under which the Authority leases the Leased Property back to the City and the City agrees to pay semiannual lease payments which are sufficient to provide revenues with which to pay principal of and interest on the Refunding Bonds when due; and
- Escrow Deposit and Trust Agreement, between the City and the successor trustee for the 2002 Certificates, providing the deposit, investment and application of funds to refinance the 2002 Certificates.
- Continuing Disclosure Certificate, to be executed by the City.

SECTION 3. Negotiated Sale of Refunding Bonds. The City Council hereby approves the negotiated sale of the Refunding Bonds by the Authority to JP Morgan and Stifel, Nicolaus & Company, Incorporated dba Stone & Youngberg, a Division of Stifel Nicolaus (collectively, the "Underwriter"). The Refunding Bonds shall be sold pursuant to the terms and provisions of a Bond Purchase Agreement among the Authority, the City and the Underwriter in substantially the form on file with the City Clerk together with any changes therein or additions thereto deemed advisable by an Authorized Officer. The Refunding Bonds shall be sold at such price and shall bear interest at such rates as shall produce a minimum net present value savings to the City of at least 3% of the principal amount of the outstanding 2002 Certificates, as such savings shall be verified and conclusively determined by the City's Financial Advisor (the "Minimum Savings Requirement"). The Underwriter's discount shall not exceed 1.0%.

SECTION 4. Official Statement. The City Council hereby approves the preliminary Official Statement describing the Refunding Bonds in substantially the form on file with the City Clerk. The City Manager is hereby authorized and directed to approve any changes in or additions to said preliminary Official Statement and to execute an appropriate certificate stating the City Manager's determination that the preliminary Official Statement (together with any changes therein or additions thereto) has been deemed nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934. Distribution of the preliminary Official Statement by the Underwriter is hereby approved. The City Manager is hereby authorized and directed to approve any changes in or additions to a final form of said Official Statement, and the execution thereof by the City Manager shall be conclusive evidence of approval of any such changes and additions. The City Council hereby authorizes the distribution of the final Official Statement by the Underwriter. The final Official Statement shall be executed on behalf of the City by the City Manager.

SECTION 5. Official Actions. The Mayor, the Deputy City Manager/Internal Services Director, the City Attorney, the City Clerk and all other officers of the City are each authorized and directed on behalf of the City to make any and all leases, assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance or termination, warrants and other documents, which they or any of them deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. An Authorized Officer may revise the identity of the Leased Property as necessary in order to accomplish the purposes of this Resolution. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

SECTION 6. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

Dated: August 1, 2012

Mayor

=====

I hereby certify that Resolution No. 2012-____ was passed and adopted by the City Council of the City of Lodi in a regular/special joint meeting held August 1, 2012, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2012-____

RESOLUTION NO. 2012- ____

RESOLUTION OF THE BOARD OF DIRECTORS OF THE LODI PUBLIC FINANCING AUTHORITY AUTHORIZING THE ISSUANCE AND SALE OF 2012 REFUNDING LEASE REVENUE BONDS TO REFINANCE OUTSTANDING 2002 CERTIFICATES OF PARTICIPATION, AND APPROVING RELATED DOCUMENTS AND OFFICIAL ACTIONS

=====

WHEREAS, the City of Lodi (the "City") has previously entered into a Trust Agreement dated as of January 1, 2002, with the Lodi Public Improvement Corporation and BNY Western Trust Company, as successor trustee, under which \$26,745,000 aggregate principal amount of Certificates of Participation (2002 Public Improvement Financing Project) (the "2002 Certificates") were executed and delivered for the purpose of financing and refinancing various municipal facilities of the City; and

WHEREAS, in order to take advantage of prevailing bond market conditions, the City Council wishes to authorize the refinancing of the 2002 Certificates; and

WHEREAS, to that end, the City has proposed to lease the real property constituting its new police building and Carnegie Forum, including land and improvements (the "Leased Property") to the Lodi Public Financing Authority (the "Authority") in consideration of the payment by the Authority of an upfront rental payment which is sufficient to provide funds to refinance the 2002 Certificates; and

WHEREAS, in order to raise funds for such purpose, the Authority proposes to issue and sell its Lodi Public Financing Authority 2012 Refunding Lease Revenue Bonds in the aggregate principal amount of not to exceed \$20,000,000 (the "Refunding Bonds") under Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law"); and

WHEREAS, in order to secure the payments of principal of and interest on the Refunding Bonds, the Authority proposes to lease the Leased Property back to the City under a Lease Agreement (the "Lease Agreement"), under which the City is obligated to pay semiannual lease payments as rental for the Leased Property, and the Authority will assign substantially all of its rights under the Lease Agreement to U.S. Bank National Association, as trustee for the Refunding Bonds; and

WHEREAS, the Board of Directors wishes at this time to approve all proceedings to which it is a party relating to the issuance and sale of the Refunding Bonds and assist the City in the refinancing of the 2002 Certificates;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Lodi Public Financing Authority as follows:

SECTION 1. Issuance of Refunding Bonds. The Board of Directors hereby authorizes the issuance of the Refunding Bonds under the Bond Law in the maximum principal amount of \$20,000,000, for the purpose of providing funds to refinance the 2002 Certificates. The Refunding Bonds shall be issued under the Bond Law and the Indenture of Trust that is approved below.

SECTION 2. Approval of Related Financing Agreements. The Board of Directors hereby approves each of the following agreements required for the issuance and sale of the Refunding Bonds and the refinancing of the 2002 Certificates, in substantially the respective forms on file with the Secretary together with any changes therein or additions thereto deemed advisable by the Executive Director, the Treasurer or the General Counsel (each, an "Authorized Officer"), whose execution thereof shall be conclusive evidence of the approval of any such changes or additions. An Authorized Officer is hereby authorized and directed for and on behalf of the Authority to execute, and the Secretary is hereby authorized and directed to attest, the final form of each such agreement, as follows:

- Indenture of Trust, between the Authority and U.S. Bank National Association, as trustee (the "Trustee"), setting forth the terms and provisions relating to the Refunding Bonds.
- Site Lease, between the City as lessor and the Authority as lessee, under which the City leases the Leased Property to the Authority in consideration of the payment of an amount which will be applied by the City to refinance the 2002 Certificates.
- Lease Agreement, between the Authority as lessor and the City as lessee, under which the Authority leases the Leased Property back to the City and the City agrees to pay semiannual lease payments which are sufficient to provide revenues with which to pay principal of and interest on the Refunding Bonds when due; and
- Assignment Agreement, between the Authority and the Trustee, whereby the Authority assigns certain of its rights under the Lease Agreement to the Trustee for the benefit of the Refunding Bond owners.

SECTION 3. Negotiated Sale of Refunding Bonds. The Board of Directors hereby authorizes and directs the negotiated sale of the Refunding Bonds to JP Morgan and Stifel, Nicolaus & Company, Incorporated dba Stone & Youngberg, a Division of Stifel Nicolaus (collectively, the "Underwriter"). The Refunding Bonds shall be sold at such price and shall bear interest at such rates as shall produce a minimum net present value savings to the City of at least 3% of the principal amount of the outstanding 2002 Certificates, as such savings shall be verified and conclusively determined by the City's Financial Advisor (the "Minimum Savings Requirement"). The Underwriter's discount shall not exceed 1.0%.

SECTION 4. Official Statement. The Board of Directors hereby approves the preliminary Official Statement describing the Refunding Bonds in substantially the form on file with the Secretary. The Executive Director is hereby authorized and directed to approve any changes in or additions to said preliminary Official Statement and to execute an appropriate certificate stating the Executive Director's determination that the preliminary Official Statement (together with any changes therein or additions thereto) has been deemed nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934. Distribution of the preliminary Official Statement by the Underwriter is hereby approved. The Executive Director is hereby authorized and directed to approve any changes in or additions to a final form of said Official Statement, and the execution thereof by the Executive Director shall be conclusive evidence of

approval of any such changes and additions. The Board of Directors hereby authorizes the distribution of the final Official Statement by the Underwriter. The final Official Statement shall be executed on behalf of the Authority by the Executive Director.

SECTION 5. Official Actions. The Chair, the Executive Director, the Treasurer, the General Counsel, the Secretary and all other officers of the Authority are each authorized and directed on behalf of the Authority to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance and other documents, which they or any of them deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. An Authorized Officer may revise the identity of the Leased Property as necessary in order to accomplish the purposes of this Resolution. Whenever in this resolution any officer of the Authority is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf if such officer is absent or unavailable.

SECTION 6. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

Dated: August 1, 2012

=====

I hereby certify that Resolution No. LPFA2012-____ was passed and adopted by the Board of Directors of the Lodi Public Financing Authority in a regular/special joint meeting held August 1, 2012, by the following vote:

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

RANDI JOHL
Secretary

LPFA2012-____

[Jones Hall Letterhead]

September __, 2012

Lodi Public Financing Authority
221 West Pine Street
Lodi, CA 95240

OPINION: \$_____ Lodi Public Financing Authority 2012 Refunding Lease Revenue Bonds

Members of the Board of Directors of the Authority:

We have acted as bond counsel to the Lodi Public Financing Authority (the "Authority") in connection with the issuance by the Authority of the captioned bonds dated the date hereof (the "Bonds"). In such capacity, we have examined such law and such certified proceedings, certifications and other documents as we have deemed necessary to render this opinion.

The Bonds are issued pursuant to Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Bond Law"), the Indenture of Trust, dated as of September 1, 2012 (the "Indenture"), by and between the Authority and U.S. Bank National Association, as trustee (the "Trustee"), and a resolution (the "Resolution") of the Board of Directors of the Authority adopted ____, 2012. Under the Indenture, the Authority has pledged certain revenues (the "Revenues") for the payment of principal, premium (if any), and interest on the Bonds when due, including lease payments made by the City of Lodi (the "City") under a Lease Agreement dated as of September 1, 2012 (the "Lease Agreement") between the Authority and the City.

Regarding questions of fact material to our opinion, we have relied on representations of the Authority contained in the Indenture and the City contained in the Lease Agreement, and in the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

Based on the foregoing, we are of the opinion that, under existing law:

1. The Authority is a duly created and validly existing joint exercise of powers authority with the power to adopt the Resolution, enter into the Indenture and perform the agreements on its part contained therein, and issue the Bonds.
2. The City is a duly created and validly existing general law city with the power to enter into the Lease Agreement and perform the agreements on its part contained therein.

3. The Indenture has been duly authorized, executed and delivered by the Authority, and constitutes a valid and binding obligation of the Authority, enforceable against the Authority.

4. The Lease Agreement has been duly authorized, executed and delivered by the Authority and the City, and constitutes a valid and binding obligation of the Authority and the City, enforceable against the Authority and the City.

5. The Indenture creates a valid lien on the Revenues and other funds pledged by the Indenture for the security of the Bonds, on a parity with other bonds (if any) issued or to be issued under the Indenture.

6. The Bonds have been duly authorized and executed by the Authority, and are valid and binding limited obligations of the Authority, payable solely from the Revenues and other funds provided therefor in the Indenture.

7. Interest on the Bonds is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; it should be noted, however, that for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings. The opinions set forth in the preceding sentence are subject to the condition that the Authority and the City comply with all requirements of the Internal Revenue Code of 1986 that must be satisfied subsequent to the delivery of the Bonds in order that such interest be, or continue to be, excluded from gross income for federal income tax purposes. The Authority and the City have covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bonds in gross income for federal income tax purposes to be retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

8. Interest on the Bonds is exempt from personal income taxation imposed by the State of California.

The rights of the owners of the Bonds and the enforceability of the Bonds and the Indenture are limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur. Our engagement with respect to this matter has terminated as of the date hereof.

Respectfully submitted,

A Professional Law Corporation

ESCROW DEPOSIT AND TRUST AGREEMENT

Relating to

\$26,745,000

**Certificates of Participation
(2002 Public Improvement Financing Project)**

This ESCROW DEPOSIT AND TRUST AGREEMENT (this “**Agreement**”), dated as of September 1, 2012, is between the CITY OF LODI, a general law city and municipal corporation organized and existing under the Constitution and laws of the State of California (the “**City**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, acting as escrow agent for the Prior Certificates described below (the “**Escrow Agent**”) and as successor trustee (the “**Prior Trustee**”) for the Prior Certificates.

B A C K G R O U N D :

1. The City previously entered into a Trust Agreement dated as of January 1, 2002 (the “**Prior Trust Agreement**”), with the Lodi Public Improvement Corporation and the Prior Trustee, under which \$26,745,000 aggregate principal amount of Certificates of Participation (2002 Public Improvement Financing Project) (the “**Prior Certificates**”) were executed and delivered for the purpose of financing and refinancing various municipal facilities of the City.

2. In order to take advantage of prevailing bond market conditions, the City wishes to refinance the Prior Certificates.

3. To that end, the City has proposed to lease certain real property to the Lodi Public Financing Authority (the “**Authority**”) in consideration of the payment by the Authority of an upfront rental payment that is sufficient to provide funds to refinance the Prior Certificates.

4. In order to raise funds for such purpose, and pursuant to an Indenture of Trust, dated as of September 1, 2012 (the “**Refunding Bonds Indenture**”), the Authority proposes to issue and sell its Lodi Public Financing Authority 2012 Refunding Lease Revenue Bonds in the aggregate principal amount (the “**Refunding Bonds**”).

5. The City wishes to appoint the Escrow Agent for the purpose of establishing an irrevocable escrow fund to be funded, invested, held and administered for the purpose of providing for the payment in full of the principal and interest and premium (if any) with respect to the outstanding Prior Certificates, and to provide certain directions to the Prior Trustee with respect to the Prior Certificates.

6. As a result of the deposit and investment of funds in accordance with this Agreement, the Prior Certificates will be discharged and defeased in accordance with the provisions of Section 15.01 of the Prior Trust Agreement and prepaid in accordance with the provisions of Section 4.03 of the Prior Trust Agreement.

A G R E E M E N T :

In consideration of the premises and the material covenants contained herein, the City and U.S. Bank National Association, as Escrow Bank and Prior Trustee, hereby agree as follows:

SECTION 1. *Appointment of Escrow Agent; Establishment of Escrow Fund.* The City hereby appoints the Escrow Agent to act as escrow agent for purposes of administering the funds required to defease and prepay the Prior Certificates in accordance with the Prior Trust Agreement. The Escrow Agent is directed to establish an escrow fund (the "**Escrow Fund**") to be held by the Escrow Agent in trust as an irrevocable escrow securing the payment of the Prior Certificates as set forth below. All cash and securities in the Escrow Fund are hereby irrevocably pledged as a special fund for the payment of the principal of and interest and premium (if any) with respect to the Prior Certificates in accordance with the Prior Trust Agreement.

If at any time the Escrow Agent receives actual knowledge that the cash and securities in the Escrow Fund will not be sufficient to make any payment required by Section 4 in respect of the Prior Certificates, the Escrow Agent shall notify the City of such fact and the City shall immediately cure such deficiency from any source of legally available funds. The Escrow Agent has no liability for any such insufficiency.

SECTION 2. *Deposit and Investment of Amounts in Escrow Fund.* On August ____, 2012 (the "**Closing Date**"), the Authority, pursuant to the Refunding Bonds Indenture, will cause to be transferred to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____ in immediately available funds, to be derived from the proceeds of the Refunding Bonds.

In addition, the City hereby directs the Prior Trustee to transfer to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____, to be derived from moneys related to the Prior Certificates that are available as a result of the defeasance of the Prior Certificates.

On the Closing Date, the Escrow Agent shall invest \$_____ of the amounts deposited in the Escrow Fund in the federal securities listed on Exhibit A; the federal securities listed on Exhibit A are "Defeasance Securities" as defined in the Prior Trust Agreement. The Escrow Agent shall hold the remaining \$_____ in cash, uninvested.

SECTION 3. *Application of Amounts in Escrow Fund.* The Escrow Agent is hereby instructed to withdraw from the Escrow Fund and transfer to the Prior Trustee an amount required to pay the principal of and interest and prepayment premium (if any) on the Prior Certificates, in accordance with the schedule attached as Exhibit B hereto.

Following the payment and prepayment of the Prior Certificates in full, the Escrow Bank shall transfer any amounts remaining on deposit in the Escrow Fund to U.S. Bank National Association, as trustee for the Refunding Bonds, for deposit in the Bond Fund established under the Refunding Bonds Indenture, to be applied to pay interest next coming due and payable on the Refunding Bonds.

SECTION 4. *Irrevocable Election to Prepay Prior Certificates; Defeasance Notice.* The City has irrevocably elected to pay and prepay all of the outstanding Prior

Certificates on the date set forth in Exhibit B, in accordance with the provisions of the Prior Trust Agreement. The City previously directed the Prior Trustee to give notice of the prepayment of the Prior Certificates in accordance with the requirements of the Prior Trust Agreement, at the expense of the City, using the form set forth in Exhibit C.

The City further hereby directs the Prior Trustee to file on the Closing Date the notice attached as Exhibit D on the Municipal Securities Rulemaking Board's EMMA system.

SECTION 5. *Compensation to Escrow Agent.* The City shall pay the Escrow Agent full compensation for its services under this Agreement, including out-of-pocket costs such as publication costs, prepayment expenses, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to the purchase, substitution or withdrawal of any securities after the date hereof. Under no circumstances shall amounts deposited in or credited to the Escrow Fund be deemed to be available for said purposes. The Escrow Agent has no lien upon or right of set off against the cash and securities at any time on deposit in the Escrow Fund.

SECTION 6. *Immunities and Liability of Escrow Bank.* The Escrow Bank undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties, covenants or obligations shall be read into this Agreement against the Escrow Bank. The Escrow Bank shall not have any liability hereunder except to the extent of its negligence or willful misconduct. In no event shall the Escrow Bank be liable for any special, indirect or consequential damages. The Escrow Bank shall not be liable for any loss from any investment made by it in accordance with the terms of this Agreement. The Escrow Bank may consult with legal counsel of its own choice and the Escrow Bank shall not be liable for any action taken or not taken by it in good faith in reliance upon the opinion or advice of such counsel. The Escrow Bank shall not be liable for the recitals or representations contained in this Agreement and shall not be responsible for the validity of this Agreement, the sufficiency of the Escrow Fund or the moneys and securities to pay the principal, interest and prepayment premium with respect to the Prior Certificates.

Whenever in the administration of this Agreement the Escrow Bank deems it necessary or desirable that a matter be proved or established prior to taking or not taking any action, such matter may be deemed to be conclusively proved and established by a certificate of an authorized representative of the City and shall be full protection for any action taken or not taken by the Escrow Bank in good faith reliance thereon.

The Escrow Bank may conclusively rely as to the truth and accuracy of the statements and correctness of any opinions or calculations provided to it in connection with this Agreement and shall be protected in acting, or refraining from acting, upon any notice, instruction, request, certificate, document, opinion or other writing furnished to the Escrow Bank in connection with this Agreement and believed by the Escrow Bank to be signed by the proper party, and it need not investigate any fact or matter stated therein.

None of the provisions of this Agreement shall require the Escrow Bank to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Escrow Bank may execute any of

the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care.

The Escrow Bank may at any time resign by giving 30 days written notice of resignation to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor and, upon the acceptance by the successor of such appointment, release the resigning Escrow Bank from its obligations hereunder by written instrument, a copy of which instrument shall be delivered to the resigning Escrow Bank and the successor. If no successor shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Escrow Bank may petition any court of competent jurisdiction for the appointment of a successor.

Any bank, corporation or association into which the Escrow Bank may be merged or converted or with which it may be consolidated, or any bank, corporation or association resulting from any merger, conversion or consolidation to which the Escrow Bank shall be a party, or any bank, corporation or association succeeding to all or substantially all of the corporate trust business of the Escrow Bank shall be the successor of the Escrow Bank hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except on the part of any of the parties hereto where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

The City shall indemnify, defend and hold harmless the Escrow Bank and its officers, directors, employees, representatives and agents, from and against and reimburse the Escrow Bank for any and all claims, obligations, liabilities, losses, damages, actions, suits, judgments, reasonable costs and expenses (including reasonable attorneys' and agents' fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against the Escrow Bank directly or indirectly relating to, or arising from, claims against the Escrow Bank by reason of its participation in the transactions contemplated hereby except to the extent caused by the Escrow Bank's negligence or willful misconduct. The provisions of the foregoing sentence shall survive the termination of this Agreement or the earlier resignation or removal of the Escrow Bank.

The Escrow Bank agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail (provided, that for purposes of this Agreement, an e-mail does not constitute a notice, request or other communication hereunder but rather the portable document format or similar attachment attached to such e-mail shall constitute a notice, request or other communication hereunder), facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Escrow Bank shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the City elects to give the Escrow Bank e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Bank in its discretion elects to act upon such instructions, the Escrow Bank's understanding of such instructions shall be deemed controlling. The Escrow Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Bank's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are

inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Bank, including without limitation the risk of the Escrow Bank acting on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 7. *Termination of Agreement.* Upon payment in full of the principal of and interest and prepayment premium on the Prior Certificates and all fees, expense and charges of the Escrow Bank as described above, this Agreement shall terminate and the Escrow Bank shall be discharged from any further obligation or responsibility hereunder.

SECTION 8. *Execution in Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 9. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

CITY OF LODI

By: _____
City Manager

**U.S. BANK NATIONAL
ASSOCIATION**, as Escrow Agent and
as Prior Trustee

By _____
Authorized Officer

EXHIBIT B

ESCROW REQUIREMENTS

<u>Payment Date</u>	<u>Interest Payment</u>	<u>Prepaid Principal</u>	<u>Prepayment Premium</u>	<u>Total Payment</u>
10/1/12			\$0	

EXHIBIT C

FORM OF NOTICE OF PREPAYMENT

\$26,745,000
Certificates of Participation
(2002 Public Improvement Financing Project)

NOTICE IS HEREBY GIVEN, by the City of Lodi (the "City") that all of the captioned certificates of participation (the "2002 Certificates") have been called for prepayment under and within the meaning of the Trust Agreement, dated as of January 1, 2002 (the "2002 Trust Agreement"), on October 1, 2012 (the "Prepayment Date"), at a prepayment price equal to the par amount thereof together with accrued interest thereon to the prepayment date, without premium (the "Prepayment Price").

The 2002 Certificates consist of the following:

<u>Maturity Date</u> <u>(October 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP</u>
2013	\$690,000	4.50%	540236DV5
2014	715,000	4.50	540236DW3
2015	745,000	4.50	540236DX1
2016	775,000	5.00	540236DY9
2017	815,000	4.75	540236DZ6
2018	855,000	4.75	540236EA0
2019	895,000	4.75	540236EB8
2020	935,000	4.75	540236EC6
2021	985,000	4.75	540236ED4
2026	5,695,000	5.00	540236EE3
2031	7,265,000	5.00	540236EF9

The CUSIP number of the 2002 Certificates has been assigned by an independent service and is included in this notice solely for the convenience of the Owners and neither U.S. Bank National Association, as trustee for the 2002 Certificates (the "2002 Trustee") or the City of Lodi shall be liable for any inaccuracies in such numbers.

Prepayment of the 2002 Certificates as described in this notice shall be conditioned upon the receipt by the 2002 Trustee from the City of the funds necessary for the proposed prepayment on or before the Prepayment Date.

Payment of the Prepayment Price of the 2002 Certificates called for prepayment will become due and payable on the Prepayment Date upon presentation and surrender thereof in the following manner:

If by Mail: (REGISTERED CERTIFICATES)

U. S. Bank Trust National
Association
Corporate Trust Services
P. O. Box 64111
St. Paul, MN 55164-0111

If by Hand or Overnight Mail:

U.S. Bank Corporate Trust
Services 60 Livingston Avenue
1st FL - Bond Drop Window
St. Paul, MN 55107

Please call Bondholder Services at (800) 934-6802 with any questions.

Holders of the 2002 Certificates presenting their 2002 Certificates in person for same day payment **must** surrender their bond(s) by 1:00 P.M. CST on the Prepayment Date and a check will be available for pick up after 2:00 P.M. CST. Checks not picked up by 4:30 P.M. CST will be mailed out to the certificate holders via first class mail. If payment of the Prepayment Price is to be made to the registered owner of the 2002 Certificate, you are not required to endorse the 2002 Certificate to collect the Prepayment Price.

Interest on the principal amount designated to be prepaid shall cease to accrue on and after the Prepayment Date.

IMPORTANT NOTICE

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Act"), 28% will be withheld if tax identification number is not properly certified.

Dated: August 27, 2012

U.S. BANK NATIONAL ASSOCIATION

EXHIBIT D

FORM OF NOTICE OF DEFEASANCE

\$26,745,000
Certificates of Participation
(2002 Public Improvement Financing Project)

NOTICE IS HEREBY GIVEN, by the City of Lodi (the "City") that the captioned certificates of participation (the "2002 Certificates") have been defeased and discharged under and within the meaning of the Trust Agreement, dated as of January 1, 2002, relating to the 2002 Certificates (the "2002 Trust Agreement"). Funds for the payment of the 2002 Certificates have been deposited with U.S. Bank National Association, as escrow bank, and the sufficiency of the funds and investments for the purpose of paying the principal of and interest on the 2002 Certificates has been verified by Causey Demgen & Moore, certified public accountants.

As a consequence of the foregoing actions and in accordance with the 2002 Trust Agreement, all obligations of U.S. Bank National Association, as successor trustee for the 2002 Certificates, the Lodi Public Improvement Corporation and the City with respect to the 2002 Certificates has ceased and terminated, except the obligation to use moneys set aside in escrow as described above and, if necessary, from other legally available funds of the City.

The outstanding 2002 Certificates consist of the following:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP</u>
2013	\$690,000	4.50%	540236DV5
2014	715,000	4.50	540236DW3
2015	745,000	4.50	540236DX1
2016	775,000	5.00	540236DY9
2017	815,000	4.75	540236DZ6
2018	855,000	4.75	540236EA0
2019	895,000	4.75	540236EB8
2020	935,000	4.75	540236EC6
2021	985,000	4.75	540236ED4
2026	5,695,000	5.00	540236EE3
2031	7,265,000	5.00	540236EF9

The CUSIP number of the 2002 Certificates has been assigned by an independent service and is included in this notice solely for the convenience of the Owners and neither U.S. Bank National Association, as trustee for the 2002 Certificates (the "2002 Trustee") or the City of Lodi shall be liable for any inaccuracies in such numbers.

The City has irrevocably elected to prepay all of the outstanding 2002 Certificates on October 1, 2012, at a prepayment price equal to the par amount thereof together with accrued interest thereon to the prepayment date, without premium.

Please call Bondholder Services at (800) 934-6802 with any questions.

Dated: September 5, 2012

U.S. BANK NATIONAL ASSOCIATION

CITY OF LODI LETTERHEAD

August 1, 2012

BY EMAIL (myrna.presto-choroski@usbank.com)

Myrna Presto-Choroski
Vice President
U.S. Bank National Association
One California Street
Suite 1000, SF-CA-SF10
San Francisco, CA 94111

Re: ***\$26,745,000 City of Lodi Certificates of Participation (2002 Public Improvement Financing Project)***

Dear Myrna:

As a "City Representative" under that certain Trust Agreement, dated as of January 1, 2002 (the "**Prior Trust Agreement**") (the "Trust Agreement") relating to the above-referenced certificates of participation (the "Certificates"), this constitutes a Written Request of the City directing U.S. Bank National Association, as trustee for the Certificates (the "Trustee"), to mail a conditional prepayment notice on August 27, 2012 in substantially the form attached to this letter according to the provisions of Sections 4.03 and 4.06 of the Trust Agreement.

Please contact me with any questions.

Sincerely,

Jordan Ayers
Deputy City Manager/Internal Services Director

TO BE MAILED ON AUGUST 27, 2012

FORM OF NOTICE OF PREPAYMENT

\$26,745,000
Certificates of Participation
(2002 Public Improvement Financing Project)

NOTICE IS HEREBY GIVEN, by the City of Lodi (the "City") that all of the captioned certificates of participation (the "2002 Certificates") have been called for prepayment under and within the meaning of the Trust Agreement, dated as of January 1, 2002 (the "2002 Trust Agreement"), on October 1, 2012 (the "Prepayment Date"), at a prepayment price equal to the par amount thereof together with accrued interest thereon to the prepayment date, without premium (the "Prepayment Price").

The 2002 Certificates consist of the following:

<u>Maturity Date</u> <u>(October 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP</u>
2013	\$690,000	4.50%	540236DV5
2014	715,000	4.50	540236DW3
2015	745,000	4.50	540236DX1
2016	775,000	5.00	540236DY9
2017	815,000	4.75	540236DZ6
2018	855,000	4.75	540236EA0
2019	895,000	4.75	540236EB8
2020	935,000	4.75	540236EC6
2021	985,000	4.75	540236ED4
2026	5,695,000	5.00	540236EE3
2031	7,265,000	5.00	540236EF9

The CUSIP number of the 2002 Certificates has been assigned by an independent service and is included in this notice solely for the convenience of the Owners and neither U.S. Bank National Association, as trustee for the 2002 Certificates (the "2002 Trustee") or the City of Lodi shall be liable for any inaccuracies in such numbers.

Prepayment of the 2002 Certificates as described in this notice shall be conditioned upon the receipt by the 2002 Trustee from the City of the funds necessary for the proposed prepayment on or before the Prepayment Date.

Payment of the Prepayment Price of the 2002 Certificates called for prepayment will become due and payable on the Prepayment Date upon presentation and surrender thereof in the following manner:

If by Mail: (REGISTERED CERTIFICATES)

U. S. Bank Trust National
Association
Corporate Trust Services
P. O. Box 64111
St. Paul, MN 55164-0111

If by Hand or Overnight Mail:

U.S. Bank Corporate Trust
Services 60 Livingston Avenue
1st FL - Bond Drop Window
St. Paul, MN 55107

Please call Bondholder Services at (800) 934-6802 with any questions.

Holders of the 2002 Certificates presenting their 2002 Certificates in person for same day payment **must** surrender their bond(s) by 1:00 P.M. CST on the Prepayment Date and a check will be available for pick up after 2:00 P.M. CST. Checks not picked up by 4:30 P.M. CST will be mailed out to the certificate holders via first class mail. If payment of the Prepayment Price is to be made to the registered owner of the 2002 Certificate, you are not required to endorse the 2002 Certificate to collect the Prepayment Price.

Interest on the principal amount designated to be prepaid shall cease to accrue on and after the Prepayment Date.

IMPORTANT NOTICE

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Act"), 28% will be withheld if tax identification number is not properly certified.

Dated: August 31, 2012

U.S. BANK NATIONAL ASSOCIATION

TO BE RECORDED AND WHEN RECORDED

RETURN TO:

Jones Hall, A Professional Law Corporation
650 California Street, 18th Floor
San Francisco, California 94108
Attention: Christopher K. Lynch

THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (this “**Agreement**”), dated for convenience as of September 1, 2012, is between the LODI PUBLIC FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the “**Authority**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as trustee (the “**Trustee**”).

BACKGROUND:

1. The City previously caused execution and delivery of its Certificates of Participation (2002 Public Improvement Financing Project) in the aggregate initial principal amount of \$26,745,000 (the “**2002 Certificates**”) for the purpose of (i) financing the costs of constructing, furnishing and equipping a new police building and jail for the City, (ii) financing portions of other projects, (iii) refunding on a current basis the City’s \$3,985,000 aggregate principal amount of outstanding Certificates of Participation (1995 Public Improvement Financing Project) and refunding on an advance basis the City’s \$8,440,000 aggregate principal amount of outstanding Certificates of Participation (1996 Public Improvement Financing Project) and (iv) paying the costs of execution and delivery of the 2002 Certificates.

2. The City is proceeding to refinance its outstanding 2002 Certificates.

3. To that end, the City has leased the real property constituting its new police building and Carnegie Forum, including land and improvements, as more particularly described in Appendix A attached hereto and by this reference incorporated herein (the “**Leased Property**”), to the Authority under a Site Lease dated as of September 1, 2012, which has been recorded concurrently herewith (the “**Site Lease**”), in consideration of the payment by the Authority of an upfront rental payment (the “**Site Lease Payment**”) which is sufficient to provide funds for the prepayment of the 2002 Certificates.

4. The Authority has authorized the issuance of its Lodi Public Financing Authority 2012 Refunding Lease Revenue Bonds in the aggregate principal amount of \$_____ (the "**Bonds**") under an Indenture of Trust dated as of September 1, 2012 (the "**Indenture**"), between the Authority and the Trustee, for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with the Site Lease.

5. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Bonds, the Authority has agreed to lease the Leased Property back to the City under the Lease Agreement dated as of September 1, 2012 which has been recorded concurrently herewith (the "**Lease**") under which the City has agreed to pay semiannual Lease Payments as the rental for the Leased Property.

6. The Authority has requested the Trustee to enter into this Agreement for the purpose of assigning certain of its rights under the Lease to the Trustee for the benefit of the Bond owners.

A G R E E M E N T :

In consideration of the material covenants contained in this Agreement, the parties hereto hereby formally covenant, agree and bind themselves as follows:

SECTION 1. *Defined Terms.* All capitalized terms not otherwise defined herein have the respective meanings given those terms in the Indenture.

SECTION 2. *Assignment.* The Authority hereby assigns to the Trustee, for the benefit of the Owners of all Bonds which are issued and Outstanding under the Indenture, all of the Authority's rights under the Lease (excepting only the Authority's rights under Sections 4.5, 5.10, 7.3 and 8.4 of the Lease), including but not limited to:

- (a) the right to receive and collect all of the Lease Payments from the City under the Lease;
- (b) the right to receive and collect any proceeds of any insurance maintained thereunder with respect to the Leased Property, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Leased Property; and
- (c) the right to exercise such rights and remedies conferred on the Authority under the Lease as may be necessary or convenient (i) to enforce payment of the Lease Payments and any amounts required to be deposited in the Insurance and Condemnation Fund established under Section 5.07 of the Indenture, or (ii) otherwise to protect the interests of the Bond Owners in the event of a default by the City under the Lease.

The Trustee shall administer all of the rights assigned to it by the Authority under this Agreement in accordance with the provisions of the Indenture, for the benefit of the Owners of Bonds. The assignment made under this Section 2 is absolute and irrevocable, and without recourse to the Authority.

SECTION 3. *Acceptance.* The Trustee hereby accepts the assignments made herein for the purpose of securing the payments due under the Lease and Indenture to, and the rights under the Lease and Indenture of, the Owners of the Bonds, all subject to the provisions of the Indenture. The recitals contained herein are those of the Authority and not of the Trustee, and the Trustee assumes no responsibility for the correctness thereof.

SECTION 4. *Conditions.* This Agreement confers no rights and imposes no duties upon the Trustee beyond those expressly provided in the Indenture. The assignment hereunder to the Trustee is solely in its capacity as Trustee under the Indenture.

SECTION 5. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts, each of which is an original and all together constitute one and the same agreement. Separate counterparts of this Agreement may be separately executed by the Trustee and the Authority, both with the same force and effect as though the same counterpart had been executed by the Trustee and the Authority.

SECTION 6. *Binding Effect.* This Agreement inures to the benefit of and binds the Authority and the Trustee, and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 7. *Governing Law.* This Agreement is governed by the Constitution and laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the day and year first written above.

LODI PUBLIC FINANCING AUTHORITY

By _____
Executive Director

Attest:

Secretary

**U.S. BANK NATIONAL ASSOCIATION, as
Trustee**

By _____
Authorized Officer

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of that certain real property situated in the City of Lodi, County of San Joaquin, which is more particularly described as follows:

INDENTURE OF TRUST

Dated as of September 1, 2012

between

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

and the

LODI PUBLIC FINANCING AUTHORITY

Authorizing the Issuance of

\$ _____
Lodi Public Financing Authority
2012 Refunding Lease Revenue Bonds

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APPENDIX A	DEFINITIONS
APPENDIX B	FORM OF BOND

INDENTURE OF TRUST

This INDENTURE OF TRUST (this “**Indenture**”), dated for convenience as of September 1, 2012, is between the LODI PUBLIC FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the “**Authority**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, with a corporate trust office in San Francisco, California, being qualified to accept and administer the trusts hereby created (the “**Trustee**”).

BACKGROUND:

1. The City previously caused execution and delivery of its Certificates of Participation (2002 Public Improvement Financing Project) in the aggregate initial principal amount of \$26,745,000 (the “**2002 Certificates**”) for the purpose of (i) financing the costs of constructing, furnishing and equipping a new police building and jail for the City, (ii) financing portions of other projects, (iii) refunding on a current basis the City’s \$3,985,000 aggregate principal amount of outstanding Certificates of Participation (1995 Public Improvement Financing Project) and refunding on an advance basis the City’s \$8,440,000 aggregate principal amount of outstanding Certificates of Participation (1996 Public Improvement Financing Project) and (iv) paying the costs of execution and delivery of the 2002 Certificates.

2. The City is proceeding to refinance its outstanding 2002 Certificates.

3. To that end, the City has leased the real property constituting its new police building and Carnegie Forum, including land and improvements (the “**Leased Property**”), to the Authority under a Site Lease dated as of September 1, 2012 (the “**Site Lease**”), in consideration of the payment by the Authority of an upfront rental payment (the “**Site Lease Payment**”) which is sufficient to provide funds for the prepayment of the 2002 Certificates.

4. The Authority has authorized the issuance of its Lodi Public Financing Authority 2012 Refunding Lease Revenue Bonds in the aggregate principal amount of \$_____ (the “**Bonds**”) under this Indenture for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with the Site Lease.

5. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Bonds, the Authority has leased the Leased Property back to the City under a Lease Agreement dated as of September 1, 2012 (the “**Lease**”), under which the City has agreed to pay semiannual Lease Payments as the rental for the Leased Property thereunder.

6. The lease payments made by the City under the Lease have been assigned by the Authority to the Trustee for the security of the Bonds under an Assignment Agreement dated as of September 1, 2012, between the Authority as assignor and the Trustee as assignee.

7. In order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued

and to secure the payment of the principal thereof, premium (if any) and interest thereon, the Authority has authorized the execution and delivery of this Indenture.

8. The Authority has found and determined, and hereby affirms, that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Indenture have been in all respects duly authorized.

A G R E E M E N T :

In order to secure the payment of the principal of and the interest and redemption premium (if any) on all the Outstanding Bonds under this Indenture according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the Authority and the Trustee do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in Appendix A attached to this Indenture have the respective meanings specified in that Appendix when used in this Indenture.

SECTION 1.02. *Authorization.* Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Indenture, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

SECTION 1.03. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

THE BONDS

SECTION 2.01. *Authorization of Bonds.* The Authority has reviewed all proceedings heretofore taken and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now duly empowered, under each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture.

The Authority hereby authorizes the issuance of Bonds in the aggregate principal amount of \$_____ under the Bond Law for the purposes of providing funds to pay the Site Lease Payment to the City and thereby provide funds to prepay the 2002 Certificates. The Bonds are authorized and issued under, and are subject to the terms of, this Indenture and the Bond Law. The Bonds are designated the "Lodi Public Financing Authority 2012 Refunding Lease Revenue Bonds."

SECTION 2.02. *Terms of the Bonds.*

(a) Payment Provisions. The Bonds shall be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof, so long as no Bond has more than one maturity date. The Bonds shall mature on October 1 in each of the years and in the amounts, and bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rates, as follows:

<u>Maturity Date</u> <u>(October 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Maturity Date</u> <u>(October 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>
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Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- (a) a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,

- (b) a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date, or
- (c) interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Interest is payable on each Interest Payment Date to the persons in whose names the ownership of the Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any Bond which is not punctually paid or duly provided for on any Interest Payment Date is payable to the person in whose name the ownership of such Bond is registered on the Registration Books at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice of which is given to such Owner by first-class mail not less than 10 days prior to such special record date.

The Trustee will pay interest on the Bonds by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. At the written request of the Owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date, the Trustee will pay interest on such Bonds on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as specified in such written request, which written request will remain in effect until rescinded in writing by the Owner. The Trustee will pay principal of the Bonds in lawful money of the United States of America by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee.

SECTION 2.03. *Transfer and Exchange of Bonds.*

(a) Transfer. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. The Trustee shall require the Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer. Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like series, interest rate, maturity and aggregate principal amount. The Authority shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer of Bonds.

(b) Exchange. The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations and of the same series, interest rate and maturity. The Trustee shall require the Owner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange. The Authority shall pay the cost of printing Bonds and any

services rendered or expenses incurred by the Trustee in connection with any exchange of Bonds.

(c) Limitations. The Trustee may refuse to transfer or exchange, under the provisions of this Section 2.03, any Bonds selected by the Trustee for redemption under Article IV, or any Bonds during the period established by the Trustee for the selection of Bonds for redemption.

SECTION 2.04. *Book-Entry System.*

(a) Original Delivery. The Bonds will be initially delivered in the form of a separate single fully registered bond (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the Trustee shall register the ownership of each Bond on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, the Authority and the Trustee has no responsibility or obligation to any Depository System Participant or to any person on behalf of which the Nominee holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, the Authority and the Trustee has no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed if the Authority elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest on the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds. The Authority and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal of and premium, if any, and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal of and the interest and premium, if any, on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest and premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner shall receive a Bond evidencing the obligation of the Authority to make payments of principal, interest and premium, if any, under this Indenture. Upon delivery by the Depository to the Authority of written notice to the effect that the Depository has determined to substitute a new Nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the Authority shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the Authority shall execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds. The execution

and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the Authority or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Bond Owners. Upon the written acceptance by the Trustee, the Trustee shall agree to take all action reasonably necessary for all representations of the Trustee in such letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of such letter, the Authority may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. If either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the Authority determines to terminate the Depository as such, then the Authority shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the Authority and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the Authority fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions hereof.

If the Authority determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Authority may notify the Depository System Participants of the availability of such certificated Bonds through the Depository. In such event, the Trustee will issue, transfer and exchange Bonds as required by the Depository and others in appropriate amounts; and whenever the Depository requests, the Trustee and the Authority shall cooperate with the Depository in taking appropriate action (y) to make available one or more separate certificates evidencing the Bonds to any Depository System Participant having Bonds credited to its account with the Depository, or (z) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Bonds, all at the Authority's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

SECTION 2.05. *Registration Books.* The Trustee will keep or cause to be kept, at the Office of the Trustee, sufficient records for the registration and transfer of ownership of the Bonds, which shall upon reasonable notice as agreed to by the Trustee, be open to inspection during regular business hours by the Authority; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds as hereinbefore provided.

SECTION 2.06. *Form and Execution of Bonds.* The Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, are set forth in Appendix B attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The Chairman of the Authority shall execute, and the Secretary of the Authority shall attest each Bond. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Bond ceases to be such officer before the Closing Date, such signature will nevertheless be as effective as if the officer had remained in office until the Closing Date. Any Bond may be signed and attested on behalf of the Authority by such persons as at the actual date of the execution of such Bond are the proper officers of the Authority, duly authorized to execute debt instruments on behalf of the Authority, although on the date of such Bond any such person was not an officer of the Authority.

Only those Bonds bearing a certificate of authentication in the form set forth in Appendix B, manually executed and dated by the Trustee, are valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee is conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.07. *Bonds Mutilated, Lost, Destroyed or Stolen.* If any Bond is mutilated, the Authority, at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. The Trustee shall cancel every mutilated Bond surrendered to it and deliver such mutilated Bond to, or upon the order of, the Authority. If any Bond is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence is satisfactory and if indemnity satisfactory to the Trustee is given, the Authority, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Trustee in connection therewith. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen will constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued under this Indenture.

Notwithstanding any other provision of this Section 2.07, in lieu of delivering a new Bond for which principal has become due for a Bond which has been mutilated, lost, destroyed or stolen, the Trustee may make payment of such Bond in accordance with its terms upon receipt of indemnity satisfactory to the Trustee.

ARTICLE III

ISSUANCE OF BONDS; APPLICATION OF PROCEEDS

SECTION 3.01. *Issuance of the Bonds.* At any time after the execution of this Indenture, the Authority may execute and the Trustee shall authenticate and, upon the Written Request of the Authority, deliver the Bonds to the Original Purchaser.

SECTION 3.02. *Application of Proceeds of Sale of Bonds; Transfer of Prior Funds.* Upon the receipt of payment for the Bonds on the Closing Date, the Trustee shall deposit the proceeds thereof into a temporary account, which shall be disbursed in full on the Closing Date (whereupon said temporary account shall be closed) as follows:

- (a) The Trustee shall deposit the amount of \$_____ into the Costs of Issuance Fund.
- (b) The Trustee shall transfer the amount of \$_____, constituting the remainder of such proceeds and representing the full amount of the Site Lease Payment, to the 2002 Trustee for application pursuant to the Escrow Agreement.

In addition to the foregoing transfers, on the Closing Date the 2002 Trustee will withdraw the amount of \$_____ from the [specify funds] established for the 2002 Certificates and deposit such amounts into the Escrow Fund for application pursuant to the Escrow Agreement.

SECTION 3.03. *Establishment and Application of Costs of Issuance Fund.* The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Costs of Issuance Fund" into which the Trustee shall deposit a portion of the proceeds of sale of the Bonds under Section 3.02(a). The Trustee shall disburse amounts in the Costs of Issuance Fund from time to time to pay the Costs of Issuance upon submission of a Written Requisition of the Authority stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. Each such Written Requisition of the Authority shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. The Trustee may conclusively rely on such Written Requisitions and shall be fully protected in relying thereon. On November 1, 2012, or upon the earlier Written Request of the Authority, the Trustee shall transfer all amounts remaining in the Costs of Issuance Fund to the Interest Account and shall thereupon close the Costs of Issuance Fund.

SECTION 3.04. *Validity of Bonds.* The recital contained in the Bonds that the same are issued under the Constitution and laws of the State of California shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

ARTICLE IV

REDEMPTION OF BONDS

SECTION 4.01. *Terms of Redemption.*

(a) Optional Redemption. The Bonds maturing on or before October 1, 2022, are not subject to redemption prior to their respective stated maturities. The Bonds maturing on or after October 1, 2023, are subject to redemption in whole, or in part at the election of the Authority among maturities on such basis as shall be designated by the Authority and by lot within a maturity, at the option of the Authority, on any date on or after October 1, 2022, from any available source of funds, at a redemption price equal to 100% of the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium.

The Authority must give the Trustee written notice of its intention to redeem Bonds under this subsection (a), and the manner of selecting such Bonds for redemption from among the maturities thereof, in sufficient time to enable the Trustee to give notice of such redemption in accordance with Section 4.03.

(b) Special Mandatory Redemption From Insurance or Condemnation Proceeds. The Bonds are subject to redemption as a whole, or in part on a pro rata basis among maturities, on any date, from any Net Proceeds required to be used for such purpose as provided in Section 5.07, at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

SECTION 4.02. *Selection of Bonds for Redemption.* Whenever provision is made in this Indenture for the redemption of less than all of the Bonds of a single maturity, the Trustee shall select the Bonds of that maturity to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate \$5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond.

SECTION 4.03. *Notice of Redemption; Rescission.* The Trustee shall mail notice of redemption of the Bonds by first class mail, postage prepaid, not less than 30 nor more than 60 days before any redemption date, to the respective Owners of any Bonds designated for redemption at their addresses appearing on the Registration Books and to one or more Securities Depositories and to the Municipal Securities Rulemaking Board as provided in the Continuing Disclosure Certificate. Each notice of redemption shall state the date of the notice, the redemption date, the place or places of redemption, whether less than all of the Bonds (or all Bonds of a single maturity) are to be redeemed, the CUSIP numbers and (in the event that not all Bonds within a maturity are called for redemption) Bond numbers of the Bonds to be redeemed and the maturity or maturities of the Bonds to be redeemed, and in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on the redemption date there will become due and payable on each of said Bonds the redemption price thereof, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered. Neither the failure to receive any notice nor any defect therein shall affect the sufficiency of the proceedings for such redemption or the cessation of accrual of

interest from and after the redemption date. Notice of redemption of Bonds shall be given by the Trustee, at the expense of the Authority, for and on behalf of the Authority.

The Authority has the right to rescind any notice of the redemption of Bonds under Section 4.01(a) by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default. The Authority and the Trustee have no liability to the Bond Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this Section.

SECTION 4.04. *Partial Redemption of Bonds.* Upon surrender of any Bonds redeemed in part only, the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bonds surrendered.

SECTION 4.05. *Effect of Redemption.* Notice of redemption having been duly given as aforesaid, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, including any applicable premium, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Bonds redeemed under the provisions of this Article shall be canceled by the Trustee upon surrender thereof and destroyed in accordance with the retention policy of the Trustee then in effect.

ARTICLE V

REVENUES; FUNDS AND ACCOUNTS; PAYMENT OF PRINCIPAL AND INTEREST

SECTION 5.01. *Security for the Bonds; Bond Fund.*

(a) Pledge of Revenues and Other Amounts. Subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, all of the Revenues and all amounts (including proceeds of the sale of the Bonds) held in any fund or account established under this Indenture are hereby pledged to secure the payment of the principal of and interest and premium (if any) on the Bonds in accordance with their terms and the provisions of this Indenture. Said pledge constitutes a lien on and security interest in the Revenues and such amounts and shall attach, be perfected and be valid and binding from and after the Closing Date, without the need for any physical delivery thereof or further act.

(b) Assignment to Trustee. Under the Assignment Agreement, the Authority has transferred to the Trustee all of the rights of the Authority in the Lease (other than the rights of the Authority under Sections 4.5, 5.10, 7.3 and 8.4 thereof). The Trustee is entitled to collect and receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee is also entitled to and shall, subject to the provisions of Article VIII, take all steps, actions and proceedings which the Trustee determines to be reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the City under the Lease.

(c) Deposit of Revenues in Bond Fund. All Revenues shall be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the "Bond Fund" which the Trustee shall establish, maintain and hold in trust; except that all moneys received by the Trustee and required hereunder or under the Lease to be deposited in the Redemption Fund or the Insurance and Condemnation Fund shall be promptly deposited in such funds. All Revenues deposited with the Trustee shall be held, disbursed, allocated and applied by the Trustee only as provided in this Indenture. Any surplus remaining in the Bond Fund, after payment in full of (i) the principal of and interest on the Bonds or provision therefore under Article X, and (ii) any applicable fees and expenses to the Trustee, shall be withdrawn by the Trustee and remitted to the City.

SECTION 5.02. *Allocation of Revenues.* On or before each Interest Payment Date, the Trustee shall transfer from the Bond Fund and deposit into the following respective accounts (each of which the Trustee shall establish and maintain within the Bond Fund), the following amounts in the following order of priority:

(a) Deposit to Interest Account. The Trustee shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to be at least equal to the amount of interest becoming due and payable on such Interest Payment Date on all Bonds then Outstanding.

- (b) Deposit to Principal Account. The Trustee shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Bonds coming due and payable on such Interest Payment Date.

SECTION 5.03. *Application of Interest Account.* All amounts in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it comes due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity).

SECTION 5.04. *Application of Principal Account.* All amounts in the Principal Account shall be used and withdrawn by the Trustee solely to pay the principal amount of the Bonds at their respective maturity dates.

SECTION 5.05. *Reserved.*

SECTION 5.06. *Application of Redemption Fund.* The Trustee shall establish and maintain the Redemption Fund, into which the Trustee shall deposit a portion of the Revenues received, in accordance with a Written Request of the Authority, amounts in which shall be used and withdrawn by the Trustee solely for the purpose of paying the principal and premium (if any) of the Bonds to be redeemed under Section 4.01; *provided, however,* that at any time prior to the selection of Bonds for redemption, the Trustee may apply such amounts to the purchase of Bonds at public or private sale, when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as shall be directed under a Written Request of the Authority, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Bonds. The Trustee shall be entitled to conclusively rely on any Written Request of the Authority received under this Section 5.06, and shall be fully protected in relying thereon.

SECTION 5.07. *Insurance and Condemnation Fund.*

(a) Establishment of Fund. Upon the receipt of proceeds of insurance or eminent domain with respect to the Leased Property, the Trustee shall establish and maintain an Insurance and Condemnation Fund, to be held and applied as hereinafter set forth in this Section 5.07.

(b) Application of Insurance Proceeds. Any Net Proceeds of insurance against accident to or destruction of the Leased Property collected by the City or the Authority in the event of any such accident or destruction shall be paid to the Trustee under Section 6.3 of the Lease and deposited by the Trustee promptly upon receipt thereof in the Insurance and Condemnation Fund. If the City fails to determine and notify the Trustee in writing of its determination, within 45 days following the date of such deposit, to replace, repair, restore, modify or improve the Leased Property which has been damaged or destroyed, then such Net Proceeds shall be promptly transferred by the Trustee to the Redemption Fund and applied to the redemption of Bonds under Section 4.01(b). Notwithstanding the foregoing sentence, however, if the Leased Property is damaged or destroyed in full, the Net Proceeds of such insurance shall be used by the City to rebuild or replace the Leased Property if such proceeds are not sufficient to redeem Outstanding Bonds equal in aggregate principal amount to the unpaid Lease Payments allocable to the Leased Property. All proceeds deposited in the Insurance

and Condemnation Fund and not so transferred to the Redemption Fund shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Leased Property by the City, upon receipt of a Written Request of the City which: (i) states with respect to each payment to be made (A) the requisition number, (B) the name and address of the person to whom payment is due, (C) the amount to be paid and (D) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund and has not been the basis of any previous withdrawal; and (ii) specifies in reasonable detail the nature of the obligation. Any balance of the proceeds remaining after such work has been completed as certified by the City under a Written Certificate to the Trustee shall be paid to the City. The Trustee shall be entitled to conclusively rely on any Written Request or Written Certificate received under this subsection (b) of this Section 5.07 and in each case, shall be fully protected in relying thereon.

(c) Application of Eminent Domain Proceeds. If all or any part of the Leased Property is taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Authority shall deposit or cause to be deposited with the Trustee the Net Proceeds therefrom, which the Trustee shall deposit in the Insurance and Condemnation Fund under Section 6.2(b) of the Lease and which shall be applied and disbursed by the Trustee as follows:

- (i) If the City has not given written notice to the Trustee, within 45 days following the date on which such Net Proceeds are deposited with the Trustee, of its determination that such Net Proceeds are needed for the replacement of the Leased Property or such portion thereof, the Trustee shall transfer such Net Proceeds to the Redemption Fund to be applied towards the redemption of the Bonds under Section 4.01(b).
- (ii) If the City has given written notice to the Trustee, within 45 days following the date on which such Net Proceeds are deposited with the Trustee, of its determination that such Net Proceeds are needed for replacement of the Leased Property or such portion thereof, the Trustee shall pay to the City, or to its order, from said proceeds such amounts as the City may expend for such replacement, upon the filing of Written Requisitions of the City as agent for the Authority in the form and containing the provisions set forth in Appendix C.

In each case, the Trustee may conclusively rely upon any notice received under this subsection (c)(ii) of this Section and is protected in relying thereon.

(d) Reliance on Independent Advice. In making any such determination whether to repair, replace or rehabilitate the Leased Property under this Section 5.07, the City may obtain, but is not required to obtain, at its expense, the report of an independent engineer or other independent professional consultant, a copy of which must be filed with the Trustee. The Trustee shall have no duty to review or examine such report. Any such determination by the City is final.

SECTION 5.08. *Investments.* All moneys in any of the funds or accounts established with the Trustee under this Indenture shall be invested by the Trustee solely

in Permitted Investments. Such investments shall be directed by the Authority in a Written Request of the Authority filed with the Trustee at least 2 Business Days in advance of the making of such investments. In the absence of any such directions from the Authority, the Trustee shall invest any such moneys in Permitted Investments which constitute money market funds; provided, however, that any such investment shall be made by the Trustee only if, prior to the date on which such investment is to be made, the Trustee shall have received a Written Request of the Authority specifying a specific money market fund and, if no such Written Request of the Authority is so received, the Trustee shall hold such moneys uninvested. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. To the extent Permitted Investments are registrable, such Permitted Investments must be registered in the name of the Trustee.

All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in the Bond Fund. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee or any of its affiliates may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made under this Section 5.09.

The Trustee may make any investments hereunder through its own bond or investment department or trust investment department, or those of its parent or any affiliate. The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder. The Trustee is hereby authorized, in making or disposing of any investment permitted by this Section, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Trustee or for any third person or is dealing as a principal for its own account.

The Trustee shall furnish the Authority periodic cash transaction statements which include detail for all investment transactions effected by the Trustee or brokers selected by the Authority. Upon the Authority's election, such statements will be delivered via the Trustee's Online Trust and Custody service and upon electing such service, paper statements will be provided only upon request. The Authority waives the right to receive brokerage confirmations of security transactions effected by the Trustee as they occur, to the extent permitted by law. The Authority further understands that trade confirmations for securities transactions effected by the Trustee will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

SECTION 5.09. *Valuation and Disposition of Investments.*

(a) Except as otherwise provided in subsection (b) of this Section, the Authority covenants that all investments of amounts deposited in any fund or account created by or under this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of Section 148 of the Tax Code) shall be acquired, disposed of and valued at the Fair Market Value thereof as such term is defined in subsection (d) below. The Trustee shall have no duty in connection with the determination of Fair Market Value other than to follow the investment directions of the Authority in any Written Request of the Authority.

(b) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code; provided that the Authority shall inform the Trustee in writing which funds are subject to a yield restriction.

(c) For the purpose of determining the amount in any fund or account established hereunder, the value of Permitted Investments credited to such fund shall be valued by the Trustee at least annually on or before July 15. The Trustee may sell or present for redemption, any Permitted Investment so purchased by the Trustee whenever it is necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

(d) For purposes of this Section 5.09, the term "Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, or (iii) the investment is a United States Treasury Security -- State and Local Government Series which is acquired in accordance with applicable regulations of the United States Bureau of Public Debt.

(e) To the extent of any valuations made by the Trustee hereunder, the Trustee may utilize and rely upon computerized securities pricing services that may be available to it, including those available through its regular accounting system.

ARTICLE VI

COVENANTS OF THE AUTHORITY

SECTION 6.01. *Punctual Payment.* The Authority shall punctually pay or cause to be paid the principal of and interest and premium (if any) on all the Bonds in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of the Revenues and other amounts pledged for such payment as provided in this Indenture.

SECTION 6.02. *Extension of Payment of Bonds.* The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which have not been so extended. Nothing in this Section 6.02 limits the right of the Authority to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance does not constitute an extension of maturity of the Bonds.

SECTION 6.03. *Against Encumbrances.* The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under this Indenture while any of the Bonds are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, and reserves the right to issue other obligations for such purposes.

SECTION 6.04. *Power to Issue Bonds and Make Pledge and Assignment.* The Authority is duly authorized under law to issue the Bonds and to enter into this Indenture and to pledge and assign the Revenues and other amounts purported to be pledged and assigned, respectively, under this Indenture and under the Assignment Agreement in the manner and to the extent provided in this Indenture and the Assignment Agreement. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee shall at all times, subject to the provisions of Article VIII and to the extent permitted by law, defend, preserve and protect said pledge and assignment of Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

SECTION 6.05. *Accounting Records.* The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds and all funds and accounts established under this Indenture. The Trustee shall make such books of record and account available for inspection by the Authority and the City, during business hours, upon reasonable notice, and under reasonable circumstances.

SECTION 6.06. *Limitation on Additional Obligations.* The Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part.

SECTION 6.07. *Tax Covenants.*

(a) Private Business Use Limitation. The Authority shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(b) Federal Guarantee Prohibition. The Authority may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(c) No Arbitrage. The Authority may not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(d) Maintenance of Tax Exemption. The Authority shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

(e) Rebate of Excess Investment Earnings to United States. The Authority shall calculate or cause to be calculated all amounts of excess investment earnings with respect to the Bonds which are required to be rebated to the United States of America under Section 148(f) of the Tax Code, at the times and in the manner required under the Tax Code. The Authority shall pay when due an amount equal to excess investment earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code, such payments to be made from amounts paid by the City for that purpose under Section 4.5(d) of the Lease. The Authority shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subsection (e).

SECTION 6.08. *Enforcement of Lease.* The Trustee shall promptly collect all amounts (to the extent any such amounts are available for collection) due from the City under the Lease. Subject to the provisions of Article VIII, the Trustee shall enforce, and take all steps, actions and proceedings which the Trustee determines to be reasonably necessary for the enforcement of all of its rights thereunder as assignee of the Authority and for the enforcement of all of the obligations of the City under the Lease.

SECTION 6.09. *Waiver of Laws.* The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Bonds, and all benefit or advantage

of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

SECTION 6.10. *Further Assurances.* The Authority will make, execute and deliver any and all such further indentures, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Indenture.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

SECTION 7.01. *Events of Default.* The following events constitute Events of Default hereunder:

- (a) Failure to pay any installment of the principal of any Bonds when due, whether at maturity as therein expressed, by proceedings for redemption, by acceleration, or otherwise.
- (b) Failure to pay any installment of interest on the Bonds when due.
- (c) Failure by the Authority to observe and perform any of the other covenants, agreements or conditions on its part contained in this Indenture or in the Bonds, if such failure has continued for a period of 30 days after written notice thereof, specifying such failure and requiring the same to be remedied, has been given to the Authority by the Trustee; provided, however, if in the reasonable opinion of the Authority the failure stated in the notice can be corrected, but not within such 30-day period, such failure shall not constitute an Event of Default if the Authority institutes corrective action within such 30-day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.
- (d) The commencement by the Authority of a voluntary case under Title 11 of the United States Code or any substitute or successor statute.
- (e) The occurrence and continuation of an event of default under and as defined in the Lease.

SECTION 7.02. *Remedies Upon Event of Default.* If any Event of Default occurs, then, and in each and every such case during the continuance of such Event of Default, the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding shall, in each case, upon receipt of indemnification satisfactory to Trustee against the costs, expenses and liabilities to be incurred in connection with such action, upon notice in writing to the Authority, declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding.

Any such declaration is subject to the condition that if, at any time after such declaration and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Authority deposits with the Trustee a sum sufficient to pay all the principal of and installments of interest on the Bonds payment of which is overdue, with interest on such overdue principal at the rate borne by the respective Bonds to the extent permitted by law, and the reasonable fees, charges and expenses (including those of its legal counsel, including the allocated costs of internal attorneys) of the Trustee, and any and all other Events of Default known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate has been made therefor, then, and in every such case, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the Authority, the City and the Trustee, may, on behalf of the Owners of all of the Bonds, rescind and annul such declaration and its consequences and waive such Event of Default; but no such rescission and annulment shall extend to or shall affect any subsequent Event of Default, or shall impair or exhaust any right or power consequent thereon.

SECTION 7.03. *Application of Revenues and Other Funds After Default.* If an Event of Default occurs and is continuing, all Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of this Indenture shall be applied by the Trustee in the following order of priority:

- (a) To the payment of reasonable fees, charges and expenses of the Trustee (including reasonable fees and disbursements of its legal counsel including outside counsel and the allocated costs of internal attorneys) incurred in and about the performance of its powers and duties under this Indenture;
- (b) To the payment of the principal of and interest then due on the Bonds (upon presentation of the Bonds to be paid, and stamping or otherwise noting thereon of the payment if only partially paid, or surrender thereof if fully paid) in accordance with the provisions of this Indenture, as follows:

First: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference;

Second: To the payment to the persons entitled thereto of the unpaid principal of any Bonds which shall have become due, whether at maturity or by acceleration or redemption, with interest on the overdue principal at the rate borne by the respective Bonds (to the extent permitted by law), and, if the amount available shall not be sufficient to pay in full all the Bonds, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on

such date to the persons entitled thereto, without any discrimination or preference; and

SECTION 7.04. *Trustee to Represent Bond Owners.* The Trustee is hereby irrevocably appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Owners of the Bonds for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, this Indenture and applicable provisions of any law. All rights of action under this Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Owners of such Bonds, subject to the provisions of this Indenture.

SECTION 7.05. *Limitation on Bond Owners' Right to Sue.* Notwithstanding any other provision hereof, no Owner of any Bonds has the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Indenture, the Lease or any other applicable law with respect to such Bonds, unless (a) such Owner has given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of the Bonds then Outstanding have requested the Trustee in writing to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (c) such Owner or Owners have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee has failed to comply with such request for a period of 60 days after such written request has been received by, and said tender of indemnity has been made to, the Trustee; and (e) no direction inconsistent with such written request has been given to the Trustee during such 60 day period by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder or under law; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Owners of Bonds, or to enforce any right under the Bonds, this Indenture, the Lease or other applicable law with respect to the Bonds, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Owners of the Outstanding Bonds, subject to the provisions of this Indenture.

SECTION 7.06. *Absolute Obligation of Authority.* Nothing herein or in the Bonds contained affects or impairs the obligation of the Authority, which is absolute and unconditional, to pay the principal of and interest and premium (if any) on the Bonds to the respective Owners of the Bonds at their respective dates of maturity, or upon acceleration or call for redemption, as herein provided, but only out of the Revenues and other assets herein pledged therefor, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

SECTION 7.07. *Termination of Proceedings.* In case any proceedings taken by the Trustee or by any one or more Bond Owners on account of any Event of Default have been discontinued or abandoned for any reason or have been determined adversely to the Trustee or the Bond Owners, then in every such case the Authority, the Trustee and the Bond Owners, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the Authority, the Trustee and the Bond Owners shall continue as though no such proceedings had been taken.

SECTION 7.08. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Trustee, to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

SECTION 7.09. *No Waiver of Default.* No delay or omission of the Trustee or any Owner of the Bonds to exercise any right or power arising upon the occurrence of any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or to the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient by the Trustee or the Bond Owners.

SECTION 7.10. *Notice to Bond Owners of Default.* Immediately upon becoming aware of the occurrence of an Event of Default, but in no event later than five Business Days following becoming aware of such occurrence, the Trustee shall promptly give written notice thereof by first class mail, postage prepaid, to the Owner of each Outstanding Bond, unless such Event of Default has been cured before the giving of such notice; *provided, however* that except in the case of an Event of Default described in Sections 7.01(a) or 7.01(b), the Trustee may elect not to give such notice to the Bond Owners if and so long as the Trustee in good faith determines that it is in the best interests of the Bond Owners not to give such notice.

ARTICLE VIII

THE TRUSTEE

SECTION 8.01. *Appointment of Trustee.* U.S. Bank National Association is hereby appointed Trustee by the Authority for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Indenture. The Authority will maintain a Trustee which is qualified under the provisions of the foregoing provisions of this Article VIII, so long as any Bonds are Outstanding.

SECTION 8.02. *Acceptance of Trusts; Removal and Resignation of Trustee.* The Trustee hereby accepts the express trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

- (a) The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are expressly and specifically set forth in this Indenture and no implied duties or covenants shall be read into this Indenture against the Trustee. If an Event of Default has occurred (which has not been cured), the Trustee shall exercise such of the rights and powers vested in it by hereunder, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.
- (b) The Authority may remove the Trustee at any time, unless an Event of Default has occurred and is then continuing, and shall remove the Trustee (a) if at any time requested to do so by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or (b) if at any time the Trustee ceases to be eligible in accordance with Section 8.02, or becomes incapable of acting, or is adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property is appointed, or any public officer takes control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation.
- (c) The Trustee may at any time resign by giving written notice of such resignation to the Authority and the City, and by giving the Bond Owners notice of such resignation by mail at the addresses shown on the Registration Books.
- (d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. In the event of the removal or resignation of the Trustee under subsections (b) or (d), respectively, the Authority shall promptly appoint a successor Trustee.

If no successor Trustee has been appointed and accepted appointment within 45 days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture, must signify its acceptance of such appointment by executing and delivering to the Authority, to its predecessor Trustee a written acceptance thereof, and after payment by the Authority of all unpaid fees and expenses of the predecessor Trustee, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the Authority or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any

and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to the Leased Property held by such predecessor Trustee under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Authority shall promptly mail or cause the successor trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating agency which is then rating the Bonds and to the Bond Owners at the addresses shown on the Registration Books. If the Authority fails to mail such notice within 15 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Authority.

- (e) Any Trustee appointed under this Indenture shall be a corporation or association organized and doing business under the laws of any state or the United States of America or the District of Columbia, shall be authorized under such laws to exercise corporate trust powers, shall have (or, in the case of a corporation or association that is a member of a bank holding company system, the related bank holding company has) a combined capital and surplus of at least \$50,000,000, and shall be subject to supervision or examination by a federal or state agency, so long as any Bonds are Outstanding. If such corporation or association publishes a report of condition at least annually under law or to the requirements of any supervising or examining agency above referred to, then for the purpose of this subsection (e), the combined capital and surplus of such corporation or association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If the Trustee at any time ceases to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section.

SECTION 8.03. *Merger or Consolidation.* Any bank, national banking association, federal savings association, or trust company into which the Trustee may be merged or converted or with which it may be consolidated or any bank, national banking association, federal savings association, or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank, national banking association, federal savings association, or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank, national banking association, federal savings association, or trust company shall be eligible under subsection (e) of Section 8.02 shall be the successor to such Trustee,

without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

SECTION 8.04. *Liability of Trustee.*

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Authority, and the Trustee shall not assume responsibility for the correctness of the same, or make any representations as to the validity or sufficiency of this Indenture, the Bonds or the Lease (including any right to receive moneys thereunder or the value of or title to the premises upon which the Leased Property is located), nor shall the Trustee incur any responsibility in respect thereof, other than as expressly stated herein in connection with the respective duties or obligations of Trustee herein or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence. The Trustee may become the Owner of Bonds with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bond Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee is not liable for any error of judgment made by a responsible officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

(c) The Trustee is not liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture or assigned to it under the Assignment Agreement.

(d) The Trustee is not liable for any action taken by it and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(e) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder, or any other event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default hereunder unless and until it shall have actual knowledge thereof, or a corporate trust officer shall have received written notice thereof at its Office from the City, the Authority or the Owners of at least 25% in aggregate principal amount of the Outstanding Bonds. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by the Authority or the City of any of the terms, conditions, covenants or agreements herein, under the Lease or the Bonds or of any of the documents executed in connection with the Bonds, or as to the existence of a default or an Event of Default or an event which would, with the giving of notice, the passage of time, or both, constitute an Event of Default. The Trustee is not responsible for the validity, effectiveness or priority of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee shall not be required to ascertain or inquire as to the performance or observance by the City or the Authority of the terms, conditions, covenants or agreements set forth in the Lease, other than the covenants of

the City to make Lease Payments to the Trustee when due and to file with the Trustee when due, such reports and certifications as the City is required to file with the Trustee thereunder.

(f) No provision of this Indenture requires the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, receivers or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, receiver or attorney appointed with due care by it hereunder.

(h) The Trustee has no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of the Bond Owners under this Indenture, unless such Owners have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities (including but not limited to fees and expenses of its attorneys) which might be incurred by it in compliance with such request or direction. No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(i) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of Section 8.02(a), this Section 8.04 and Section 8.05, and shall be applicable to the assignment of any rights under the Lease to the Trustee under the Assignment Agreement.

(j) The Trustee is not accountable to anyone for the subsequent use or application of any moneys which are released or withdrawn in accordance with the provisions hereof.

(k) The Trustee makes no representation or warranty, expressed or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose for the use contemplated by the Authority or the City of the Leased Property. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Lease or this Indenture for the existence, furnishing or use of the Leased Property.

(l) The Trustee has no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(m) The Trustee is authorized and directed to execute the Assignment Agreement in its capacity as Trustee hereunder.

(n) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail (provided, that for purposes of this Agreement, an e-mail does not constitute a notice, request or other communication hereunder but rather the portable document format or similar attachment attached to such e-mail shall constitute a notice, request or other communication hereunder), facsimile transmission or other similar unsecured electronic methods, provided,

however, that, the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Authority or the City elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Authority and the City agree to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(o) The Trustee shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Trustee and could not have been avoided by exercising due care. Force majeure shall include, but not be limited to, acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

SECTION 8.05. *Right to Rely on Documents.* The Trustee shall be protected and shall incur no liability in acting or refraining from acting in reliance upon any notice, resolution, request, consent, order, certificate, report, opinion, bonds or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties. The Trustee is under no duty to make any investigation or inquiry as to any statements contained or matter referred to in any paper or document but may accept and conclusively rely upon the same as conclusive evidence of the truth and accuracy of any such statement or matter and shall be fully protected in relying thereon. The Trustee may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Trustee may treat the Owners of the Bonds appearing in the Registration Books as the absolute owners of the Bonds for all purposes and the Trustee shall not be affected by any notice to the contrary.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate, Written Request or Written Requisition of the Authority or the City, and such Written Certificate, Written Request or Written Requisition shall be full warrant to the Trustee for any action taken or suffered under the provisions of this Indenture in reliance upon such Written Certificate, Written Request or Written Requisition, and the Trustee shall be fully protected in relying thereon, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

SECTION 8.06. *Preservation and Inspection of Documents.* All documents received by the Trustee under the provisions of this Indenture shall be retained in its respective possession and in accordance with its retention policy then in effect and shall, upon reasonable notice to Trustee, be subject to the inspection of the Authority, the City and any Bond Owner, and their agents and representatives duly authorized in writing, during business hours and under reasonable conditions as agreed to by the Trustee.

SECTION 8.07. *Compensation and Indemnification.* The Authority shall pay to the Trustee from time to time, on demand, the compensation for all services rendered under this Indenture and also all reasonable expenses, advances (including any interest on advances), charges, legal (including outside counsel and the allocated costs of internal attorneys) and consulting fees and other disbursements, incurred in and about the performance of its powers and duties under this Indenture.

The Authority shall indemnify the Trustee, its officers, directors, employees and agents against any cost, loss, liability or expense whatsoever (including but not limited to fees and expenses of its attorneys) incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust and this Indenture, including costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder or under the Assignment Agreement or the Lease. As security for the performance of the obligations of the Authority under this Section 8.07 and the obligation of the Authority to make Additional Rental Payments to the Trustee, the Trustee shall have a lien prior to the lien of the Bonds upon all property and funds held or collected by the Trustee as such. The rights of the Trustee and the obligations of the Authority under this Section 8.07 shall survive the resignation or removal of the Trustee or the discharge of the Bonds and this Indenture and the Lease.

ARTICLE IX

MODIFICATION OR AMENDMENT HEREOF

SECTION 9.01. *Amendments Permitted.*

(a) Amendments With Bond Owner Consent. This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time by Supplemental Indenture, which the Authority and the Trustee may enter into when the written consents of the Owners of a majority in aggregate principal amount of all Bonds then Outstanding are filed with the Trustee. No such modification or amendment may (i) extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Owner of each Bond so affected, or (ii) reduce the aforesaid percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Revenues and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture except as permitted herein, or deprive the Owners of the Bonds of the lien created by this Indenture on such Revenues and other assets (except as expressly provided in this Indenture), without the consent of the Owners of all of the Bonds then Outstanding. It is not necessary for the consent of the Bond Owners to approve the particular form of any Supplemental Indenture, but it is sufficient if such consent approves the substance thereof.

(b) Amendments Without Owner Consent. This Indenture and the rights and obligations of the Authority, of the Trustee and the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Authority and the Trustee may enter into without the consent of any Bond Owners, if the Trustee has been furnished an opinion of counsel that the provisions of such Supplemental Indenture shall not materially adversely affect the interests of the Owners of the Bonds, including, without limitation, for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the Authority in this Indenture contained, other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Authority;
- (ii) to cure any ambiguity, inconsistency or omission, or to cure or correct any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the Authority deems necessary or desirable, provided that such modification or amendment does not materially adversely affect the interests of the Bond Owners, in the opinion of Bond Counsel filed with the Trustee;
- (iii) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect,

and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute;

- (iv) to modify, amend or supplement this Indenture in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Tax Code; or
- (v) to facilitate the issuance of additional obligations of the City under the Lease Agreement as provided in Section 7.5(b)(5) thereof.

(c) Limitation. The Trustee is not obligated to enter into any Supplemental Indenture authorized by subsections (a) or (b) of this Section 9.01 which materially adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

(d) Bond Counsel Opinion Requirement. Prior to the Trustee entering into any Supplemental Indenture hereunder, the Authority shall deliver to the Trustee an opinion of Bond Counsel stating, in substance, that such Supplemental Indenture has been adopted in compliance with the requirements of this Indenture and that the adoption of such Supplemental Indenture will not, in and of itself, adversely affect the exclusion from gross income for purposes of federal income taxes of interest on the Bonds.

(e) Notice of Amendments. The Authority shall deliver or cause to be delivered a draft of any Supplemental Indenture to each rating agency which then maintains a rating on the Bonds, at least 10 days prior to the effective date of such Supplemental Indenture under this Section 9.01.

SECTION 9.02. *Effect of Supplemental Indenture*. Upon the execution of any Supplemental Indenture under this Article IX, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority, the Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 9.03. *Endorsement of Bonds; Preparation of New Bonds*. Bonds delivered after the execution of any Supplemental Indenture under this Article may, and if the Authority so determines shall, bear a notation by endorsement or otherwise in form approved by the Authority as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand on the Owner of any Bonds Outstanding at the time of such execution and presentation of his Bonds for the purpose at the Office of the Trustee or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Bonds. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Authority, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Authority and authenticated by the Trustee, and upon demand on the Owners of any Bonds then Outstanding shall be exchanged at the Office of the Trustee, without cost to any Bond Owner, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amount of the same maturity.

SECTION 9.04. *Amendment of Particular Bonds.* The provisions of this Article IX do not prevent any Bond Owner from accepting any amendment as to the particular Bonds held by such Owner.

ARTICLE X

DEFEASANCE

SECTION 10.01. *Discharge of Indenture.* Any or all of the Outstanding Bonds may be paid by the Authority in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable hereunder by the Authority:

- (a) by paying or causing to be paid the principal of and interest and premium (if any) on such Bonds, as and when the same become due and payable;
- (b) by depositing with the Trustee, in trust, at or before maturity, money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem such Bonds; or
- (c) by delivering all of such Bonds to the Trustee for cancellation.

If the Authority also pays or causes to be paid all other sums payable hereunder by the Authority, then and in that case, at the election of the Authority (evidenced by a Written Certificate of the Authority, filed with the Trustee, signifying the intention of the Authority to discharge all such indebtedness and this Indenture), and notwithstanding that any of such Bonds shall not have been surrendered for payment, this Indenture and the pledge of Revenues and other assets made under this Indenture with respect to such Bonds and all covenants, agreements and other obligations of the Authority under this Indenture with respect to such Bonds shall cease, terminate, become void and be completely discharged and satisfied, subject to Section 10.02. In such event, upon the Written Request of the Authority, the Trustee shall execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the City all moneys or securities or other property held by it under this Indenture which are not required for the payment or redemption of any of such Bonds not theretofore surrendered for such payment or redemption. The Trustee is entitled to conclusively rely on any such Written Certificate or Written Request and, in each case, is fully protected in relying thereon.

SECTION 10.02. *Discharge of Liability on Bonds.* Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem any Outstanding Bonds (whether upon or prior to the maturity or the redemption date of such Bonds), provided that, if such Bonds are to be redeemed prior to maturity, notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the Authority in respect of such Bonds shall cease, terminate and be completely discharged, and the Owners thereof shall thereafter be entitled only to payment out of such money or securities deposited

with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.04.

The Authority may at any time surrender to the Trustee, for cancellation by Trustee, any Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

SECTION 10.03. *Deposit of Money or Securities with Trustee.* Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established under this Indenture and shall be:

- (a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount of such Bonds, premium, if any, and all unpaid interest thereon to the redemption date; or
- (b) non-callable Federal Securities, the principal of and interest on which when due will, in the written opinion of an Independent Accountant filed with the City, the Authority and the Trustee, provide money sufficient to pay the principal of and interest and premium (if any) on the Bonds to be paid or redeemed, as such principal, interest and premium become due, provided that in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee has been made for the giving of such notice;

provided, in each case, that (i) the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Written Request of the Authority) to apply such money to the payment of such principal, interest and premium (if any) with respect to such Bonds, and (ii) the Authority shall have delivered to the Trustee an opinion of Bond Counsel to the effect that such Bonds have been discharged in accordance with this Indenture (which opinion may rely upon and assume the accuracy of the Independent Accountant's opinion referred to above). The Trustee shall be entitled to conclusively rely on such Written Request or opinion and shall be fully protected, in each case, in relying thereon.

SECTION 10.04. *Unclaimed Funds.* Notwithstanding any provisions of this Indenture, any moneys held by the Trustee in trust for the payment of the principal of, or interest on, any Bonds and remaining unclaimed for 2 years after the principal of all of the Bonds has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in this Indenture), if such moneys were so held at such date, or 2 years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall be repaid to the Authority free from the trusts created by this Indenture, and all liability of the Trustee with respect to

such moneys shall thereupon cease; *provided, however*, that before the repayment of such moneys to the Authority as aforesaid, the Trustee shall (at the cost of the Authority) first mail to the Owners of Bonds which have not yet been paid, at the addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Authority of the moneys held for the payment thereof.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. *Liability of Authority Limited to Revenues.* Notwithstanding anything in this Indenture or in the Bonds contained, the Authority is not required to advance any moneys derived from any source other than the Revenues, the Additional Rental Payments and other assets pledged under this Indenture for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. Nevertheless, the Authority may, but is not required to, advance for any of the purposes hereof any funds of the Authority which may be made available to it for such purposes.

SECTION 11.02. *Limitation of Rights to Parties and Bond Owners.* Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the Authority, the Trustee, the City and the Owners of the Bonds, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Trustee, the City and the Owners of the Bonds.

SECTION 11.03. *Funds and Accounts.* Any fund or account required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds and accounts shall at all times be maintained in accordance with corporate industry standards to the extent practicable, and with due regard for the requirements of Section 6.05 and for the protection of the security of the Bonds and the rights of every Owner thereof. The Trustee may establish such funds and accounts as it deems necessary or appropriate to perform its obligations under this Indenture.

SECTION 11.04. *Waiver of Notice; Requirement of Mailed Notice.* Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. Whenever in this Indenture any notice is required to be given by mail, such requirement may be satisfied by the deposit of such notice in the United States mail, postage prepaid, by first class mail.

SECTION 11.05. *Destruction of Bonds.* Whenever in this Indenture provision is made for the cancellation by the Trustee, and the delivery to the Authority, of any Bonds, the Trustee shall destroy such Bonds as may be allowed by law and deliver a certificate of such destruction to the Authority.

SECTION 11.06. *Severability of Invalid Provisions.* If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

SECTION 11.07. *Notices.* All notices or communications to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, confirmed by telephone, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the Authority
or the City:*

City of Lodi
221 West Pine Street
Lodi, CA 95240
Attention: City Manager
Fax: (209) 333-6710

If to the Trustee:

U.S. Bank National Association
Attn.: Corporate Finance
100 California Street, Suite 1000
San Francisco, CA 94111
Fax: 415-677-3768

SECTION 11.08. *Evidence of Rights of Bond Owners.* Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Bond Owners in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any person of Bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and the Authority if made in the manner provided in this Section 11.08.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other

officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Bonds shall be proved by the Registration Books.

Any request, consent, or other instrument or writing of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in accordance therewith or reliance thereon.

SECTION 11.09. *Disqualified Bonds.* In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are known by the Trustee to be owned or held by or for the account of the Authority or the City, or by any other obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City or any other obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City or any other obligor on the Bonds. In case of a dispute as to such right, the Trustee shall be entitled to rely upon the advice of counsel in any decision by Trustee and shall be fully protected in relying thereon.

Upon request, the Authority shall certify to the Trustee those Bonds disqualified under this Section 11.09, and the Trustee may conclusively rely on such certifications.

SECTION 11.10. *Money Held for Particular Bonds.* The money held by the Trustee for the payment of the interest, premium, if any, or principal due on any date with respect to particular Bonds (or portions of Bonds in the case of Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto, *subject, however,* to the provisions of Section 10.04 but without any liability for interest thereon.

SECTION 11.11. *Waiver of Personal Liability.* No member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or interest or premium (if any) on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Indenture.

SECTION 11.12. *Successor Is Deemed Included in All References to Predecessor.* Whenever in this Indenture either the Authority, the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority, the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.13. *Execution in Several Counterparts.* This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 11.14. *Payment on Non-Business Day.* In the event any payment is required to be made hereunder on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and with the same effect as if made on such preceding non-Business Day.

SECTION 11.15. *Governing Law.* This Indenture shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the LODI PUBLIC FINANCING AUTHORITY has caused this Indenture to be signed in its name by its Treasurer and attested to by its Secretary, and U.S. BANK NATIONAL ASSOCIATION, in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

LODI PUBLIC FINANCING AUTHORITY

By _____
Executive Director

Attest:

Secretary

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By _____
Authorized Officer

APPENDIX A

DEFINITIONS

“Additional Rental Payments” means the amounts of additional rental which are payable by the City under Section 4.5 of the Lease or which are otherwise identified as Additional Rental Payments under the Lease.

“Assignment Agreement” means the Assignment Agreement dated as of September 1, 2012, between the Authority as assignor and the Trustee as assignee, as originally executed or as thereafter amended.

“Authority” means the Lodi Public Financing Authority, a joint exercise of powers authority duly organized and existing under the laws of the State of California.

“Authorized Representative” means: (a) with respect to the Authority, its Chair, Executive Director, Treasurer, General Counsel or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Executive Director and filed with the City and the Trustee; and (b) with respect to the City, its City Manager, Deputy City Manager/Internal Services Director, City Attorney or any other person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its City Manager and filed with the Authority and the Trustee.

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Authority of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Tax Code.

“Bond Fund” means the fund by that name established and held by the Trustee under Section 5.01.

“Bond Law” means Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code.

“Bond Year” means each twelve-month period extending from October 2 in one calendar year to October 1 of the succeeding calendar year, both dates inclusive; except that the first Bond Year commences on the Closing Date and extends to and including October 1, 2012.

“Bonds” means the \$_____ aggregate principal amount of Lodi Public Financing Authority 2012 Refunding Lease Revenue Bonds authorized by and at any time Outstanding under this Indenture.

“Business Day” means a day (other than a Saturday or a Sunday) on which banks are not required or authorized to remain closed in the City in which the Office of the Trustee is located.

“City” means the City of Lodi, a general law city and municipal corporation organized and existing under the Constitution and laws of the State of California.

“Closing Date” means the date of delivery of the Bonds to the Original Purchaser.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City relating to the authorization, issuance, sale and delivery of the Bonds and the refunding of the 2002 Certificates, including but not limited to: printing expenses; rating agency fees; filing and recording fees; initial fees, expenses and charges of the Trustee and their respective counsel, including the Trustee’s first annual administrative fee; fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals; fees and charges for preparation, execution and safekeeping of the Bonds; and any other cost, charge or fee in connection with the original issuance of the Bonds and the refunding of the 2002 Certificates.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee under Section 3.03.

“Depository” means (a) initially, DTC, and (b) any other Securities Depositories acting as Depository under Section 2.04.

“Depository System Participant” means any participant in the Depository’s book-entry system.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Escrow Agreement” means the Escrow Deposit and Trust Agreement dated as of the Closing Date, between the City and the 2002 Trustee, relating to the payment and prepayment of the 2002 Certificates and the discharge of the City’s obligations relating thereto.

“Event of Default” means any of the events specified in Section 7.01.

“Excess Investment Earnings” means an amount required to be rebated to the United States of America under Section 148(f) of the Tax Code due to investment of gross proceeds of the Bonds at a yield in excess of the yield on the Bonds.

“Federal Securities” means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

“Fiscal Year” means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the Authority as its official fiscal year period.

“Indenture” means this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture under the provisions hereof.

“Independent Accountant” means any certified public accountant or firm of certified public accountants appointed and paid by the Authority or the City, and who, or each of whom (a) is in fact independent and not under domination of the Authority or the City; (b) does not have any substantial interest, direct or indirect, in the Authority or the City; and (c) is not connected with the Authority or the City as an officer or employee of the Authority or the City but who may be regularly retained to make annual or other audits of the books of or reports to the Authority or the City.

“Insurance and Condemnation Fund” means the fund by that name established and held by the Trustee under Section 5.07.

“Interest Account” means the account by that name established and held by the Trustee in the Bond Fund under Section 5.02.

“Interest Payment Date” means each April 1 and October 1, commencing April 1, 2013, so long as any Bonds remain unpaid.

“Lease” means the Lease Agreement dated as of September 1, 2012, between the Authority as lessor and the City as lessee of the Leased Property, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof and of this Indenture.

“Lease Payment Date” means, with respect to any Interest Payment Date, the Business Day immediately preceding such Interest Payment Date.

“Lease Payments” means the amounts payable by the City under Section 4.3(a) of the Lease, including any prepayment thereof and including any amounts payable upon a delinquency in the payment thereof.

“Leased Property” means the real property described in Appendix A to the Lease, together with all improvements and facilities at any time situated thereon.

“Net Proceeds” means amounts derived from any policy of casualty insurance or title insurance with respect to the Leased Property, or the proceeds of any taking of the Leased Property or any portion thereof in eminent domain proceedings (including sale under threat of such proceedings), to the extent remaining after payment therefrom of all expenses incurred in the collection and administration thereof.

“Nominee” means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated under Section 2.04(a).

“Office” means the corporate trust office of the Trustee in St. Paul, Minnesota, or such other or additional offices as the Trustee may designate in writing to the Authority from time to time as the corporate trust office for purposes of the Indenture; except that with respect to presentation of Bonds for payment or for registration of transfer and exchange such term means the office or agency of the Trustee at which, at any particular time, its corporate trust agency business is conducted.

“Original Purchaser” means JP Morgan and Stifel, Nicolaus & Company, Incorporated dba Stone & Youngberg, a Division of Stifel Nicolaus, as original purchasers of the Bonds upon their delivery by the Trustee on the Closing Date.

“Outstanding”, when used as of any particular time with reference to Bonds, means all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with Section 10.02, including Bonds (or portions thereof) described in Section 11.09; and (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee under this Indenture.

“Owner”, whenever used herein with respect to a Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

“Permitted Encumbrances” means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may permit to remain unpaid under Article V of the Lease; (b) the Site Lease, the Lease and the Assignment Agreement; (c) any right or claim of any mechanic, laborer, material man, supplier or vendor not filed or perfected in the manner prescribed by law; (d) that certain Lease Agreement (A-06-194) dated as of March 28, 2006, by and between the County of San Joaquin and the City (as modified by an Assignment and Assumption of Lease, dated as of July 1, 2008, among the County, the City and the Judicial Council of California, Administrative Office of the Courts); (e) the exceptions disclosed in the title insurance policy with respect to the Leased Property issued as of the Closing Date by Stewart Title Guaranty Company; and (f) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the City certifies in writing will not materially impair the use of the Leased Property for its intended purposes.

“Permitted Investments” means any of the following:

- (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged.
- (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.
- (c) Any direct or indirect obligations of an agency or department of the United States of America whose obligations represent the full faith and credit of the United States of America, or which are rated A or better by S&P.
- (d) Interest-bearing deposit accounts (including certificates of deposit) in federal or State chartered savings and loan associations or in federal or State of California banks (including the Trustee), provided that: (i) the unsecured obligations of such commercial bank or savings and loan association are rated A or better by S&P; or (ii) such deposits are fully insured by the Federal Deposit Insurance

Corporation or secured at all times by collateral described in (a) or (b) above.

- (e) Commercial paper rated “A-1+” or better by S&P.
- (f) Federal funds or bankers acceptances with a maximum term of one year of any bank which an unsecured, uninsured and unguaranteed obligation rating of “A-1+” or better by S&P.
- (g) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of at least AAAm-G, AAAm or AAm, which funds may include funds for which the Trustee, its affiliates, parent or subsidiaries provide investment advisory or other management services.
- (h) Obligations the interest on which is excludable from gross income pursuant to Section 103 of the Tax Code and which are either (a) rated A or better by S&P, or (b) fully secured as to the payment of principal and interest by Permitted Investments described in clauses (a) or (b).
- (i) Obligations issued by any corporation organized and operating within the United States of America having assets in excess of \$500,000,000, which obligations are rated A or better by S&P.
- (j) Bonds or notes issued by any state or municipality which are rated A or better by S&P.
- (k) Any investment agreement with, or guaranteed by, a financial institution the long-term unsecured obligations or the claims paying ability of which are rated A or better by S&P at the time of initial investment, by the terms of which all amounts invested thereunder are required to be withdrawn and paid to the Trustee in the event either of such ratings at any time falls below A.
- (l) The Local Agency Investment Fund of the State of California, created pursuant to Section 16429.1 of the California Government Code, to the extent the Trustee is authorized to register such investment in its name.

“Principal Account” means the account by that name established and held by the Trustee in the Bond Fund under Section 5.02.

“Record Date” means, with respect to any Interest Payment Date, the 15th calendar day of the month preceding such Interest Payment Date, whether or not such day is a Business Day.

“Redemption Fund” means the fund by that name established and held by the Trustee under Section 5.06.

“Registration Books” means the records maintained by the Trustee under Section 2.05 for the registration and transfer of ownership of the Bonds.

“Revenues” means: (a) all amounts received by the Authority or the Trustee under or with respect to the Lease, including, without limiting the generality of the foregoing, all of the Lease Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), but excluding (i) any amounts described in Section 7.5(b)(v) of the Lease, and (ii) any Additional Rental Payments; and (b) all interest, profits or other income derived from the investment of amounts in any fund or account established under this Indenture.

“Securities Depositories” means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the Authority designates in written notice filed with the Trustee.

“Site Lease” means the Site Lease dated as of September 1, 2012, between the City as lessor and the Authority as lessee, as amended from time to time in accordance with its terms.

“Site Lease Payment” means the amount of \$_____ which is payable by the Authority to the City on the Closing Date under Section 3 of the Site Lease.

“S&P” means Standard & Poor’s, a division of the McGraw Hill Companies, of New York, New York, its successors and assigns.

“Supplemental Indenture” means any indenture hereafter duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending this Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under said Code.

“Term” means, with reference to the Lease, the time during which the Lease is in effect, as provided in Section 4.2 thereof.

“Trustee” means U.S. Bank National Association, a national banking association organized and existing under the laws of United States of America, or its successor or successors, as Trustee hereunder as provided in Article VIII.

“2002 Certificates” means the outstanding Certificates of Participation (2002 Public Improvement Financing Project) originally executed and delivered in the aggregate principal amount of \$26,745,000.

“2002 Trustee” means U.S. Bank National Association, its successors and assigns, as successor trustee for the 2002 Certificates.

“Written Certificate,” “Written Request” and “Written Requisition” of the Authority or the City mean, respectively, a written certificate, request or requisition signed in the

name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

APPENDIX B

BOND FORM

NO. R-_____

\$_____

UNITED STATES OF AMERICA
STATE OF CALIFORNIA

LODI PUBLIC FINANCING AUTHORITY

2012 REFUNDING LEASE REVENUE BOND

INTEREST RATE: _____% MATURITY DATE: October 1, _____, 2012 ORIGINAL ISSUE DATE: _____, 2012 CUSIP: _____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: *** _____ ***

SPECIMEN

The LODI PUBLIC FINANCING AUTHORITY, a public body corporate and politic duly organized and existing under the laws of the State of California (the "Authority"), for value received, hereby promises to pay to the Registered Owner specified above or registered assigns (the "Registered Owner"), on the Maturity Date specified above (subject to any right of prior redemption hereinafter provided for), the Principal Amount specified above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond unless (i) this Bond is authenticated on or before an Interest Payment Date and after the close of business on the 15th day of the month preceding such interest payment date, in which event it shall bear interest from such Interest Payment Date, or (ii) this Bond is authenticated on or before March 15, 2013, in which event it shall bear interest from the Original Issue Date specified above; *provided, however*, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on this Bond, at the Interest Rate per annum specified above, payable semiannually on April 1 and October 1 in each year, commencing April 1, 2013 (the "Interest Payment Dates"), calculated on the basis of a 360-day year composed of twelve 30-day months.

Principal hereof and premium, if any, upon early redemption hereof are payable upon presentation and surrender hereof at the corporate trust office of U.S. Bank National Association, in San Francisco, California (the "Trust Office"), as trustee (the "Trustee"). Interest hereon is payable by check of the Trustee mailed to the Registered Owner hereof at the Registered Owner's address as it appears on the registration books of the Trustee as of the close of business on the fifteenth day of the month preceding each Interest Payment Date (a "Record Date"), or, upon written request filed with the

Trustee as of such Record Date by a registered owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to an account in the United States designated by such registered owner in such written request.

This Bond is not a debt of the City of Lodi (the "City"), the County of San Joaquin, the State of California, or any of its political subdivisions, and neither the City, said County, said State, nor any of its political subdivisions, is liable hereon nor in any event shall this Bond be payable out of any funds or properties of the Authority other than the Revenues.

This Bond is one of a duly authorized issue of bonds of the Authority designated as the "Lodi Public Financing Authority 2012 Refunding Lease Revenue Bonds" (the "Bonds"), in an aggregate principal amount of \$_____, all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption provisions) and all issued under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code, and under an Indenture of Trust dated as of September 1, 2012, between the Authority and the Trustee (the "Indenture") and a resolution of the Authority adopted on _____, 2012, authorizing the issuance of the Bonds. Reference is hereby made to the Indenture (copies of which are on file at the office of the Authority) and all supplements thereto for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Revenues, and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Authority thereunder, to all of the provisions of which the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued by the Authority to refinance certain outstanding Certificates of Participation of the City. This Bond and the interest and premium, if any, hereon are special obligations of the Authority, payable from the Revenues, and secured by a charge and lien on the Revenues as defined in the Indenture, consisting principally of lease payments made by the City under a Lease Agreement dated as of September 1, 2012, between the Authority as lessor and the City as lessee (the "Lease"). As and to the extent set forth in the Indenture, all of the Revenues are exclusively and irrevocably pledged in accordance with the terms hereof and the provisions of the Indenture, to the payment of the principal of and interest and premium (if any) on the Bonds.

The rights and obligations of the Authority and the owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or premium (if any) thereon, or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the owner of each Bond so affected.

The Bonds maturing on or before October 1, 2022, are not subject to optional redemption prior to their respective stated maturity dates. The Bonds maturing on or after October 1, 2023, are subject to redemption in whole, or in part at the request of the Authority among maturities on such basis as the Authority may designate and by lot within a maturity, at the option of the Authority, on any date on or after October 1, 2022, from any available source of funds, at a redemption price equal to 1000% of the principal

amount to be redeemed plus accrued interest to the date of redemption, without premium.

The Bonds are subject to redemption as a whole, or in part by lot, on any date, to the extent of any net proceeds of hazard or title insurance with respect to the property which has been leased under the Lease (the "Leased Property") or any portion thereof which are not used to repair or replace the Leased Property pursuant to the Lease, or to the extent of any net proceeds arising from the disposition of the Leased Property or any portion thereof in eminent domain proceedings which the City elects to be used for such purpose pursuant to the Lease, at a redemption price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

As provided in the Indenture, notice of redemption will be mailed by the Trustee by first class mail not less than 30 nor more than 60 days prior to the redemption date to the respective owners of any Bonds designated for redemption at their addresses appearing on the registration books of the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption or the cessation of accrual of interest thereon from and after the date fixed for redemption. Notice of any optional redemption of the Bonds may be rescinded under the circumstances set forth in the Indenture, upon notice to the owners of such Bonds.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer, a new Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. This Bond may be exchanged at the Trust Office for Bonds of the same tenor, aggregate principal amount, interest rate and maturity, of other authorized denominations.

The Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority and the Trustee shall not be affected by any notice to the contrary.

Unless this Bond is presented by an authorized representative of The Depository Trust Company to the Authority or the Trustee for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

It is hereby certified by the Authority that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the Ordinance and the laws of the State of

California and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Ordinance or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

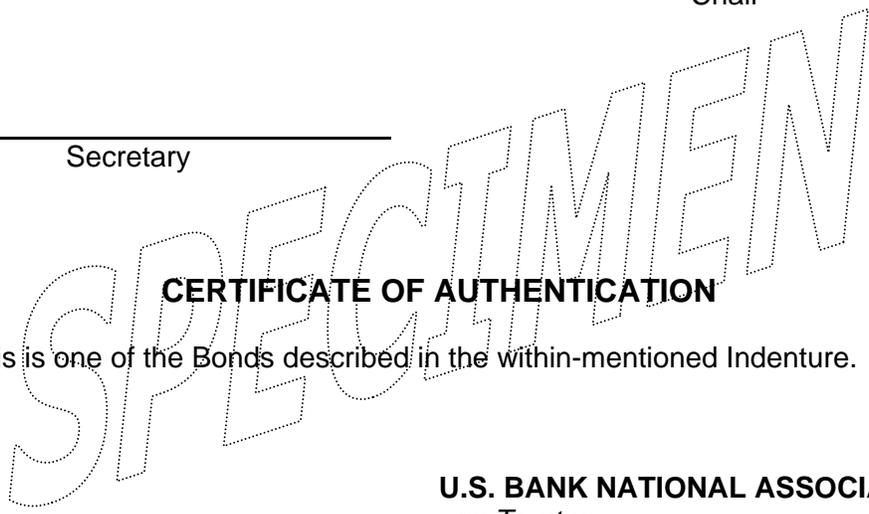
IN WITNESS WHEREOF, the Lodi Public Financing Authority has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Chair and attested to by the facsimile signature of its Secretary, all as of the Original Issue Date specified above.

LODI PUBLIC FINANCING AUTHORITY

By _____
Chair

Attest:

Secretary



CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By _____
Authorized Signatory

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto _____ whose address and social security or other tax identifying number is _____, the within-mentioned Bond and hereby _____ irrevocably _____ constitute(s) _____ and _____ appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor institution.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

TO BE RECORDED AND WHEN RECORDED

RETURN TO:

Jones Hall, A Professional Law Corporation

650 California Street, 18th Floor

San Francisco, California 94108

Attention: Christopher K. Lynch, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX UNDER SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

LEASE AGREEMENT

Dated as of September 1, 2012

between the

LODI PUBLIC FINANCING AUTHORITY,

as lessor

and the

CITY OF LODI,

as lessee

Relating to

\$ _____

**Lodi Public Financing Authority
2012 Refunding Lease Revenue Bonds**

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APPENDIX A	DESCRIPTION OF THE LEASED PROPERTY
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LEASE AGREEMENT

This LEASE AGREEMENT (this "**Lease**"), dated for convenience as of September 1, 2012, is between the LODI PUBLIC FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California, as lessor (the "**Authority**"), and the CITY OF LODI, a general law city and municipal corporation duly organized and existing under the Constitution and laws of the State of California, as lessee (the "**City**").

BACKGROUND:

1. The City previously caused execution and delivery of its Certificates of Participation (2002 Public Improvement Financing Project) in the aggregate initial principal amount of \$26,745,000 (the "**2002 Certificates**") for the purpose of (i) financing the costs of constructing, furnishing and equipping a new police building and jail for the City, (ii) financing portions of other projects, (iii) refunding on a current basis the City's \$3,985,000 aggregate principal amount of outstanding Certificates of Participation (1995 Public Improvement Financing Project) and refunding on an advance basis the City's \$8,440,000 aggregate principal amount of outstanding Certificates of Participation (1996 Public Improvement Financing Project) and (iv) paying the costs of execution and delivery of the 2002 Certificates.

2. The City is proceeding to refinance its outstanding 2002 Certificates.

3. To that end, the City has leased the real property constituting its new police building and Carnegie Forum, including land and improvements, as more particularly described in Appendix A attached hereto and by this reference incorporated herein (the "**Leased Property**"), to the Authority under a Site Lease dated as of September 1, 2012, which has been recorded concurrently herewith (the "**Site Lease**"), in consideration of the payment by the Authority of an upfront rental payment (the "**Site Lease Payment**") which is sufficient to provide funds for the prepayment of the 2002 Certificates.

4. The Authority has authorized the issuance of its Lodi Public Financing Authority 2012 Refunding Lease Revenue Bonds in the aggregate principal amount of \$_____ (the "**Bonds**") under an Indenture of Trust dated as of September 1, 2012 (the "**Indenture**"), between the Authority and U.S. Bank National Association, as trustee (the "**Trustee**"), for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with the Site Lease.

5. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Bonds, the Authority has agreed to lease the Leased Property back to the City under this Lease under which the City agrees to pay semiannual Lease Payments as the rental for the Leased Property.

6. The lease payments made by the City under this Lease have been assigned by the Authority to the Trustee for the security of the Bonds under an Assignment Agreement dated as of September 1, 2012, between the Authority as assignor and the Trustee as assignee, which has been recorded concurrently herewith.

7. The City and the Authority have found and determined that all acts and proceedings required by law necessary to make this Lease, when executed by the City

and the Authority, the valid, binding and legal obligations of the City and the Authority, and to constitute this Lease a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Lease have been in all respects duly authorized.

A G R E E M E N T :

In consideration of the material covenants contained in this Lease, the parties hereto hereby formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Lease have the respective meanings given them in the Indenture.

SECTION 1.2. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular includes the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and includes the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

COVENANTS, REPRESENTATIONS AND WARRANTIES

SECTION 2.1. *Covenants, Representations and Warranties of the City.* The City makes the following covenants, representations and warranties to the Authority, the Trustee as of the date of the execution and delivery of this Lease:

- (a) Due Organization and Existence. The City is a general law city and municipal corporation duly organized and validly existing under the Constitution and laws of the State of California, has full legal right, power and authority under the laws of the State of California to enter into the Site Lease and this Lease and to carry out and consummate all transactions contemplated hereby, and by proper action the City has duly authorized the execution and delivery of the Site Lease and this Lease.
- (b) Due Execution. The representatives of the City executing the Site Lease and this Lease have been fully authorized to execute the same under a resolution duly adopted by the City Council of the City.
- (c) Valid, Binding and Enforceable Obligations. The Site Lease and this Lease have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms.
- (d) No Conflicts. The execution and delivery of the Site Lease and this Lease, the consummation of the transactions therein and herein contemplated and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease and this Lease or the financial condition, assets, properties or operations of the City.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Site Lease and this Lease, or the consummation of any transaction therein and

herein contemplated, except as have been obtained or made and as are in full force and effect.

- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Site Lease and this Lease, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease and this Lease or the financial conditions, assets, properties or operations of the City.

SECTION 2.2. *Covenants, Representations and Warranties of the Authority.* The Authority makes the following covenants, representations and warranties to the City, the Trustee as of the date of the execution and delivery of this Lease:

- (a) Due Organization and Existence. The Authority is a joint exercise of powers authority duly organized and existing under a joint powers agreement and the laws of the State of California; has power to enter into this Lease, the Site Lease, the Assignment Agreement and the Indenture; is possessed of full power to own and hold, improve and equip real and personal property, and to lease the same; and has duly authorized the execution and delivery of each of the aforesaid agreements and such agreements constitute the legal, valid and binding obligations of the Authority, enforceable against the Authority in accordance with their respective terms.
- (b) Due Execution. The representatives of the Authority executing this Lease, the Site Lease, the Assignment Agreement and the Indenture are fully authorized to execute the same pursuant to official action taken by the governing body of the Authority.
- (c) Valid, Binding and Enforceable Obligations. This Lease, the Site Lease, the Assignment Agreement and the Indenture have been duly authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms.
- (d) No Conflicts. The execution and delivery of this Lease, the Site Lease, the Assignment Agreement and the Indenture, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or

breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease, the Assignment Agreement and the Indenture or the financial condition, assets, properties or operations of the Authority.

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease, the Site Lease, the Assignment Agreement or the Indenture, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.

- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease, the Site Lease, the Assignment Agreement or the Indenture, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease, the Assignment Agreement or the Indenture or the financial conditions, assets, properties or operations of the Authority.

ARTICLE III

DEPOSIT AND APPLICATION OF FUNDS; SUBSTITUTION AND RELEASE OF PROPERTY

SECTION 3.1. *Deposit of Moneys.* On the Closing Date, the Authority will cause the proceeds of sale of the Bonds to be deposited with the Trustee. The Trustee shall deposit such proceeds in accordance with Section 3.01 of the Indenture.

SECTION 3.2. *Substitution of Property.* The City has the option at any time and from time to time, to substitute other real property (the “**Substitute Property**”) for the Leased Property or any portion thereof (the “**Former Property**”), upon satisfaction of all of the following requirements which are hereby declared to be conditions precedent to such substitution:

- (a) No Event of Default has occurred and is continuing.
- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the San Joaquin County Recorder sufficient memorialization of, an amendment hereof which adds the legal description of the Substitute Property to Appendix A and deletes therefrom the legal description of the Former Property.
- (c) The City has obtained a CLTA policy of title insurance insuring the City’s leasehold estate hereunder in the Substitute Property, subject only to Permitted Encumbrances, in an amount at least equal to the estimated value thereof.
- (d) The City has certified in writing to the Authority and the Trustee that the Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and has been determined to be essential to the proper, efficient and economic operation of the City and to serve an essential governmental function of the City.
- (e) The Substitute Property does not cause the City to violate any of its covenants, representations and warranties made herein.
- (g) The City has filed with the Authority and the Trustee a written certificate of the City or other written evidencing stating that the useful life of the Substitute Property at least extends to October 1, _____, that the estimated value of the Leased Property, after substitution of the Substitute Property and release of the Former Property, is at least equal to the aggregate Outstanding principal amount of the Bonds, and the fair rental value of the Leased Property, after substitution of the Substitute Property and release of the Former Property, is at least equal to the Lease Payments thereafter coming due and payable hereunder.
- (h) The City has mailed written notice of such substitution to each rating agency which then maintains a rating on the Bonds.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property will apply with full force and effect to the Substitute Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of any substitution of property under this Section. The Authority and the City will execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease and the Assignment Agreement of record against the Former Property and to cause the Substitute Property to become subject to all of the terms and conditions of the Site Lease, this Lease and the Assignment Agreement.

SECTION 3.3. *Release of Property.* The City has the option at any time and from time to time to release any portion of the Leased Property from this Lease (the "**Released Property**") provided that the City has satisfied all of the following requirements which are hereby declared to be conditions precedent to such release:

- (a) No Event of Default has occurred and is continuing.
- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the San Joaquin County Recorder sufficient memorialization of, an amendment hereof which removes the Released Property from the Site Lease and this Lease.
- (c) The City has certified in writing to the Authority and the Trustee that the value of the property which remains subject to this Lease following such release is at least equal to the aggregate Outstanding principal amount of the Bonds, and the fair rental value of the property which remains subject to this Lease following such release is at least equal to the Lease Payments thereafter coming due and payable hereunder.
- (d) The City has mailed written notice of such release to each rating agency which then maintains a rating on the Bonds.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease and the Assignment Agreement of record against the Released Property.

ARTICLE IV

LEASE OF LEASED PROPERTY; TERM OF THIS LEASE; LEASE PAYMENTS

SECTION 4.1. *Lease of Leased Property.* The Authority hereby leases the Leased Property to the City and the City hereby leases the Leased Property from the Authority, upon the terms and conditions set forth in this Lease.

SECTION 4.2. *Term.* The Term of this Lease commences on the Closing Date and ends on the date on which the Indenture is discharged in accordance with Section 13.01 thereof, but under any circumstances not later than October 1, _____. The provisions of this Section are subject to the provisions of Section 6.2 relating to the taking in eminent domain of the Leased Property in whole or in part.

SECTION 4.3. *Lease Payments.*

(a) Obligation to Pay. Subject to the provisions of Sections 6.2 and 6.3 and the provisions of Article IX, the City agrees to pay to the Authority, its successors and assigns, the Lease Payments in the respective amounts specified in Appendix B attached to this Lease, to be due and payable in immediately available funds on the Interest Payment Dates immediately following each of the respective Lease Payment Dates specified in Appendix B, and to be deposited by the City with the Trustee on each of the Lease Payment Dates specified in Appendix B. Any amount held in the Bond Fund, the Interest Account and the Principal Account on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in whole under Article IX, and amounts required for payment of past due principal or interest on any Bonds not presented for payment) will be credited towards the Lease Payment then required to be paid hereunder. The City is not required to deposit any Lease Payment with the Trustee on any Lease Payment Date if the amounts then held in the Bond Fund, the Interest Account and the Principal Account are at least equal to the Lease Payment then required to be deposited with the Trustee. The Lease Payments payable in any Rental Period are for the use of the Leased Property during that Rental Period.

(b) Effect of Prepayment. If the City prepays all Lease Payments in full under Sections 9.2 or 9.3, the City's obligations under this Section will thereupon cease and terminate. If the City prepays the Lease Payments in part but not in whole under Sections 9.2 or 9.3, the principal components of the remaining Lease Payments will be reduced in integral multiples of \$5,000 among Lease Payment Dates on a basis which corresponds to the principal maturities of the Bonds which are redeemed thereby; and the interest component of each remaining Lease Payment will be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Bonds thereby redeemed under Section 4.01 of the Indenture.

(c) Rate on Overdue Payments. If the City fails to make any of the payments required in this Section, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the highest rate of interest on any Outstanding Bond.

(d) Fair Rental Value. The aggregate amount of the Lease Payments and Additional Rental Payments coming due and payable during each Rental Period constitute the total rental for the Leased Property for such Rental Period, and are payable by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Leased Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments represent the fair rental value of the Leased Property. In making that determination, consideration has been given to the estimated value of the Leased Property, other obligations of the City and the Authority under this Lease, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the City and the general public.

(e) Assignment. The City understands and agrees that all Lease Payments have been assigned by the Authority to the Trustee in trust, under the Assignment Agreement, for the benefit of the Owners of the Bonds, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby agrees to pay to the Trustee at its Office, all payments payable by the City under this Section and all amounts payable by the City under Article IX.

SECTION 4.4. *Source of Payments; Covenant to Budget and Appropriate.* The Lease Payments are payable from any source of available funds of the City, subject to the provisions of Section 6.3. The City covenants to take all actions required to include the Lease Payments in each of its budgets during the Term of this Lease and to make the necessary appropriations for all Lease Payments and Additional Rental Payments. The foregoing covenant of the City contained constitutes a duty imposed by law and each and every public official of the City is required to take all actions required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the City.

SECTION 4.5. *Additional Rental Payments.* In addition to the Lease Payments, the City shall pay when due the following amounts of Additional Rental Payments in consideration of the lease of the Leased Property by the City from the Authority hereunder:

- (a) all fees and expenses incurred by the Authority in connection with or by reason of its leasehold estate in the Leased Property, when due,
- (b) all reasonable compensation to the Trustee for all services rendered under the Indenture and for all reasonable expenses, charges, costs, liabilities, legal fees and other disbursements incurred in and about the performance of its powers and duties under the Indenture,
- (c) the reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Trustee to prepare audits, financial statements, reports, opinions or provide such other services required under this Lease or the Indenture,
- (d) amounts coming due and payable as Excess Investment Earnings in accordance with Section 7.6(e), and

- (e) the reasonable out-of-pocket expenses of the Authority in connection with the execution and delivery of this Lease or the Indenture, or in connection with the issuance of the Bonds, including but not limited to any and all expenses incurred in connection with the authorization, sale and delivery of the Bonds, or incurred by the Authority in connection with any litigation which may at any time be instituted involving this Lease, the Bonds, the Indenture or any of the other documents contemplated hereby or thereby, or otherwise incurred in connection with the administration of this Lease.

SECTION 4.6. *Quiet Enjoyment.* Throughout the Term of this Lease, the Authority shall provide the City with quiet use and enjoyment of the Leased Property and the City will peaceably and quietly have and hold and enjoy the Leased Property, without suit, trouble or hindrance from the Authority, except as expressly set forth in this Lease. The Authority will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Authority may lawfully do so. Notwithstanding the foregoing, the Authority has the right to inspect the Leased Property as provided in Section 7.2.

SECTION 4.7. *Title.* Upon the termination of this Lease (other than under Section 8.2(b) hereof), all right, title and interest of the Authority in and to the Leased Property transfers to and vests in the City. The Authority shall take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer of title.

ARTICLE V

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

SECTION 5.1. *Maintenance, Utilities, Taxes and Assessments.* Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all improvement, repair and maintenance of the Leased Property are the responsibility of the City, and the City will pay for or otherwise arrange for the payment of all utility services supplied to the Leased Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and will pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Authority agrees to provide only the Leased Property. The City waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the City under the terms of this Lease.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Leased Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

The City may, at its expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority notifies the City that, in its reasonable opinion, by nonpayment of any such items the interest of the Authority in the Leased Property will be materially endangered or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority and the Trustee.

SECTION 5.2. *Modification of Leased Property.* The City has the right, at its own expense, to make additions, modifications and improvements to the Leased Property or any portion thereof. All additions, modifications and improvements to the Leased Property will thereafter comprise part of the Leased Property and become subject to the provisions of this Lease. Such additions, modifications and improvements may not in any way damage the Leased Property, or cause the Leased Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Leased Property, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements. The City will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the City under this Section; except that if any such lien is established and the City first notifies or causes to be notified the Authority of the City's intention to do so, the City may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Authority with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Authority. The Authority will cooperate fully in any such contest, upon the request and at the expense of the City.

SECTION 5.3. *Liability and Property Damage Insurance.* The City shall maintain or cause to be maintained throughout the Term of this Lease, but only if and to the extent available from reputable insurers at reasonable cost in the reasonable opinion of the City, a standard commercial general liability insurance policy or policies in protection of the Authority, the City, and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Leased Property. Such policy or policies shall provide coverage in such liability limits and be subject to such deductibles as the City deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of Section 5.7, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance must be applied toward extinguishment or satisfaction of the liability with respect to which paid.

SECTION 5.4. *Casualty Insurance.* The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, casualty insurance against loss or damage to all buildings situated on the Leased Property, in an amount at least equal to the lesser of (a) 100% of the replacement value of the insured buildings, or (b) 100% of the aggregate principal amount of the Outstanding Bonds. Such insurance must, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance, and must include earthquake insurance if available at reasonable cost from reputable insurers in the judgment of the City. Such insurance may be subject to such deductibles as the City deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance must be applied as provided in Section 6.1.

SECTION 5.5. *Rental Interruption Insurance.* The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any portion of the Leased Property constituting buildings or other improvements as a result of any of the hazards covered in the insurance required by Section 5.4, in an amount at least equal to the maximum such Lease Payments coming due and payable during any consecutive two Fiscal Years. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance, if any, must be paid to the Trustee and deposited in the Bond Fund, to be applied as a credit towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

SECTION 5.6. *Recordation Hereof; Title Insurance.* On or before the Closing Date the City shall, at its expense, (a) cause the Site Lease, the Assignment Agreement and this Lease, or a memorandum hereof or thereof in form and substance approved by Bond Counsel, to be recorded in the office of the San Joaquin County Recorder, and (b) obtain a CLTA title insurance policy insuring the City's leasehold estate hereunder in the Leased Property, subject only to Permitted Encumbrances, in an amount at least equal to the aggregate principal amount of the Bonds. All Net Proceeds received under any such title insurance policy must be deposited with the Trustee in the Bond Fund to be credited towards the prepayment of the remaining Lease Payments under Section 9.3.

SECTION 5.7. *Insurance Net Proceeds; Form of Policies.* Each policy of insurance maintained under Sections 5.4, 5.5 and 5.6 must name the Trustee as loss payee so as to provide that all proceeds thereunder are payable to the Trustee. The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease. All such policies shall provide that the Trustee is given 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The City must file with the Trustee annually, within 90 days following the close of each Fiscal Year, a certificate of the City stating that all policies of insurance required hereunder are then in full force and effect. The Trustee has no responsibility for the sufficiency, adequacy or amount of any insurance or self-insurance herein

required and is fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss.

If any insurance maintained under Section 5.3 is provided in the form of self-insurance, the City must file with the Trustee annually, within 90 days following the close of each Fiscal Year, a statement of the risk manager of the City or an independent insurance adviser engaged by the City identifying the extent of such self-insurance and stating the determination that the City maintains sufficient reserves with respect thereto. If any such insurance is provided in the form of self-insurance by the City, the City has no obligation to make any payment with respect to any insured event except from those reserves.

SECTION 5.8. *Installation of City's Personal Property.* The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Leased Property. All such items shall remain the sole property of the City, in which neither the Authority nor the Trustee has any interest, and may be modified or removed by the City at any time, provided that the City must repair all damage to the Leased Property resulting from the installation, modification or removal of any such items. Nothing in this Lease prevents the City from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, so long as no such lien or security interest attaches to any part of the Leased Property.

SECTION 5.9. *Liens.* The City may not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, other than as herein contemplated and except for such encumbrances as the City certifies in writing to the Trustee do not materially and adversely affect the leasehold estate of the City in the Leased Property hereunder. If any such mortgage, pledge, lien, charge, encumbrance or claim does materially and adversely affect the leasehold estate of the City in the Leased Property hereunder, the City will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible; provided that the City is not required to do so prior to the time when such mortgage, pledge, lien, charge, encumbrance or claim actually causes such material adverse effect. The City will reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

SECTION 5.10. *Advances.* If the City fails to perform any of its obligations under this Article V, the Authority may (but is not required to) take such action as it deems necessary to cure such failure, including the advancement of money, and the City shall repay all such advances as Additional Rental Payments hereunder, with interest at the rate set forth in Section 4.3(c).

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. *Application of Net Proceeds.* The Trustee, as assignee of the Authority under the Assignment Agreement, has the right to receive all Net Proceeds. As provided in the Indenture, the Trustee will deposit all Net Proceeds in the Insurance and Condemnation Fund to be applied as set forth in Section 5.07 of the Indenture.

SECTION 6.2. *Termination or Abatement Due to Eminent Domain.* If the Leased Property is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease thereupon ceases as of the day possession is taken. If less than all of the Leased Property is taken permanently, or if the Leased Property is taken temporarily, under the power of eminent domain, then:

- (a) this Lease shall continue in full force and effect with respect thereto and does not terminate by virtue of such taking, and the parties waive the benefit of any law to the contrary; and
- (b) the Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property.

SECTION 6.3. *Abatement Due to Damage or Destruction.* The Lease Payments are subject to abatement during any period in which by reason of damage or destruction (other than by eminent domain which is hereinbefore provided for) there is substantial interference with the use and occupancy by the City of the Leased Property or any portion thereof. The Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property not damaged or destroyed. Such abatement will continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Lease continues in full force and effect and the City waives any right to terminate this Lease by virtue of any such damage and destruction.

ARTICLE VII

OTHER COVENANTS OF THE CITY

SECTION 7.1. *Disclaimer of Warranties.* THE AUTHORITY AND THE TRUSTEE MAKE NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE LEASED PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF ANY PORTION OF THE LEASED PROPERTY OR A DEALER THEREIN, THAT THE CITY LEASES THE LEASED PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. The Authority has no liability for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease for the existence, furnishing, functioning or use of the Leased Property by the City.

SECTION 7.2. *Access to the Leased Property.* The City agrees that the Authority and any Authorized Representative of the Authority, and the Authority's successors or assigns, have the right at all reasonable times to enter upon and to examine and inspect the Leased Property or any part thereof. The City further agrees that the Authority, any Authority Representative and the Authority's successors or assigns may have such rights of access to the Leased Property or any component thereof as reasonably necessary to cause the proper maintenance of the Leased Property if the City fails to perform its obligations hereunder; *provided, however*, that neither the Authority nor any of its assigns has any obligation to cause such proper maintenance.

SECTION 7.3. *Release and Indemnification Covenants.* The City agrees to indemnify the Authority, the Trustee and their respective officers, agents, successors and assigns, against all claims, losses and damages, including legal fees and expenses, arising out of any of the following:

- (a) the use, maintenance, condition or management of, or from any work or thing done on the Leased Property by the City,
- (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease,
- (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property,
- (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Leased Property,
- (e) the acquisition, construction, improvement and equipping of the Leased Property, or the authorization of payment of the costs thereof, or

- (f) the acceptance and performance of the duties of the Trustee under the Indenture and under this Lease.

No indemnification is made under this Section or elsewhere in this Lease for willful misconduct or negligence under this Lease by the Authority, the Trustee or their respective officers, agents, employees, successors or assigns.

SECTION 7.4. *Assignment and Subleasing by the City.* The City may sublease the Leased Property, or any portion thereof, subject to all of the following conditions:

- (a) this Lease and the obligation of the City to make Lease Payments hereunder must remain obligations of the City;
- (b) the City must, within 30 days after the delivery thereof, furnish or cause to be furnished to the Authority and the Trustee a true and complete copy of such sublease;
- (c) no such sublease by the City may cause the Leased Property to be used for a purpose which is not authorized under the provisions of the laws of the State of California; and
- (d) the City must furnish to the Authority and the Trustee a written opinion of Bond Counsel stating that such sublease does not cause the interest on the Bonds to become included in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State of California.

SECTION 7.5. *Amendment Hereof.* The Authority and the City may at any time amend or modify any of the provisions of this Lease, but only: (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Bonds; or (b) without the consent of the Trustee or any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City contained in this Lease, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;
- (ii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, to conform to the original intention of the City and the Authority;
- (iii) to modify, amend or supplement this Lease in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Tax Code;
- (iv) to amend the description of the Leased Property to reflect accurately the property originally intended to be included therein, or in connection with any substitution or release of property under Sections 3.2 or 3.3;

- (v) to obligate the City to pay additional amounts of rental for the use and occupancy of the Leased Property, but only if (A) such additional amounts of rental are pledged or assigned for the payment of any bonds, notes, leases or other obligations the proceeds of which are applied to finance or refinance the acquisition or construction of any real or personal property for which the City is authorized to expend funds subject to its control, (B) the City has obtained and filed with the Trustee an appraisal showing that the appraised value of the Leased Property is at least equal to the aggregate principal amount of the Outstanding Bonds and all such other bonds, notes, leases or other obligations, and (C) the City has filed with the Trustee written evidence that the amendments made under this clause (v) will not of themselves cause a reduction or withdrawal of any rating then assigned to the Bonds; or
- (vi) in any other respect whatsoever as the Authority and the City deem necessary or desirable, if in the opinion of Bond Counsel such modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds.

No such modification or amendment may (a) extend or have the effect of extending any Lease Payment Date or reducing any Lease Payment or any premium payable upon the prepayment thereof, without the express consent of the Owners of the affected Bonds, or (b) modify any of the rights or obligations of the Trustee without its written assent thereto.

SECTION 7.6. *Tax Covenants.*

(a) Private Business Use Limitation. The City shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(b) Federal Guarantee Prohibition. The City may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(c) No Arbitrage. The City may not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(d) Maintenance of Tax Exemption. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

(e) Rebate of Excess Investment Earnings to United States. The City shall calculate or cause to be calculated the Excess Investment Earnings in all respects at the times and in the manner required under the Tax Code. The City shall pay the full

amount of Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code. Such payments shall be made by the City from any source of legally available funds of the City, and shall constitute Additional Rental Payments hereunder.

The City shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subsection (e). In order to provide for the administration of this subsection (e), the City may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the City may deem appropriate. The Trustee has no duty or obligation to monitor or enforce compliance by the City of any of the requirements under this subsection (e).

SECTION 7.7. *Continuing Disclosure.* The City shall comply with and carry out all of the provisions of the Continuing Disclosure Certificate executed by the City as of the Closing Date, as originally executed and as it may be amended from time to time in accordance with its terms. Notwithstanding any other provision of this Lease, failure of the City to comply with such Continuing Disclosure Certificate will not constitute an Event of Default, although any Participating Underwriter (as that term is defined in such Continuing Disclosure Certificate) or any Owner or beneficial owner of the Bonds may take such actions as may be necessary and appropriate to compel performance by the City of its obligations under this Section, including seeking mandate or specific performance by court order.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.1. *Events of Default Defined.* Any one or more of the following events constitute an Event of Default hereunder:

- (a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding subsection (a), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee. If in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30-day period, the failure will not constitute an Event of Default if the City commences to cure the failure within such 30-day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.
- (c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any

proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

SECTION 8.2. *Remedies on Default.* Whenever any Event of Default has happened and is continuing, the Authority may exercise any and all remedies available under law or granted under this Lease. Notwithstanding anything herein or in the Indenture to the contrary, neither the Authority nor the Trustee may accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Authority may exercise any and all rights granted hereunder; except that no termination of this Lease may be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Authority may exercise each and every one of the following remedies, subject in all respects to the limitations set forth in Section 8.3.

- (a) Enforcement of Payments Without Termination. If the Authority does not elect to terminate this Lease in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the re-leasing of the Leased Property, or, if the Authority is unable to re-lease the Leased Property, then for the full amount of all Lease Payments to the end of the Term of this Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Leased Property or the exercise of any other remedy by the Authority. The City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to enter upon and re-lease the Leased Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Leased Property, to place the Leased Property in storage or other suitable place in the County of San Joaquin for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Leased Property and the removal and storage of the Leased Property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Lease constitute full and sufficient notice of the right of the Authority to re-lease the Leased Property in the event of such re-entry without effecting a surrender of this Lease, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of

such default by the City the right to terminate this Lease shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The City agrees to surrender and quit possession of the Leased Property upon demand of the Authority for the purpose of enabling the Leased Property to be re-let under this paragraph, and the City further waives the right to any rental obtained by the Authority in excess of the Lease Payments and hereby conveys and releases such excess to the Authority as compensation to the Authority for its services in re-leasing the Leased Property.

- (b) Termination of Lease. If an Event of Default occurs and is continuing hereunder, the Authority at its option may terminate this Lease and re-lease all or any portion of the Leased Property. If the Authority terminates this Lease at its option and in the manner hereinafter provided on account of default by the City (and notwithstanding any re-entry upon the Leased Property by the Authority in any manner whatsoever or the re-leasing of the Leased Property), the City nevertheless agrees to pay to the Authority all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Rental Payments. Any surplus received by the Authority from such re-leasing shall be deposited in the Bond Fund. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Authority shall of itself operate to terminate this Lease, and no termination of this Lease on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Authority shall have given written notice to the City of the election on the part of the Authority to terminate this Lease. The City covenants and agrees that no surrender of the Leased Property, or of the remainder of the Term hereof or any termination of this Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Authority by such written notice.
- (c) Proceedings at Law or In Equity. If an Event of Default occurs and continues hereunder, the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

SECTION 8.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy is cumulative and in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default impairs any such right or power or operates as a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article VIII it is not necessary to give any notice, other than as expressly required in this Article VIII or by law.

SECTION 8.4. *Agreement to Pay Attorneys' Fees and Expenses.* If the Authority or the City defaults under any of the provisions of this Lease and the nondefaulting party employs attorneys or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party; *provided, however,* that the Trustee shall not be required to expend its own funds for any payment described in this Section.

SECTION 8.5. *No Additional Waiver Implied by One Waiver.* If the Authority or the City breaches any agreement in this Lease and thereafter the other party waives the breach, such waiver is limited to the particular breach so waived and does not operate to waive any other breach hereunder.

SECTION 8.6. *Application of Proceeds.* All net proceeds received from the release of the Leased Property under this Article VIII, and all other amounts derived by the Authority or the Trustee as a result of the occurrence of an Event of Default, must be paid to and applied by the Trustee in accordance with Section 7.03 of the Indenture.

SECTION 8.7. *Trustee and Bond Owners to Exercise Rights.* Such rights and remedies as are given to the Authority under this Article VIII have been assigned by the Authority to the Trustee under the Assignment Agreement for the benefit of the Bond Owners, to which assignment the City hereby consents. The Trustee and the Bond Owners shall exercise such rights and remedies in accordance with the Indenture.

ARTICLE IX

PREPAYMENT OF LEASE PAYMENTS

SECTION 9.1. *Security Deposit.* Notwithstanding any other provision of this Lease, the City may on any date secure the payment of the Lease Payments allocable to the Leased Property in whole or in part by depositing with the Trustee an amount of cash which, together with other available amounts on deposit in the funds and accounts established under the Indenture, is either:

- (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Appendix B, or
- (b) invested in whole or in part in non-callable Federal Securities in such amount as will, in the opinion of an independent certified public accountant, (which opinion must be addressed and delivered to the Trustee), together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay such Lease Payments when due under Section 4.3(a), as the City instructs at the time of said deposit.

If the City makes a security deposit under this Section with respect to all unpaid Lease Payments, and notwithstanding the provisions of Section 4.2, (a) the Term of this Lease will continue, (b) all obligations of the City under this Lease, and all security provided by this Lease for said Lease Payments, will thereupon cease and terminate,

excepting only the obligation of the City to make, or cause to be made all of said Lease Payments from such security deposit, and (c) under Section 4.7, title to the Leased Property will vest in the City on the date of said deposit automatically and without further action by the City or the Authority. Said security deposit constitutes a special fund for the payment of Lease Payments in accordance with the provisions of this Lease.

SECTION 9.2. *Optional Prepayment.* The City has the option to prepay the principal components of the Lease Payments in whole, or in part in any integral multiple of \$5,000, from any source of legally available funds, on any date on or after October 1, 2022, at a prepayment price equal to the aggregate principal components of the Lease Payments to be prepaid, together with the interest component of the Lease Payment required to be paid on such Interest Payment Date, and together with a prepayment premium equal to the premium (if any) required to be paid on the resulting redemption of Bonds under Section 4.01(a) of the Indenture. Such prepayment price shall be deposited by the Trustee in the Redemption Fund to be applied to the redemption of Bonds under Section 4.01(a) of the Indenture. The City shall give written notice to the Trustee of its intention to prepay the Lease Payments under this Section in sufficient time to enable the Trustee to give notice of the corresponding redemption of Bonds in accordance with Section 4.03 of the Indenture. .

SECTION 9.3. *Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain.* The City shall prepay the principal components of the Lease Payments allocable to the Leased Property in whole or in part on any date, from and to the extent of any Net Proceeds of insurance award or eminent domain award with respect to the Leased Property theretofore deposited in the Redemption Fund for that purpose under Article VI hereof and Section 5.07 of the Indenture. Such Net Proceeds, to the extent remaining after payment of any delinquent Lease Payments, will be credited towards the City's obligations under this Section and applied to the corresponding redemption of Bonds under Section 4.01(b) of the Indenture.

SECTION 9.4. *Credit for Amounts on Deposit.* If the principal components of the Lease Payments are prepaid in full under this Article IX, such that the Indenture is discharged by its terms as a result of such prepayment, at the written election of the City filed with the Trustee any or all amounts then on deposit in the Bond Fund (and the accounts therein) will be credited towards the amounts then required to be so prepaid.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. *Notices.* Any notice, request, complaint, demand or other communication under this Lease shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the Authority
or the City:*

City of Lodi
221 West Pine Street
Lodi, CA 95240
Attention: City Manager
Fax: (209) 333-6710

If to the Trustee:

U.S. Bank National Association
U.S. Bank National Association
Attn.: Corporate Finance
100 California Street, Suite 1000
San Francisco, CA 94111
Fax: 415-677-3768

SECTION 10.2. *Binding Effect.* This Lease inures to the benefit of and binds the Authority, the City and their respective successors and assigns.

SECTION 10.3. *Severability.* If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

SECTION 10.4. *Net-net-net Lease.* This Lease is deemed and construed to be a "net-net-net lease" and the City hereby agrees that the Lease Payments are an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 10.5. *Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

SECTION 10.6. *Further Assurances and Corrective Instruments.* The Authority and the City shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

SECTION 10.7. *Execution in Counterparts.* This Lease may be executed in several counterparts, each of which is an original and all of which constitute but one and the same instrument.

SECTION 10.8. *Applicable Law.* This Lease is governed by and construed in accordance with the laws of the State of California.

SECTION 10.9. *Authority and City Representatives.* Whenever under the provisions of this Lease the approval of the Authority or the City is required, or the Authority or the City is required to take some action at the request of the other, such approval or such request shall be given for the Authority and for the City by an Authorized Representative thereof, and any party hereto may conclusively rely upon any such approval or request.

SECTION 10.10. *Captions.* The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease.

IN WITNESS WHEREOF, the Authority and the City have caused this Lease to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**LODI PUBLIC FINANCING AUTHORITY, as
lessor**

By _____
Executive Director

Attest:

Secretary

CITY OF LODI, as lessee

By _____
City Manager

Attest:

City Clerk

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of that certain real property situated in the City of Lodi, County of San Joaquin, which is more particularly described as follows:

APPENDIX B

SCHEDULE OF LEASE PAYMENTS

<u>Lease Payment Date*</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Aggregate Lease Payment</u>
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* Lease Payment Dates are the Business Day immediately preceding each date listed in the schedule

TO BE RECORDED AND WHEN RECORDED
RETURN TO:

Jones Hall
A Professional Law Corporation
650 California Street, 18th Floor
San Francisco, California 94108
Attention: Christopher K. Lynch, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX UNDER SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

SITE LEASE

This SITE LEASE (this "**Site Lease**"), dated for convenience as of September 1, 2012, is between the CITY OF LODI, a general law city and municipal corporation duly organized and existing under the Constitution and laws of the State of California, as lessor (the "**City**"), and the LODI PUBLIC FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California, as lessee (the "**Authority**").

BACKGROUND:

1. The City previously caused execution and delivery of its Certificates of Participation (2002 Public Improvement Financing Project) in the aggregate initial principal amount of \$26,745,000 (the "**2002 Certificates**"), pursuant to a Trust Agreement, dated as of January 1, 2002 (the "2002 Trust Agreement"), between the Lodi Public Improvement Corporation and U.S. Bank National Association, as successor trustee (the "**2002 Trustee**"), for the purpose of (i) financing the costs of constructing, furnishing and equipping a new police building and jail for the City, (ii) financing portions of other projects, (iii) refunding on a current basis the City's \$3,985,000 aggregate principal amount of outstanding Certificates of Participation (1995 Public Improvement Financing Project) and refunding on an advance basis the City's \$8,440,000 aggregate principal amount of outstanding Certificates of Participation (1996 Public Improvement Financing Project) and (iv) paying the costs of execution and delivery of the 2002 Certificates.

2. The City is proceeding to refinance its outstanding 2002 Certificates.

3. To that end, the City has proposed to lease its new police building and Carnegie Forum, including land and improvements, as more particularly described in Appendix A attached hereto and by this reference incorporated herein (the "**Leased Property**"), to the Authority under this Site Lease, in consideration of the payment by the Authority of an upfront rental payment (the "**Site Lease Payment**") which is sufficient to provide funds for the prepayment of the 2002 Certificates.

4. The Authority has authorized the issuance of its Lodi Public Financing Authority 2012 Refunding Lease Revenue Bonds in the aggregate principal amount of \$_____ (the "**Bonds**") under an Indenture of Trust dated as of September 1, 2012 (the "Indenture"), between the Authority and U.S. Bank National Association, as trustee (the "**Trustee**"), for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with this Site Lease.

5. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Bonds, the Authority has agreed to lease the Leased Property back to the City under a Lease Agreement dated as of September 1, 2012 (the "**Lease**"), which has been recorded concurrently herewith, under which the City has agreed to pay semiannual Lease Payments as the rental for the Leased Property thereunder.

6. The lease payments made by the City under the Lease have been assigned by the Authority to the Trustee for the security of the Bonds under an Assignment Agreement dated as of September 1, 2012, between the Authority as assignor and the Trustee as assignee, which has been recorded concurrently herewith.

A G R E E M E N T :

In consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:

SECTION 1. *Lease of Property to Authority.* The City hereby leases the Leased Property to the Authority and the Authority hereby leases the Leased Property from the City, on the terms and conditions hereinafter set forth.

SECTION 2. *Term; Possession.* The term of this Site Lease commences on the Closing Date and ends on the date on which the Indenture is discharged in accordance with Section 13.01 thereof, but under any circumstances not later than October 1, 20___. The provisions of this Section 2 are subject in all respects to any other provisions of this Site Lease relating to the termination hereof.

SECTION 3. *Rental.* The Authority shall pay to the City as and for rental of the Leased Property hereunder, the sum of \$_____ (the "**Site Lease Payment**"). The Site Lease Payment is due and payable upon the issuance of the Bonds and the execution and delivery hereof, and will be paid from the proceeds of the Bonds. The Authority and the City hereby find and determine that the total amount of the Site Lease Payment does not exceed the fair market value of the leasehold interest in the Leased Property which is conveyed hereunder by the City to the Authority. No other amount of rental is due and payable by the Authority for the use and occupancy of the Leased Property under this Site Lease.

As provided in the Indenture, a portion of the proceeds of the Bonds will be applied to make the Site Lease Payment by depositing the full amount thereof with the 2002 Trustee to be held, invested and administered in accordance with the Escrow Agreement for the purpose of discharging the City's obligations with respect to the 2002 Certificates.

SECTION 4. *Leaseback to City.* The Authority shall lease the Leased Property back to the City under the Lease.

SECTION 5. *Assignments and Subleases.* Unless the City is in default under the Lease, the Authority may not assign its rights under this Site Lease or sublet all or any portion of the Leased Property, except as provided in the Assignment Agreement and in the Lease, without the prior written consent of the City.

SECTION 6. *Substitution or Release of Property.* If the City exercises its option under Section 3.2 of the Lease to substitute property for the Leased Property in whole or in part, such substitution shall also operate to substitute property for the Leased Property which is leased hereunder. If the City exercises its option under Section 3.3 of the Lease to release a portion of the Leased Property from the Lease, such substitution shall also operate to release such portion of the Leased Property hereunder. The description of the Leased Property which is leased under the Lease shall conform at all times to the description of the Leased Property which is leased hereunder.

SECTION 7. *Right of Entry.* The City reserves the right for any of its duly authorized representatives to enter upon the Leased Property, or any portion thereof, at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

SECTION 8. *Termination.* The Authority agrees, upon the termination of this Site Lease, to quit and surrender the Leased Property in the same good order and condition as the Leased Property was in at the time of commencement of the term hereof, reasonable wear and tear excepted, and agrees that all buildings, improvements and structures then existing upon the Leased Property shall remain thereon and title thereto shall vest thereupon in the City for no additional consideration.

SECTION 9. *Default.* If the Authority defaults in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Authority, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease shall be deemed to occur as a result thereof and no such remedy may include termination hereof; *provided, however,* that so long as the Lease remains in effect, the Lease Payments payable by the City under the Lease shall continue to be paid to the Trustee.

SECTION 10. *Quiet Enjoyment.* The Authority at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy all of the Leased Property, subject to the provisions of the Lease and subject only to Permitted Encumbrances (as that term is defined in the Lease).

SECTION 11. *Waiver of Personal Liability.* All liabilities under this Site Lease on the part of the Authority are solely corporate liabilities of the Authority as a public entity, and the City hereby releases each and every member and officer of the Authority of and from any personal or individual liability under this Site Lease. No member or officer of the Authority or its governing board shall at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the Authority hereunder.

SECTION 12. *Taxes.* The City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Leased Property and any improvements thereon.

SECTION 13. *Eminent Domain.* If the whole or any part of the Leased Property or any improvements thereon is taken by eminent domain proceedings, the interest of the Authority shall be recognized and is hereby determined to be the amount of the then unpaid Lease Payments payable under the Lease and the balance of the award, if any, shall be paid to the City.

SECTION 14. *Partial Invalidity.* If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 15. *Notices.* Any notice, request, complaint, demand or other communication under this Site Lease shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopy, telex or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by telecopy, telex or other form of telecommunication, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The City, the Authority and the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the Authority
or the City:*

City of Lodi
221 West Pine Street
Lodi, CA 95240
Attention: City Manager
Fax: (209) 333-6710

If to the Trustee:

U.S. Bank National Association
Attn.: Corporate Finance
100 California Street, Suite 1000
San Francisco, CA 94111
Fax: 415-677-3768

SECTION 16. *Amendment of this Site Lease.* The Authority and the City may at any time amend or modify any of the provisions of this Site Lease, but only (a) with the prior written consent of the Owners of a majority in aggregate principal amount of the Outstanding Bonds; or (b) without the consent of any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to make cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, or in any other respect whatsoever as the Authority and the City may deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds;

- (ii) to amend any provision hereof relating to the Tax Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest on the Bonds under the Tax Code, in the opinion of Bond Counsel;
- (iii) to conform to any amendment of the Indenture which is made thereto in accordance with Section 9.01 of the Indenture; or
- (iv) for the purpose of effectuating any substitution or release of property under Section 6.

SECTION 17. *Governing Law.* This Site Lease shall be construed in accordance with and governed by the Constitution and laws of the State of California.

SECTION 18. *Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary under this Site Lease with all rights of a third party beneficiary.

SECTION 19. *Binding Effect.* This Site Lease inures to the benefit of and is binding upon the Authority, the City and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 20. *Section Headings.* All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

SECTION 21. *Execution in Counterparts.* This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same lease. It is also agreed that separate counterparts of this Site Lease may be separately executed by the Authority and the City, all with the same force and effect as though the same counterpart had been executed by both the Authority and the City.

SECTION 22. *Defined Terms.* All capitalized terms used herein and not otherwise defined have the respective meanings given those terms in the Indenture.

IN WITNESS WHEREOF, the City and the Authority have caused this Site Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CITY OF LODI, as lessor

By _____
City Manager

Attest:

City Clerk

LODI PUBLIC FINANCING AUTHORITY, as lessee

By _____
Executive Director

Attest:

Secretary

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The Leased Property consists of that certain real property situated in the City of Lodi, County of San Joaquin, State of California, which is more particularly described as follows:

PPRELIMINARY OFFICIAL STATEMENT DATED AUGUST __, 2012

NEW ISSUE - FULL BOOK-ENTRY

RATINGS: Fitch: “___”
Standard & Poor’s: “___”
See “Ratings”.

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, although for the purpose of computing the alternative minimum tax imposed on certain corporations, such interest is taken into account in determining certain income and earnings. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. See “TAX MATTERS.”

\$ _____*
LODI PUBLIC FINANCING AUTHORITY
2012 Refunding Lease Revenue Bonds

Dated: Date of Delivery

Due: October 1, as shown on inside cover

Authority for Issuance. The 2012 Refunding Lease Revenue Bonds (the “Bonds”) are being issued by the Lodi Public Financing Authority (the “Authority”) under a resolution adopted by the Board of Directors of the Authority on August 1, 2012, and an Indenture of Trust dated as of September 1, 2012 (the “Indenture”) by and between the Authority and U.S. Bank National Association, as trustee for the Bonds (the “Trustee”). See “THE BONDS - Authority for Issuance.”

Use of Proceeds. The proceeds of the Bonds will be used to (i) refinance \$_____ outstanding principal amount of City of Lodi (the “City”) Certificates of Participation (2002 Public Improvement Financing Project) (the “Refunded Certificates”) and the City’s related lease payment obligation; and (ii) pay the costs of issuing the Bonds. See “THE REFINANCING PLAN.”

Security for the Bonds. Under the Indenture, the Bonds will be payable solely from and secured by Revenues and certain funds and accounts held under the Indenture. Revenues consist primarily of lease payments (“Lease Payments”) to be made by the City pursuant to a Lease Agreement, dated as of September 1, 2012 (the “Lease”), by and between the Authority and the City, for the leasing of certain real property. Under the Lease, the City covenants to take such action as necessary to include the Lease Payments in its annual budgets and to make all necessary appropriations for such Lease Payments (subject to abatement under certain circumstances as described in this Official Statement). See “SECURITY FOR THE BONDS.”

Bond Terms; Book-Entry Only. The Bonds will bear interest at the rates shown on the inside cover page, payable semiannually on April 1 and October 1 of each year, commencing on April 1, 2013, and will be issued in fully-registered form without coupons in integral multiples of \$5,000. The Bonds will be issued in book-entry only form, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). Purchasers of the Bonds will not receive certificates representing their interests in the Bonds. Payments of the principal of, premium, if any, and interest on the Bonds will be made to DTC, which is obligated in turn to remit such principal, premium, if any, and interest to its DTC Participants for subsequent disbursement to the beneficial owners of the Bonds. See “THE BONDS - General Provisions.”

Redemption. The Bonds are subject to redemption prior to maturity. See “THE BONDS - Redemption.”

NEITHER THE BONDS, NOR THE OBLIGATION OF THE AUTHORITY TO PAY PRINCIPAL OF OR INTEREST ON THE BONDS, NOR THE OBLIGATION OF THE CITY TO MAKE THE LEASE PAYMENTS, CONSTITUTES A DEBT OR A LIABILITY OF THE AUTHORITY, THE CITY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL LIMITATION ON INDEBTEDNESS, OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY. THE BONDS ARE SECURED SOLELY BY THE PLEDGE OF REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE TAXING POWER OF THE CITY. THE AUTHORITY HAS NO TAXING POWER.

THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR QUICK REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE OF BONDS. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION WITH RESPECT TO THE PURCHASE OF THE BONDS.

The Bonds are offered when, as and if issued and received by the Underwriter and subject to the approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will be passed upon for the City and the Authority by the City Attorney, and for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, Sacramento, California. It is anticipated that the Bonds will be delivered in book-entry form through the facilities of DTC on or about September __, 2012.

J.P. Morgan	Stone & Youngberg, a Division of Stifel Nicolaus
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The date of this Official Statement is: August __, 2012.

* Preliminary; subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. These securities may not be sold, nor may offers to buy them be accepted, prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of, these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful.

MATURITY SCHEDULE
(Base CUSIP†: _____)

Maturity Date (October 1)	Principal Amount	Interest Rate	Price or Yield	CUSIP†
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† Copyright 2012, American Bankers Association. CUSIP data provided herein is provided by Standard and Poor's CUSIP Service Bureau, a division of The McGraw Hill Companies, Inc. CUSIP data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Service. CUSIP numbers are provided for convenience of reference only. Neither the Authority, City nor the Underwriters take any responsibility for the accuracy of such numbers.

**LODI PUBLIC FINANCING AUTHORITY
CITY OF LODI**

AUTHORITY BOARD/CITY COUNCIL

JoAnne Mounce /Mayor/Chair
Alan Nakanishi/Mayor Pro Tem/Vice-Chair
Larry Hansen/Councilmember/ Member
Phil Katzakian/Councilmember/Member
Bob Johnson/Councilmember/Member

AUTHORITY/CITY OFFICIALS

Konradt Bartlam/City Manager/Executive Director
Jordan Ayers/Deputy City Manager/Treasurer
Randi Johl/City Clerk/Secretary
Steve Schwabauer, City Attorney/Authority Counsel

BOND COUNSEL

Jones Hall, A Professional Law Corporation
San Francisco, California

FINANCIAL ADVISOR

Lamont Financial Services Corporation
Los Angeles, California

TRUSTEE

U.S. Bank National Association
San Francisco, California

VERIFICATION AGENT

Causey Demgen & Moore Inc.

No dealer, broker, salesperson or other person has been authorized by the Authority, the City or the Underwriters to give any information or to make any representations in connection with the offer or sale of the Bonds other than those contained herein; and, if given or made, such other information or representations must not be relied upon as having been authorized by the Authority, the City or the Underwriters. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

This Official Statement is not to be construed as a contract with the purchasers or owners of the Bonds. Statements contained in this Official Statement that involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representations of fact.

The information set forth herein has been obtained from the Authority and the City and from other sources that the Authority and the City believe to be reliable. The information and expression of opinion herein are subject to change without notice and neither delivery of the Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City or the Authority or any other parties described herein since the date hereof. All summaries of the Resolution or other documents are made subject to the provisions of such documents and do not purport to be complete statements of any or all of such provisions. Reference is hereby made to such documents on file with the City for further information in connection therewith.

The Underwriters have provided the following sentence for inclusion in this Official Statement: The Underwriters have reviewed the information in this Official Statement in accordance with, and as a part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

In connection with the offering of the Bonds, the Underwriters may overallocate or effect transactions that stabilize or maintain the market price of such Bonds at a level above that which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time. The Underwriters may offer and sell the Bonds to certain dealers and dealer banks and banks acting as agents at prices lower than the public offering prices stated on the cover page hereof and said public offering prices may be changed from time to time by the Underwriters.

The Bonds have not been registered under the Securities Act of 1933, as amended, in reliance upon an exemption contained in such act. The Bonds have not been registered or qualified under the securities laws of any state.

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements." Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "budget" or other similar words. Such forward-looking statements include but are not limited to certain statements contained in the information in Appendix A – "THE CITY OF LODI" in this Official Statement. The achievement of certain results or other expectations contained in such forward-looking statements involves known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Neither the Authority nor the City plans to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.

The City maintains a website. However, the information presented therein is not part of this Official Statement and should not be relied upon in making an investment decision with respect to the Bonds.

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OFFICIAL STATEMENT
\$ _____*
LODI PUBLIC FINANCING AUTHORITY
2012 REFUNDING LEASE REVENUE BONDS

INTRODUCTION

This introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page and appendices, and the documents summarized or described in this Official Statement. A full review should be made of the entire Official Statement. The offering to potential investors is made only by means of the entire Official Statement.

Capitalized terms used but not defined in this Official Statement have the meanings set forth in the Indenture (as defined below). See “APPENDIX C - Summary of Principal Legal Documents.”

Authority for Issuance. The Lodi Public Financing Authority (the “Authority”) is issuing its 2012 Refunding Lease Revenue Bonds (the “Bonds”) under the following legal authority:

- (a) Articles 10 and 11 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, commencing with Section 6584 (the “Bond Law”),
- (b) a resolution adopted by the Board of Directors (the “Board”) of the Authority on August 1, 2012 (the “Authority Resolution”), and a resolution adopted by the City Council (the “City Council”) of the City of Lodi (the “City”) on August 1, 2012 (the “City Resolution”), and
- (c) an Indenture of Trust (the “Indenture”), dated as of September 1, 2012, by and between the Authority and U.S. Bank National Association, as trustee (the “Trustee”).

Form of Bonds; Book-Entry Only. The Bonds will be issued in fully registered form, registered in the name of The Depository Trust Company, New York, New York (“DTC”), or its nominee, which will act as securities depository for the Bonds. Purchasers of the Bonds will not receive certificates representing the Bonds that are purchased. See “THE BONDS - Book-Entry Only System” and “APPENDIX F - DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

Purpose of the Bonds. The Bonds are being issued to provide funds to (i) refinance \$_____ outstanding principal amount of the City’s Certificates of Participation (2002 Public Improvement Financing Project) (the “Refunded Certificates”); and (ii) pay the costs of issuing the Bonds.

Security for the Bonds and Pledge of Revenues. The Bonds will be payable solely from and secured by Revenues and certain funds and accounts held under the Indenture. Revenues consist primarily of Lease Payments to be made by the City pursuant to a Lease Agreement, dated as of September 1, 2012, between the City and the Authority (the “Lease”). See “THE LEASED PROPERTY.” Under the Lease, the City covenants to take such action as necessary to include the Lease Payments in its annual budgets and to make all necessary appropriations for such Lease

* Preliminary; subject to change.

Payments (subject to abatement under certain circumstances described in the Lease). See “SECURITY FOR THE BONDS.”

The scheduled Lease Payments payable by the City under the Lease are calculated to be sufficient to permit the Authority to pay the principal of, and interest on, the Bonds when due. However, in the event of any damage or destruction such that there is substantial interference with the use and occupancy of all or any portion of the Leased Property, or a temporary taking of the Leased Property or a permanent taking of a portion of the Leased Property, Lease Payments may be abated under the Lease without constituting a default. See “SECURITY FOR THE BONDS – Abatement” and “RISK FACTORS – Abatement.” However, proceeds of insurance may be available to pay Lease Payments in the event of insured damage, destruction or condemnation with respect to the Leased Premises.

Pursuant to an Assignment Agreement, dated as of September 1, 2012 (the “Assignment Agreement”), by and between the Authority and the Trustee, the Authority has assigned to the Trustee for the benefit of the Owners of the Bonds, certain of the Authority’s rights under the Lease, including its rights to receive Lease Payments and to enforce remedies in the event of a default by the City for the purpose of securing the payment of debt service on the Bonds.

No Additional Parity Obligations. Under the Indenture, the Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part. The Lease Agreement does not prohibit the City from entering into other obligations payable from the General Fund of the City.

Redemption. The Bonds are subject to redemption prior to their stated maturity dates. See “THE BONDS - Redemption.”

Abatement. The Lease provides that the obligation of the City to pay Lease Payments will be subject to abatement by reason of (i) any damage or destruction such that there is substantial interference with the use and occupancy of all or any portion of the Leased Property, or (ii) a temporary taking of the Leased Property or a permanent taking of a portion of the Leased Property. However, to the extent proceeds of rental interruption insurance are available with respect to the Bonds (as described below), Lease Payments (or a portion thereof) may be made from that source. See “SECURITY FOR THE BONDS - Abatement” and “RISK FACTORS - Abatement.”

Risks of Investment. The Bonds are repayable primarily from Lease Payments and other amounts payable by the City under the Lease. For a discussion of some of the risks associated with the purchase of the Bonds, see “RISK FACTORS.”

NEITHER THE BONDS, THE OBLIGATION OF THE AUTHORITY TO PAY PRINCIPAL OF OR INTEREST ON THE BONDS, NOR THE OBLIGATION OF THE CITY TO MAKE THE LEASE PAYMENTS, CONSTITUTES A DEBT OR A LIABILITY OF THE AUTHORITY, THE CITY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL LIMITATION ON INDEBTEDNESS, OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY. THE BONDS ARE SECURED SOLELY BY THE PLEDGE OF REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE TAXING POWER OF THE CITY. THE AUTHORITY HAS NO TAXING POWER.

THE REFINANCING PLAN

The Bonds are being issued to provide funds to (i) refinance the Refunded Certificates and the City’s related lease payment obligation, and (ii) pay the costs of issuing the Bonds.

The Refunded Certificates were executed and delivered for the purpose of (i) financing the costs of constructing, furnishing and equipping a new police building and jail for the City, (ii) financing portions of other projects, (iii) refunding on a current basis the City’s \$3,985,000 aggregate principal amount of outstanding Certificates of Participation (1995 Public Improvement Financing Project) and refunding on an advance basis the City’s \$8,440,000 aggregate principal amount of outstanding Certificates of Participation (1996 Public Improvement Financing Project), (iv) funding a debt service reserve fund for the Refunded Certificates and (v) paying the costs of execution and delivery of the Refunded Certificates.

The Refunded Certificates consist of the following:

Certificates of Participation (2002 Public Improvement Financing Project) Base CUSIP[†] Number: 540236

<i>Maturity Date (October 1)</i>	<i>Principal Amount</i>	<i>CUSIP Number[†]</i>	<i>Maturity or Prepayment Date</i>
2012	\$655,000	DU7	10/1/2012
2013	690,000	DV5	10/1/2012
2014	715,000	DW3	10/1/2012
2015	745,000	DX1	10/1/2012
2016	775,000	DY9	10/1/2012
2017	815,000	DZ6	10/1/2012
2018	855,000	EA0	10/1/2012
2019	895,000	EB8	10/1/2012
2020	935,000	EC6	10/1/2012
2021	985,000	ED4	10/1/2012
2026	5,695,000	EE2	10/1/2012
2031	7,265,000	EF9	10/1/2012

Upon the execution and delivery of the Bonds, a portion of the proceeds thereof and other available moneys with respect to the Refunded Certificates shall be applied to the purchase of certain direct obligations of the United States of America, along with uninvested cash and earnings on the obligations, which will satisfy the City’s payment obligations with respect to the Refunded Certificates until their payment or prepayment dates. These direct obligations and cash shall be deposited in an escrow account held by U.S. Bank National Association, as escrow agent for the Refunded Certificates (the “Escrow Agent”) under an escrow agreement (the “Escrow Agreement”) that will require the Escrow Agent to apply the principal of and interest on such obligations, together

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with other moneys held by the Escrow Agent, to the payment or prepayment of the Refunded Certificates on their respective payment or prepayment dates set forth in the table below.

The obligations of the United States of America so deposited with the Escrow Agent into the escrow account for the Refunded Certificates will bear interest at such rates and will be scheduled to mature at such times and in such amounts that, when paid in accordance with their terms, together with any other funds held by the Escrow Agent under the Escrow Agreement, will be sufficient to make full and timely payment of the principal of and interest evidenced and represented by the Refunded Certificates prior to their respective scheduled payment or prepayment dates and to pay the prepayment price of the outstanding Refunded Certificates on such prepayment date. For information on mathematical verification for the sufficiency of scheduled payments with respect to such obligations of the United States of America and other funds held by the Escrow Agent to make such payments with respect to the Refunded Certificates, see “VERIFICATION OF MATHEMATICAL COMPUTATIONS.” Upon such irrevocable deposit with the Escrow Agent and the receipt by the Escrow Agent of irrevocable escrow instructions from the City under the Escrow Agreement, the Refunded Certificates will be defeased and the owners of the Refunded Certificates will no longer be entitled to the benefits of the legal documents under which they were executed and delivered.

The amounts held and invested by the Escrow Agent in the Escrow Fund are pledged solely to the payment of the Refunded Certificates. Neither the funds deposited in the Escrow Fund nor the interest on the invested funds will be available for the payment of debt service on the Bonds.

Estimated Sources and Uses of Funds

The estimated sources and uses of funds relating to the Bonds are as follows:

Sources:	
<hr/>	
Principal Amount	
Plus Original Issue Premium	
Less Underwriters’ Discount	
Plus Available Money Relating to the Refunded Certificates	
Total Sources	<hr/> \$
Uses:	
<hr/>	
Escrow Fund	\$
Costs of Issuance ⁽¹⁾	
Total Uses	<hr/> \$
<hr/>	

⁽¹⁾ Represents funds to be used to pay Costs of Issuance, which include legal fees, printing costs, rating agency fees and other miscellaneous expenses.

THE LEASED PROPERTY

Lease Payments will be made by the City under the Lease for the use and occupancy of the Leased Property, which is described in greater detail below.

Description

The Property being leased under the Lease (the “Leased Property”) includes (i) the real property and facilities comprising the Police Building and (ii) the real property and the facilities comprising Carnegie Forum.

Police Building. The Police Building, located at 215 West Elm Street, houses the Police department, the Lodi City jail and 7,648 square feet of space rented by the State of California for a Superior Court branch. Completed in 2003, the 52,500 square foot building sits on property that is approximately 1.01 acres and is part of the larger complex of buildings that comprise the downtown campus, including City Hall, the old public safety building and Carnegie Forum. The Police Building has an insured value of approximately \$17,500,000.

Carnegie Forum. Carnegie Forum, located adjacent to the City Hall building houses the Lodi City Council Chambers, conference rooms and, in the basement, the Information Technology division. The brick building was originally built as a library in 1909 and was extensively remodeled to its current use in 1989. The 1.9 acre City Hall/Carnegie Forum sites front Pine Street at the edge of the revitalized downtown. Carnegie Forum has an insured value of approximately \$2,832,000.

Modifications of Leased Property

Under the Lease, the City will have the right during the term of the Lease to make additions, modifications and improvements to the Leased Property or any portion thereof. Such additions, modifications and improvements may not in any way damage the Leased Property, or cause the Leased Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Leased Property, upon completion of any additions, modifications and improvements, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements.

Substitution

Under the Lease, the City has the option at any time and from time to time, to substitute other real property (the “Substitute Property”) for the Leased Property or any portion thereof (the “Former Property”), upon satisfaction of all of the requirements set forth in the Lease, which includes (among others) the following:

- No Event of Default under the Lease has occurred and is continuing.
- The City has obtained a CLTA policy of title insurance insuring the City’s leasehold estate under the Lease in the Substitute Property, subject only to Permitted Encumbrances (as defined in the Lease), in an amount at least equal to the estimated value thereof.
- The City has certified in writing to the Authority and the Trustee that the Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and has been determined to be essential to the proper, efficient and economic operation of the City and to serve an essential governmental function of the City.

- The Substitute Property does not cause the City to violate any of its covenants, representations and warranties made herein.
- The City has filed with the Authority and the Trustee a written certificate of the City or other written evidencing stating that the useful life of the Substitute Property at least extends to October 1, _____, that the estimated value of the Leased Property, after substitution of the Substitute Property and release of the Former Property, is at least equal to the aggregate Outstanding principal amount of the Bonds, and the fair rental value of the Leased Property, after substitution of the Substitute Property and release of the Former Property, is at least equal to the Lease Payments thereafter coming due and payable under the Lease.
- The City has mailed written notice of the substitution to each rating agency that then maintains a rating on the Bonds.

See “APPENDIX C – Summary of Principal Legal Documents.”

After a substitution, the Former Property will be released from the leasehold, as appropriate. The Authority and the City will also make any amendments needed to be made to the Lease, and will enter into any necessary site or ground leases in connection with such substitution. Such amendments may be made without the consent of Bondowners. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments as a result of a substitution.

Release of Leased Property

Under the Lease, the City has the option at any time and from time to time during the term of the Lease to release from the Lease any portion of the Leased Property; provided that the City satisfies all of the requirements under the Lease that are conditions precedent to such removal, which include (among others) the following:

- No Event of Default has occurred and is continuing.
- The City has certified in writing to the Authority and the Trustee that the value of the property which remains subject to the Lease following such release is at least equal to the aggregate Outstanding principal amount of the Bonds, and the fair rental value of the property which remains subject to the Lease following such release is at least equal to the Lease Payments thereafter coming due and payable.

See “APPENDIX C - Summary of Principal Legal Documents.”

THE BONDS

Authority for Issuance

The Bonds are being issued under the Bond Law, the Authority Resolution (which was adopted by the Board of Directors of the Authority on August __, 2012), the City Resolution (which was adopted by the City Council on August __, 2012), and the Indenture.

General Provisions

Bond Terms. The Bonds will be dated their date of delivery and issued in fully registered form without coupons in integral multiples of \$5,000. The Bonds will mature in the amounts and on the dates, and bear interest at the annual rates, set forth on the inside cover page of this Official Statement.

Payments of Principal and Interest. Interest on the Bonds will be payable on April 1 and October 1 in each year, beginning April 1, 2013 (each an “Interest Payment Date”). Principal on the Bonds will be payable on October 1 in the amounts and in the years set forth on the inside front cover of this Official Statement.

While the Bonds are subject to the book-entry system, the principal, interest and any prepayment premium with respect to the Bonds will be paid by the Trustee to DTC for subsequent disbursement to beneficial owners of the Bonds. See APPENDIX F – “DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,
- a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date, or
- interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Principal and premium, if any, with respect to each Bond is payable upon surrender of such Bond at the Office of the Trustee in St. Paul, Minnesota, upon maturity or the earlier redemption thereof. The principal of, premium, if any, and interest on the Bonds will be payable in lawful money of the United States of America. Interest with respect to the Bonds will be computed on the basis of a 360 day year composed of twelve 30-day months.

Transfer, Registration and Exchange

See “APPENDIX C - Summary of Principal Legal Documents” for a description of the provisions of the Indenture relating to the transfer, registration and exchange of the Bonds.

Redemption

Optional Redemption. The Bonds maturing on or before October 1, 20__ are not subject to optional redemption prior to their stated maturity. The Bonds maturing on or after October 1, 20__ are subject to redemption, as a whole or in part at the election of the Authority among maturities on such basis as designated by the Authority and by lot within a maturity, at the option of the Authority, on October 1, 20__ and on any date thereafter, at a redemption price equal to 100% of the principal

amount of Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

Special Mandatory Redemption From Insurance or Condemnation Proceeds. The Bonds are subject to redemption as a whole, or in part on a pro rata basis among maturities, on any date, from any Net Proceeds of insurance or an eminent domain award with respect to the Leased Property which are not applied to repair, rebuild or replace the Leased Property as provided in the Indenture, at a redemption price equal to 100% of the principal amount to be redeemed plus interest accrued thereon to the date fixed for redemption, without premium.

Notice of Redemption. Notice of redemption will be mailed by the Trustee, first class, postage prepaid, not more than 60 and not less than 30 days before any redemption date, to the respective registered Owners of any Bonds designated for redemption at their addresses appearing on the registration books maintained by the Trustee and to one or more Securities Depositories and the Municipal Securities Rulemaking Board. Neither the failure to receive any notice nor any defect therein will affect the proceedings for such redemption.

Selection of Bonds for Redemption. Whenever provision is made in the Indenture for the redemption of less than all of the Bonds of a single maturity, the Trustee will select the Bonds to be redeemed from all Bonds of that maturity to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purposes of such selection, Bonds will be deemed to be comprised of \$5,000 portions and each portion will be subject to redemption as if such portion were a separate Bond.

Effect of Redemption. If notice of redemption has been duly given and money for the payment of the redemption price of the Bonds called for redemption has been duly provided, such Bonds so called will cease to be entitled to any benefit under the Indenture other than the right to receive payment of the redemption price, and no interest will accrue thereon from and after the redemption date specified in such notice.

Rescission of Redemption. The Authority has the right to rescind any notice of optional redemption of Bonds by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default. The Authority and the Trustee have no liability to the Bond Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under the Indenture.

Book-Entry Only System

The Bonds will be issued as fully registered bonds in book-entry only form, registered in the name of Cede & Co. as nominee of DTC, and will be available to ultimate purchasers in integral multiples of \$5,000, under the book-entry system maintained by DTC. While the Bonds are subject to the book-entry system, the principal, interest and any prepayment premium with respect to a Bond will be paid by the Trustee to DTC, which in turn is obligated to remit such payment to its DTC Participants for subsequent disbursement to Beneficial Owners of the Bonds. Purchasers of the Bonds will not receive certificates representing their interests therein, which will be held at DTC.

See “APPENDIX F - DTC AND THE BOOK-ENTRY ONLY SYSTEM” for further information regarding DTC and the book-entry system.

DEBT SERVICE SCHEDULE

The table below shows annual debt service payments on the Bonds, assuming no optional or extraordinary redemption.

<u>Year Ending October 1</u>	<u>Principal</u>	<u>Interest</u>	<u>Debt Service</u>
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SECURITY FOR THE BONDS

The principal of and interest on the Bonds are not a debt of the Authority (except to the limited extent described in this Official Statement) or the City, nor a legal or equitable pledge, charge, lien or encumbrance, upon any of their respective property, or upon any of their income, receipts, or revenues except the Revenues and other amounts pledged under the Indenture.

This section provides summaries of the security for the Bonds and certain provisions of the Indenture and the Lease. See “APPENDIX C - Summary of Principal Legal Documents” for a more complete summary of the Indenture and the Lease. Capitalized terms used but not defined in this section have the meanings given in APPENDIX C.

Pledge of Revenues

The Bonds are payable from and secured by a pledge of Revenues and certain funds and accounts established and held by the Trustee under the Indenture. Revenues, as defined in the Indenture, mean:

(a) all amounts received by the Authority or the Trustee under or with respect to the Lease, including, without limiting the generality of the foregoing, all of the Lease Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), but excluding (i) any amounts described in the provisions of the Lease relating to permitted amendments that provide for additional rental to be pledged or assigned for the payment of bonds issued to finance or refinance projects for which the City is authorized to expend its funds, and (ii) any Additional Rental Payments (consisting of certain administrative costs due to the Authority and the Trustee under the Lease), and

(b) all interest, profits or other income derived from the investment of amounts in any fund or account established under the Indenture.

Pursuant to the Assignment Agreement, the Authority has assigned to the Trustee for the benefit of the Owners of the Bonds, certain of its rights under the Lease, including its right to receive Lease Payments for the purpose of securing the payment of debt service on the Bonds and the right to pursue remedies in the event the City defaults under the lease.

THE BONDS ARE SPECIAL OBLIGATIONS OF THE AUTHORITY PAYABLE SOLELY FROM AND SECURED BY A PLEDGE OF REVENUES AND CERTAIN FUNDS AND ACCOUNTS HELD UNDER THE INDENTURE. THE AUTHORITY HAS NO TAXING POWER. THE OBLIGATION OF THE CITY TO MAKE LEASE PAYMENTS UNDER THE LEASE DOES NOT CONSTITUTE AN OBLIGATION OF THE CITY FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION. NEITHER THE BONDS NOR THE OBLIGATION OF THE CITY TO MAKE LEASE PAYMENTS UNDER THE LEASE CONSTITUTES AN INDEBTEDNESS OF THE CITY, THE COUNTY, THE STATE OF CALIFORNIA (THE "STATE") OR ANY OF ITS POLITICAL SUBDIVISIONS (INCLUDING ANY MEMBER OF THE AUTHORITY) IN CONTRAVENTION OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATIONS.

Lease Payments; Covenant to Appropriate

The City covenants, under the Lease, to make Lease Payments as rental for the right to use and occupy the Leased Property under the Lease. Amounts of the scheduled Lease Payments are calculated to be sufficient to pay debt service on the Bonds when due. Lease Payments will be paid by the City semiannually to the Trustee on the Business Day immediately preceding each Interest Payment Date. Upon receipt, the Trustee will deposit the Lease Payments in the Bond Fund for the purposes of paying principal of and interest on the Bonds. The City covenants under the Lease to take such action as may be necessary to include all Lease Payments and Additional Rent in its annual budgets and to make the necessary annual appropriations for all such rental payments.

Under certain circumstances described in the Lease, however, Lease Payments are subject to abatement during periods of substantial interference with the City's use and occupancy of all or a portion of the Leased Property, as described in " – Abatement" below.

Abatement

The Lease provides that the obligation of the City to pay Lease Payments will be subject to abatement by reason of (i) any damage or destruction such that there is substantial interference with the use and occupancy of all or any portion of the Leased Property, or (ii) a temporary taking of the Leased Property or a permanent taking of a portion of the Leased Property. Such abatement will be in an amount determined by the City, such that the resulting unabated portion of the Lease Payments will represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property. Such abatement will continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction.

Notwithstanding the foregoing, under the Lease, the Lease Payments will not be subject to abatement to the extent that proceeds from rental interruption insurance are available to pay the portion of the Lease Payments which would otherwise be abated.

Insurance; Condemnation

In the event of an abatement of Lease Payments, debt service on the Bonds may, to a certain extent, be covered by insurance proceeds. The City is required to procure and maintain rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any portion of the Leased Property constituting buildings or other improvements as a result of certain hazards pursuant to the Lease. Such insurance will be in an amount at least equal to the maximum amount of Lease Payments coming due and payable during any consecutive two Fiscal Years. The Net Proceeds of such insurance, if any, will be paid to the Trustee and deposited in the Bond Fund, for application as a credit towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

The Lease also requires the City to maintain title insurance, standard commercial general liability insurance and casualty insurance with respect to the Leased Property. Any Net Proceeds under such title insurance policy will be deposited with the Trustee in the Bond Fund, to be credited towards the prepayment of the remaining Lease Payments under the Lease. The required casualty insurance will have a coverage amount at least equal to the lesser of (a) 100% of the replacement value of the insured buildings, or (b) 100% of the aggregate principal amount of the Bonds, and may be subject to such deductibles as the City deems adequate and prudent.

See Appendix C – "SUMMARY OF PRINCIPAL LEGAL DOCUMENTS" for a description of provisions of the Lease Agreement and the Trust Indenture relating to the application of proceeds from the casualty insurance or condemnation awards.

See "RISK FACTORS – Abatement."

No Reserve Account

No debt service reserve account has been established with respect to the Bonds.

Remedies

If the City defaults in performance of its obligations under the Lease, the Authority or the Trustee, as assignee of the Authority, may either terminate the Lease and re-enter and re-let all or a portion of the Leased Property or may retain the Lease and hold the City liable for all payments on an annual basis and still have the right to re-enter and re-let the Leased Property without effecting a surrender of the Lease. Additionally, the Trustee may pursue remedies at law or in equity to enforce the Lease.

Although the Lease and the Indenture provide that the Trustee, as assignee of the Authority, may take possession of the Leased Property if there is a default by the City, and the Lease provides that the Trustee may have such rights of access to the Leased Property as may be necessary to exercise any remedies, portions of the Leased Property may not be easily recoverable and, even if recovered, could be of little value to others. There can be no assurance that the Leased Property can be re-let for an amount equal to all outstanding Lease Payments. Due to the essential nature of the governmental functions of the Leased Property, it is not certain whether a court would permit the exercise of the remedies of repossession and re-letting with respect thereto. In addition, the remedy of repossession and re-letting may prove to be unavailable or not economically viable with respect to all or portions of the Leased Property because the Authority has only a leasehold or other possessory right to some of the Leased Property. Therefore, repossession of the Leased Property in such instances may not be an available remedy. In addition, assuming the Leased Property could be repossessed, it may prove functionally impossible to relet.

THE AUTHORITY

The Authority was created in July 2010 by a joint exercise of powers agreement, which was entered into between the City and Industrial Development Authority of the City of Lodi (“IDA”), pursuant to the provisions of the Act. Under the Joint Exercise of Powers Agreement, the Authority is a public entity, separate from the City and the IDA. The debts, liabilities and obligations of the Authority are not debts, liabilities and obligations of either the City or the IDA. The Authority is administered by a governing board consisting of the members of the Lodi City Council.

THE CITY

City Financial Information

Certain financial, economic and demographic information regarding the City is contained in APPENDIX A - “THE CITY OF LODI” and APPENDIX B - “AUDITED FINANCIAL STATEMENTS OF THE CITY FOR THE FISCAL YEAR ENDED JUNE 30, 2011.” Each contains important information concerning the City and should be read in its entirety. In particular, Appendix A describes certain factors that have affected the City’s financial condition in the past and that could materially affect the financial condition of the City in future fiscal years, including variations in property tax growth rates, and increasing retirement and other labor costs, and the financial condition of the State.

City Financial Outlook

Although the recession and generally prevailing economic conditions have resulted in a decline in City revenues (including property and sales taxes) of approximately 10% since Fiscal Year

2007-2008, the City has not experienced the severe financial impacts faced by many other local governments throughout the State. The City attributes this to a number of factors, including the City's Growth Management Program. The program has been in place for over twenty years. Due to the program, residential growth in the City was moderate (as compared to the rapid increase in development and assessed valuations experienced by other local governments in the State during the housing boom which ended in 2007 and 2008). As a result, when the economy slowed and the recession began in 2007 and 2008, the City did not experience the significant reductions in property values and property tax revenue that surrounding communities have seen. In addition, the City's foreclosure rate is significantly lower than surrounding communities.

The City has experienced significant increases in its labor related costs over the last several years. The City recently completed negotiations with all labor groups whose contracts expired during the 2011-12 fiscal year. Of the City's 9 bargaining units, 8 had contracts that expired during the year. Key elements in the new contracts, which generally end on December 31, 2013, include employees paying the full share of the employee share of retirement by the end of the contract, capping City medical cost exposure at the January 2012 levels and establishing a second tier retirement system for all new hires. Additionally, similar benefit changes were approved for executive, confidential and appointed staff along with Council members. Savings to the City from these changes over the term of the contracts is estimated to be \$3.6 million.

See APPENDIX A - "THE CITY OF LODI" for financial information relating to the City, including the City's adopted budget for Fiscal Year 2012-13."

STATE BUDGET

The State has been experiencing significant financial stress, experiencing budget shortfalls in the billions of dollars each of the last several years. State revenues have declined significantly as a result of recent economic conditions and other factors. While the State is not a significant source of City revenues, and the City does not anticipate that the State's financial condition will materially adversely affect the financial condition of the City, there can be no assurances state financial pressures will not adversely affect the City.

The State's adopted budget for Fiscal Year 2012-13 contains billions of dollars of cuts in expenditures, as well as increased revenues (including a temporary increase in income and sales taxes proposed for the November 2012 ballot (the "2012 Tax Initiative")) to balance the State's budget for Fiscal Year 2012-13 and to rebuild a reserve. The proposed State budget also sets forth \$6.1 billion in trigger cuts that are scheduled to go into effect on January 1, 2013 should the Governor's 2012 Tax Initiative fail to pass, including reduced funding for schools, community colleges and other higher education institutions, and reduced funding for a variety of public safety programs.

Information about the State Budget is regularly available at various State-maintained websites. An impartial analysis of the budget is posted by the Legislative Analyst Office at www.lao.ca.gov. In addition, various State official statements, many of which contain a summary of the current and past State budgets, may be found at the website of the State Treasurer, www.treasurer.ca.gov. The information referred to is prepared by the respective State agency maintaining each website and not by the City, the Authority or the Underwriters, and the City, the Authority and the Underwriters take no responsibility for the continued accuracy of the Internet addresses or for the accuracy or timeliness of information posted there, and such information is not incorporated herein by these references.

CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS

The ability of the City to raise fees, taxes and other revenues is limited. Following is a description of certain constitutional limitations on taxes and appropriations applicable to the City. For a description of other factors relating to the revenues of the City, see APPENDIX A —"THE CITY OF LODI."

Article XIII A of the State Constitution

Section 1(a) of Article XIII A of the State Constitution limits the maximum ad valorem tax on real property to 1% of full cash value (as defined in Section 2 of Article XIII A), to be collected by counties and apportioned according to law. Section 1(b) of Article XIII A provides that the 1% limitation does not apply to ad valorem taxes to pay interest or redemption charges on (1) indebtedness approved by the Voters prior to June 1, 1978 or (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after June 1, 1978, by two thirds of the votes cast by the voters voting on the Proposition. Section 2 of Article XIII A defines "full cash value" to mean "the county assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." The full cash value may be adjusted annually to reflect inflation at a rate not to exceed 2% per year, or to reflect a reduction in the consumer price index or comparable data for the area under taxing jurisdiction or reduced in the event of declining property value caused by substantial damage, destruction or other factors. Legislation enacted by the State Legislature to implement Article XIII A provides that notwithstanding any other law, local agencies may not levy any ad valorem property tax except to pay debt service on indebtedness approved by the voters as described above.

The voters of the State subsequently approved various measures which further amended Article XIII A. One such amendment generally provides that the purchase or transfer of (i) real property between spouses or (ii) the principal residence and the first \$1,000,000 of the full cash value of other real property between parents and children, does not constitute a "purchase" or "change of ownership" triggering reassessment under Article XIII A. This amendment could serve to reduce the property-tax revenues of the City. Other amendments permitted the State Legislature to allow persons over 55 or "severely disabled homeowners" who sell their residences and buy or build another of equal or lesser value within two years in the same county, to transfer the old residence's assessed value to the new residence.

In the November 1990 election, the voters approved the amendment of Article XIII A to permit the State Legislature to exclude from the definition of "newly constructed" the construction or installation of seismic retrofitting improvements or improvements utilizing earthquake hazard mitigation technologies constructed or installed in existing buildings after November 6, 1990.

Article XIII A has also been amended to permit reduction of the "full cash value" base in the event of declining property values caused by damage, destruction or other factors, provided that there would be no increase in the "full cash value" base in the event of reconstruction of property damaged or destroyed in a disaster.

Article XIIB of the State Constitution

Article XIIB of the State Constitution limits the annual appropriations of the State and of any city, county, school district, special district, authority or other political subdivision of the State to the appropriations limit for the prior Fiscal Year, as adjusted for changes in the cost of living, population and services for which the fiscal responsibility is shifted to or from the governmental entity. The “base year” for establishing this appropriations limit is the 1978-79 Fiscal Year. The appropriations limit may also be adjusted in emergency circumstances, subject to limitations.

Appropriations of an entity of local government subject to Article XIIB generally include authorizations to expend during a Fiscal Year the “proceeds of taxes” levied by or for the entity, exclusive of certain State subventions, refunds of taxes, and benefit payments from retirement, unemployment insurance and disability insurance funds. “Proceeds of taxes” include but are not limited to, all tax revenues, certain State subventions received by the local governmental entity and the proceeds to the local governmental entity from (1) regulatory licenses, user charges, and user fees (to the extent that such proceeds exceed the cost of providing the service or regulation) and (2) the investment of tax revenues. Article XIIB provides that if a governmental entity’s revenues in any year exceed the amounts permitted to be spent, the excess must be returned by revising tax rates or fee schedules over the subsequent two fiscal years.

Article XIIB does not limit the appropriation of moneys to pay debt service on indebtedness existing or authorized as of January 1, 1979, or for bonded indebtedness approved thereafter by a vote of the electors of the issuing entity at an election held for that purpose, or appropriations for certain other limited purposes. Furthermore, Article XIIB was amended in 1990 to exclude from the appropriations limit “all qualified capital outlay projects, as defined by the Legislature” from proceeds of taxes. The Legislature has defined “qualified capital outlay project” to mean a fixed asset (including land and construction) with a useful life of 10 or more years and a value which equals or exceeds \$100,000. As a result of this amendment, the appropriations to pay the lease payments on the City’s long term general fund lease obligations are generally excluded from the City’s appropriations limit.

Articles XIIC and XIID of the State Constitution

On November 5, 1996, the voters of the State approved Proposition 218, known as the “Right to Vote on Taxes Act.” Proposition 218 added Articles XIIC and XIID to the California Constitution and contains a number of interrelated provisions affecting the ability of the City to levy and collect both existing and future taxes, assessments, fees and charges. The interpretation and application of Proposition 218 will ultimately be determined by the courts with respect to a number of the matters discussed below, and it is not possible at this time to predict with certainty the outcome of such determination.

Article XIIC requires that all new local taxes be submitted to the electorate before they become effective. Taxes for general governmental purposes of the City require a majority vote and taxes for specific purposes, even if deposited in the City’s General Fund, require a two-thirds vote. Further, any general purpose tax the City imposed, extended or increased without voter approval after December 31, 1994 may continue to be imposed only if approved by a majority vote in an election that must be held before November 6, 1998. The voter-approval requirements of Article XIIC reduce the flexibility of the City to raise revenues for the general fund, and no assurance can

be given that the City will be able to impose, extend or increase such taxes in the future to meet increased expenditure needs.

The City currently imposes the following general taxes: business-operations tax and transient-occupancy tax. Since all of these taxes were imposed before January 1, 1995, and have not been extended or increased since that date, these taxes should be exempt from the requirements of Article XIIC. Any future increases in these taxes, however, would be subject to the voter requirement of Article XIIC.

Article XIID also adds several provisions making it generally more difficult for local agencies to levy and maintain fees, charges, and assessments for municipal services and programs. These provisions include, among other things, (i) a prohibition against assessments that exceed the reasonable cost of the proportional special benefit conferred on a parcel, (ii) a requirement that assessments confer a “special benefit,” as defined in Article XIID, over and above any general benefits conferred; (iii) a majority protest procedure for assessments which involves the mailing of notice and a ballot to the record owner of each affected parcel, a public hearing and the tabulation of ballots weighted according to the proportional financial obligation of the affected parties, and (iv) a prohibition against fees and charges used for general governmental services, including police, fire and library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

On November 2, 2010, voters in the State approved Proposition 26. Proposition 26 amends Article XIIC of the State Constitution by expanding the definition of “tax” to include “any levy, charge, or exaction of any kind imposed by a local government” except the following: (1) a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege; (2) a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and does not exceed the reasonable costs to the local government of providing the service or product; (3) a charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, for performing investigations, inspections, and audits, for enforcing agricultural marketing orders, and for the administrative enforcement and adjudication thereof; (4) a charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property; (5) a fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law; (6) a charge imposed as a condition of property development; and (7) assessments and property-related fees imposed in accordance with the provisions of Article XIID. Proposition 26 provides that the local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bears a fair or reasonable relationship to the payor’s burdens on, or benefits received from, the governmental activity. As of the date of this Official Statement, the City is unaware of any fees that would have to be reduced or eliminated because of Proposition 26. However, see APPENDIX A - “THE CITY OF LODI - Payments to General Fund from Electric Utility” for a discussion of annual transfers made to the General Fund from the City’s electric utility.

Currently, the City transfers a portion of utility fund gross operating revenues to the General Fund to cover indirect support costs. The City believes that charges relating to such services are exempt from Proposition 218. The City believes that any successful challenges, however, to the

transfers of utility fund revenues to the General Fund would not have an impact on the City's ability to pay the Lease Payment under the Lease Agreement.

The City currently levies assessments for one landscape maintenance district and two property and business improvement districts. These assessments are approximately \$399,500 annually. The City believes that each of such assessments and districts complies with the requirements of Article XIID, unless otherwise exempt. Subsequent increases of such assessments, if any, would be required to comply.

Article XIIC also removes limitations on the initiative power in matters of reducing or repealing local taxes, assessments, fees or charges. No assurance can be given that the voters of the City will not, in the future, approve an initiative or initiatives which reduce or repeal local taxes, assessments, fees or charges currently comprising a substantial part of the City's general fund. If such repeal or reduction occurs, the City's operations could be adversely affected.

Proposition 62

At the November 4, 1986, general election, the voters of the State approved Proposition 62, a statutory initiative (1) requiring that any tax imposed by local governmental entities for general governmental purposes be approved by resolution or ordinance adopted by two-thirds vote of the governmental agency's legislative body and by a majority of the electorate of the governmental entity; (2) requiring that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters within that jurisdiction; (3) restricting the use of revenues from a special tax to the purposes or for the service for which the special tax was imposed; (4) prohibiting the imposition of ad valorem taxes on real property by local governmental entities, except as permitted by Article XIII A; (5) prohibiting the imposition of transaction taxes and sales taxes on the sale of real property by local governmental entities; and (6) requiring that any tax imposed by a local governmental entity on or after August 1, 1985, be ratified by a majority vote of the electorate within two years of the adoption of the initiative or be terminated by November 15, 1988.

Following its adoption by the voters, various provisions of Proposition 62 were declared unconstitutional at the appellate court level. On September 28, 1995, however, the California Supreme Court, in *Santa Clara City Local Transportation Authority v. Guardino*, upheld the constitutionality of the portion of Proposition 62 requiring a two-thirds vote in order for a local government or district to impose a special tax and, by implication, upheld a parallel provision requiring a majority vote in order for a local government or district to impose any general tax. The *Guardino* decision did not address whether it should be applied retroactively.

In response to *Guardino*, the California Legislature adopted Assembly Bill 1362, which provided that *Guardino* should apply only prospectively to any tax that was imposed or increased by an ordinance or resolution adopted after December 14, 1995. Assembly Bill 1362 was vetoed by the Governor; hence the application of the *Guardino* decision on a retroactive basis remains unclear.

The *Guardino* decision also did not decide the question of the applicability of Proposition 62 to charter cities such as the City. Two cases decided by the California Courts of Appeals in 1993, *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137 (rev. den. May 27, 1993), and *Fisher v. County of Alameda* (1993) 20 Cal.App.4th 120 (rev. den. Feb. 24, 1994), held that the restriction imposed by Proposition 62 on property transfer taxes did not apply to charter cities because charter

cities derive their power to enact such taxes under Article XI, Section 5, of the California Constitution relating to municipal affairs.

Proposition 62, as an initiative statute, does not have the same level of authority as a constitutional initiative. It is analogous to legislation adopted by the State Legislature, except that it may be amended only by a vote of the State's electorate. However, Proposition 218, as a constitutional amendment, is applicable to charter cities and supersedes many of the provisions of Proposition 62.

Proposition 1A

Senate Constitutional Amendment No. 4 was enacted by the Legislature and subsequently approved by the voters as Proposition 1A at the November 2004 election. Among other things, Proposition 1A amended the State Constitution to reduce the Legislature's authority over local government revenue sources by placing restrictions on the State's access to local governments' property, sales and vehicle-license fee revenues as of November 3, 2004, and by providing that the State may not reduce any local sales-tax rate, limit existing local government authority to levy a sales-tax rate or change the allocation of local sales-tax revenues, subject to certain exceptions.

Future Initiatives

Article XIII A, Article XIII B and Propositions 62 and 218 were each adopted as measures that qualified for the ballot pursuant to the State's initiative process. From time to time, other initiative measures could be adopted, further affecting City's revenues or their ability to expend revenues.

RISK FACTORS

The following describes certain special considerations and risk factors affecting the payment of and security for the Bonds. The following discussion is not meant to be an exhaustive list of the risks associated with the purchase of any Bonds and does not necessarily reflect the relative importance of the various risks. Potential investors in the Bonds are advised to consider the following special factors along with all other information in this Official Statement in evaluating the Bonds. There can be no assurance that other considerations will not materialize in the future.

Special Obligations of the Authority

The Bonds are special obligations of the Authority and are payable solely from, and secured by, a pledge of Revenues and certain funds and accounts held under the Indenture. Revenues consist primarily of Lease Payments payable by the City under the Lease. If, for any reason, the Revenues collected under the Indenture are not sufficient to pay debt service on the Bonds, the Authority will not be obligated to utilize any other of its funds, other than moneys on deposit in the Bond Fund and certain other funds and accounts established under the Indenture, to pay debt service on the Bonds. The Authority has no taxing power.

No Pledge of Taxes

The obligation of the City to pay the Lease Payments and Additional Rental does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay Lease Payments and Additional Rental does not constitute a debt or indebtedness of the

Authority, the City, the State of California or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction.

Limitations on Taxes and Fees

The ability of the City to raise revenues is very limited. See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS.” As of the date of this Official Statement, the City is unaware of any fees that would have to be reduced or eliminated because of these constitutional limitations, including Proposition 26.

However, see APPENDIX A - “THE CITY OF LODI - Payments to General Fund from Electric Utility” for a discussion of annual transfers made to the General Fund from the City’s electric utility. As described therein, while the City does not believe that these transfers are violative of Proposition 26. However, the provisions of Proposition 26 are subject to judicial interpretation, and there can be no assurances that, if challenged, a court would not find that the transfer violates Proposition 26. In such circumstances there can be no assurances that the City would not be required to discontinue the transfer, and refund all or a portion of the amount transferred after the passage of Proposition 26. The PILOT is projected to constitute approximately 16.6% of general fund revenues in Fiscal Year 2012-13.

Additional Obligations of the City

The City has existing obligations payable from its General Fund. See APPENDIX A - “THE CITY OF LODI - Outstanding General Fund Debt and Lease Obligations.” The City is permitted to enter into other obligations which constitute additional charges against its revenues without the consent of Owners of the Bonds. To the extent that additional obligations are incurred by the City, the funds available to pay Lease Payments may be decreased.

The Lease Payments and other payments due under the Lease (including payment of costs of repair and maintenance of the Leased Property, taxes and other governmental charges levied against the Leased Property) are payable from funds lawfully available to the City. If the amounts that the City is obligated to pay in a fiscal year exceed the City’s revenues for such year, the City may choose to make some payments rather than making other payments, including Lease Payments and Additional Rental, based on the perceived needs of the City. The same result could occur if, because of California Constitutional limits on expenditures, the City is not permitted to appropriate and spend all of its available revenues or is required to expend available revenues to preserve the public health, safety and welfare.

Default

Whenever any event of default referred to in the Lease happens and continues, the Authority is authorized under the terms of the Lease to exercise any and all remedies available under law or granted under the Lease. See APPENDIX C – “Summary of Principal Legal Documents” for a detailed description of available remedies in the case of a default under the Lease.

In the event of a default, there is no remedy of acceleration of the total Lease Payments due over the term of the Lease. The Trustee is not empowered to sell the Leased Property and use the proceeds of such sale to prepay the Bonds or pay debt service on the Bonds.

The City will be liable only for Lease Payments on an annual basis and, in the event of a default, the Trustee would be required to seek a separate judgment each year for that year's defaulted Lease Payments. Any such suit for money damages would be subject to limitations on legal remedies against municipalities in California, including a limitation on enforcement of judgments against funds of a fiscal year other than the fiscal year in which the Lease Payments were due and against funds needed to serve the public welfare and interest.

Abatement

Under certain circumstances related to damage, destruction, condemnation or title defects which cause a substantial interference with the use and possession of the Leased Property, the City's obligation to make Lease Payments will be subject to full or partial abatement and could result in the Trustee having inadequate funds to pay the principal and interest on the Bonds as and when due. See "SECURITY FOR THE BONDS - Abatement" and "APPENDIX C - Summary of Principal Legal Documents."

Natural Calamities

From time to time, the City is subject to natural calamities, including, but not limited to, earthquake, flood, or wildfire, that may adversely affect economic activity in the City, and which could have a negative impact on City finances. There can be no assurance that the occurrence of any natural calamity would not cause substantial interference to the Leased Property (potentially resulting in abatement of the City's obligation to make Lease Payments), or that the City would have insurance or other resources available to make repairs to the Leased Property in order to make Lease Payments under the Lease. See "- Abatement" above. The City does not maintain earthquake insurance on the Leased Property.

State Budget

The State is facing significant financial stress. There can be no assurances that the State will not take budgetary or other actions which materially adversely affect the financial condition of the City. See "STATE BUDGET."

Limitations on Remedies Available to Bond Owners

The ability of the City to comply with its covenants under the Lease may be adversely affected by actions and events outside of the control of the City, and may be adversely affected by actions taken (or not taken) by voters, property owners, taxpayers or payers of assessments, fees and charges. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS" above. Furthermore, any remedies available to the owners of the Bonds upon the occurrence of an event of default under the Lease or the Indenture are in many respects dependent upon judicial actions, which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

In addition to the limitations on Bondholder remedies contained in the Lease and the Indenture, the rights and obligations under the Bonds, the Lease and the Indenture may be subject to the following: the United States Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect; usual equity principles which may limit the specific

enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State of California and its governmental bodies in the interest of serving a significant and legitimate public purpose.

Bankruptcy proceedings, or the exercise of powers by the federal or state government, if initiated, could subject the Owners of the Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation or modification of their rights. The opinion of Bond Counsel notes that the rights of the owners of the Bonds and the enforceability of the Bonds and the Indenture are limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity.

Loss of Tax-Exemption

The City has covenanted in the Lease, and the Authority has covenanted in the Indenture, that each will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of interest on the Bonds under Section 103 of the Internal Revenue Code of 1986. In the event either the City or the Authority fails to comply with the foregoing tax covenant, interest on the Bonds may be includable in the gross income of the Owners thereof for federal tax purposes. See "TAX MATTERS".

Secondary Market for Bonds

There can be no guarantee that there will be a secondary market for the Bonds or, if a secondary market exists, that any Bonds can be sold for any particular price. Prices of bond issues for which a market is being made will depend upon then-prevailing circumstances. Such prices could be substantially different from the original purchase price. No assurance can be given that the market price for the Bonds will not be affected by the introduction or enactment of any future legislation (including without limitation amendments to the Internal Revenue Code), or changes in interpretation of the Internal Revenue Code, or any action of the Internal Revenue Service, including but not limited to the publication of proposed or final regulations, the issuance of rulings, the selection of the Bonds for audit examination, or the course or result of any Internal Revenue Service audit or examination of the Bonds or obligations that present similar tax issues as the Bonds.

TAX MATTERS

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to the qualifications set forth below, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, provided, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings.

The opinions set forth in the preceding paragraph are subject to the condition that the Authority and the City comply with all requirements of the Internal Revenue Code of 1986, as amended (the "Tax Code") that must be satisfied subsequent to the issuance of the Bonds. The

Authority and the City have covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of such interest in gross income for federal income tax purposes to be retroactive to the date of issuance of the Bonds.

If the initial offering price to the public (excluding bond houses and brokers) at which a Bond is sold is less than the amount payable at maturity thereof, then such difference constitutes "original issue discount" for purposes of federal income taxes and State of California personal income taxes. If the initial offering price to the public (excluding bond houses and brokers) at which a Bond is sold is greater than the amount payable at maturity thereof, then such difference constitutes "original issue premium" for purposes of federal income taxes and State of California personal income taxes. De minimis original issue discount and original issue premium is disregarded.

Under the Tax Code, original issue discount is treated as interest excluded from federal gross income and exempt from State of California personal income taxes to the extent properly allocable to each owner thereof subject to the limitations described in the first paragraph of this section. The original issue discount accrues over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). The amount of original issue discount accruing during each period is added to the adjusted basis of such Bonds to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such Bond. The Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the Bonds who purchase the Bonds after the initial offering of a substantial amount of such maturity. Owners of such Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering, the allowance of a deduction for any loss on a sale or other disposition, and the treatment of accrued original issue discount on such Bonds under federal individual and corporate alternative minimum taxes.

Under the Tax Code, original issue premium is amortized on an annual basis over the term of the Bond (said term being the shorter of the Bond's maturity date or its call date). The amount of original issue premium amortized each year reduces the adjusted basis of the owner of the Bond for purposes of determining taxable gain or loss upon disposition. The amount of original issue premium on a Bond is amortized each year over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). Amortized Bond premium is not deductible for federal income tax purposes. Owners of premium Bonds, including purchasers who do not purchase in the original offering, should consult their own tax advisors with respect to State of California personal income tax and federal income tax consequences of owning such Bonds.

In the further opinion of Bond Counsel, interest on the Bonds is exempt from California personal income taxes.

Owners of the Bonds should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the Bonds may have federal or state tax consequences other than as described above. Bond Counsel expresses no opinion regarding any federal or state tax consequences arising with respect to the Bonds other than as expressly described above.

CERTAIN LEGAL MATTERS

The Bonds are offered when, as and if issued and received by the Underwriter and subject to the approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will be passed upon for the City and the Authority by the City Attorney, and for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, Sacramento, California.

LITIGATION

Litigation Concerning the Bonds. To the best knowledge of the City, there is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Lease, the Site Lease or the Indenture, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by the Lease, the Site Lease or the Indenture, or the financial conditions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under the Lease.

Prior Environmental Litigation Involving the City. The City of Lodi initiated litigation in 2000 to address PCE and TCE contamination that threatened the City's water supply. The litigation exposed the City to several economic risks associated with: 1) the costs of the litigation; 2) the financing of the litigation; and 3) the City's wastewater system because the PCE had been discharged by private parties to, and may have leaked from the City's wastewater collection system. The City has now fully resolved the environmental clean up litigation, and all of the associated litigation that arose out of the economic risks referenced above. In exchange for money to fund the clean-up, the settlements require the City to perform the clean-up. The City estimates that its global unfunded liability for the contamination litigation is approximately \$34.4 million, including a \$15 million contingency. The City is paying the costs of the clean-up from revenues of the City's water system. The City raised its water rates an average of \$10.50 per month in September of 2005 to meet this liability and the City believes that the revenues generated from this rate increase will fully fund the City's clean-up costs.

FINANCIAL STATEMENTS

Macias, Gini & O'Connell, Certified Public Accountants (the "Auditor"), audited the financial statements of the City for the Fiscal Year ended June 30, 2011. The Auditor's examination was made in accordance with generally accepted auditing standards and Governmental Auditing Standards, issued by the Comptroller General of the United States. See "APPENDIX B – Audited Financial Statements of the City for Fiscal Year Ended June 30, 2011."

The City has not requested nor did the City obtain permission from the Auditor to include the audited financial statements as an appendix to this Official Statement. Accordingly, the Auditor has not performed any post-audit review of the financial condition or operations of the City.

RATINGS

Standard & Poor's and Fitch are expected to assign the Bonds the long-term ratings of “__” and “__”, respectively. The ratings reflect only the respective views of the rating agencies, and any explanation of the significance of such ratings may be obtained only from such rating agencies as follows: Standard & Poor's, 55 Water Street, 38th Floor, New York, New York 10041; and Fitch Ratings, One State Street Plaza, New York, New York 10004. There is no assurance that the ratings will remain in effect for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agencies, or either of them, if, in their respective judgments, circumstances so warrant. The City undertakes no responsibility to oppose any such revisions or withdrawal. Any downward revision or withdrawal of any rating may have an adverse effect on the market price of the Bonds.

CONTINUING DISCLOSURE

The City will covenant for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the City by not later than 210 days after the end of each fiscal year of the City (currently June 30th), commencing with the report for the 2011-12 fiscal year (the “Annual Report”), and to provide notices of the occurrence of certain enumerated events. Such reports are required to be filed with the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access system (“EMMA”). The specific nature of the information to be contained in the Annual Report or the notices of environmental events is described in “APPENDIX D– Form of Continuing Disclosure Agreement,” attached to this Official Statement. These covenants have been made in order to assist the underwriters of the Bonds in complying with Securities Exchange Commission Rule 15c2 12(b)(5).

The City has entered into a number of continuing disclosure undertakings in connection with City obligations, including obligations payable from the City's General Fund, as well as obligations payable from the revenues relating to the City's electric, wastewater and water utilities. During the past five years, the City has prepared continuing disclosure reports pursuant to these undertakings and transmitted such reports to its dissemination agent in December following City Council receipt of the Comprehensive Annual Financial Report. However, the reports generally were filed on EMMA after the date required, and frequently certain of the reports were not filed so as to be linked on EMMA with all of the CUSIP numbers for the respective City obligations to which such reports related. Upon discovery of these issues in connection with the preparation of documentation with respect to the Bonds, the City corrected the filings on EMMA (so that the appropriate reports are “linked” on EMMA to the City obligations to which they relate). The City also will confirm that the dissemination agent files timely reports in the future.

FINANCIAL ADVISOR

Lamont Financial Services Corp. (the “Financial Advisor”) has assisted the City with various matters relating to the planning, structuring and delivery of the Bonds. The Financial Advisor is a financial advisory firm and is not engaged in the business of underwriting or distributing municipal securities or other public securities. The Financial Advisor assumes no responsibility for the accuracy, completeness or fairness of this Official Statement. The Financial Advisor will receive compensation from the City contingent upon the sale and delivery of the Bonds.

UNDERWRITING

The underwriters set forth on the cover page of this Official Statement have entered into a bond purchase agreement with the Authority under which they will purchase the Bonds at a price of \$_____ (equal to the par amount of the Bonds, plus original issue premium of \$_____, and less an Underwriter's discount of \$_____).

The Underwriters will be obligated to take and pay for all of the Bonds if any are taken. The Underwriters intend to offer the Bonds to the public at the offering prices set forth on the inside cover page of this Official Statement. After the initial public offering, the public offering price may be varied from time to time by the Underwriters.

J.P. Morgan Securities LLC ("JPMS"), one of the Underwriters, provided the information contained in this paragraph for inclusion in this Official Statement and the City does not take any responsibility for or make any representation as to its accuracy or completeness. JPMS, one of the underwriters of the Bonds, has entered into negotiated dealer agreements (each, a "Dealer Agreement") with each of UBS Financial Services Inc. ("UBSFS") and Charles Schwab & Co., Inc. ("CS&Co.") for the retail distribution of certain securities offerings, including the Bonds, at the original issue prices. Pursuant to each Dealer Agreement, each of UBSFS and CS&Co. will purchase the Bonds from JPMS at the original issue prices less a negotiated portion of the selling concession applicable to any Bonds that such firm sells.

VERIFICATION OF MATHEMATICAL COMPUTATIONS

Upon delivery of the Bonds, Causey Demgen & Moore Inc., independent certified public accountants, will deliver a report stating that the firm has verified the mathematical accuracy of certain computations relating to the adequacy of the amounts deposited pursuant to the Escrow Agreement to pay the applicable redemption price of and accrued interest on, the Refunded Certificates on their respective payment and redemption dates.

PROFESSIONAL SERVICES

In connection with the issuance of the Bonds, all or a portion of the fees payable to the Bond Counsel, Underwriters' Counsel, the Financial Advisor and the Trustee are contingent upon the issuance and delivery of the Bonds.

EXECUTION

The execution and delivery of this Official Statement have been authorized by the Board of Directors of the Authority and the City Council of the City.

LODI PUBLIC FINANCING AUTHORITY

By : _____
Executive Director

CITY OF LODI

By : _____
City Manager

APPENDIX A

THE CITY OF LODI

General

The City of Lodi, California (“Lodi” or the “City”) was incorporated as a General Law city on December 6, 1906. The City is located in the San Joaquin Valley between Stockton, 10 miles to the south, and Sacramento, 35 miles to the north, and adjacent to U.S. Highway 99. The City is located on the main line of the Union Pacific Railroad and is within five miles of Interstate 5. The City population is approximately 62,473 (as of January 1, 2011) and is contained in an area of 13.92 square miles.

The City provides a wide range of municipal services, including public safety (police, fire and graffiti abatement), public utilities services (electric, water and sewer), transportation services (streets, flood control and transit), leisure, cultural and social services (parks and recreation, library, and community center), and general government services (management, human resources administration, financial administration, building maintenance and equipment maintenance).

Lodi is built on a strong and broad based agricultural industry with national and industrial markets for its commodities and products. Wines, processed foods, nuts, fruit and milk are major commodities of the Lodi area and provide the basic material for food processing and packaging. These commodities support the operations of General Mills, Guild Winery and Pacific Coast Producers, three companies in the business of processing local agricultural commodities.

In addition, Lodi has a wide range of small, financially sound businesses. These companies range in size from 10 to 150 employees and produce a wide variety of products, services and commodities.

Municipal Government

City Council. All powers of the City are vested in the City Council which is empowered to perform all duties of and obligations of the City as imposed by State law. The City has a five-member City Council comprised of members elected at large. Each council member is elected for four years with staggering terms.

Members of the City Council are set forth below:

Council Member	Title	Expiration of Term
JoAnne Mounce	Mayor	December 5, 2012
Alan Nakanishi	Mayor Pro Tempore	December 3, 2014
Larry D. Hansen	Council Member	December 3, 2014
Phil Katzakian	Council Member	December 3, 2014
Bob Johnson	Council Member	December 5, 2012

City Staff. Biographies of senior management of the City follows:

KONRADT BARTLAM, City Manager of the City of Lodi, was appointed to the position by the City Council on November 17, 2010 after a six-month stint as the interim manager. He had been Lodi's community development director for 11 of the previous 14 years. Bartlam served as Lodi's community development director from 1996 to 2005, left for other professional opportunities, and returned on a part-time basis in 2008. He has 25 years of municipal planning experience, and most recently managed the comprehensive update to Lodi's General Plan, adopted on April 7, 2010.

JORDAN AYERS, Deputy City Manager/Internal Services Director, as been the City of Lodi's Deputy City Manager/Internal Services Director since Dec. 15, 2008. As Lodi's administrative second-in-command, Ayers oversees the City's Finance, Budget and Treasury, Information Systems and Human Resources functions. Ayers came to Lodi after a 26-year career with Sacramento County. He was deputy director for administrative and business services within Sacramento County's General Services department before being hired by Lodi. Ayers began his professional career with Sacramento County following his graduation from California State University, Sacramento, in 1982 with a bachelor of science degree in business administration.

STEPHEN SCHWABAUER, City Attorney of the City of Lodi, was appointed City Attorney by the City Council in June 2004 after five months in an interim capacity. He spent the previous five years as Lodi's Deputy City Attorney, which followed five years as a private lawyer in Stockton. When he took over as City Attorney, Schwabauer inherited a 15-year-old environmental contamination dispute. Subsequently, the city has resolved the majority of the cases, saving the city millions of dollars in potential liability. Schwabauer, a Ventura native, earned a bachelor of arts degree in 1990 from the University of California, Davis; and his law degree from the University of California, Berkeley, Boalt Hall School of Law in 1994.

Labor Relations

City employees are represented by various associations, and labor relations have been generally amicable in that there have been no major strikes, work stoppages or other similar incidents. The following table provides a list of departments in the City and the number of employees within these departments for Fiscal Year 2012-13.

CITY OF LODI
Employee Organizations

Department	FY 2012/13 Budgeted Staff
Administration	12
Community Development	9
Electric	40
Fire	54
Internal Services	29
Library	12
Parks, Recreation and Cultural services	29
Police	103
Public Works	<u>93</u>
Total	<u>381</u>

Source: City of Lodi Budget Document

Of the 381 budgeted positions, 215 reside in the General Fund. The City provides retirement and other post employment benefits to City employees. See “ – Retirement System” herein.

The City recently completed negotiations with all labor groups whose contracts expired during the 2011-12 fiscal year. Of the City’s 9 bargaining units, 8 had contracts that expired during the year. Key elements in the new contracts, which generally end on December 31, 2013, include employees paying the full share of the employee share of retirement by the end of the contract, capping City medical cost exposure at the January 2012 levels and establishing a second tier retirement system for all new hires. Additionally, similar benefit changes were approved for executive, confidential and appointed staff along with Council members. Savings to the City from these changes over the term of the contracts is estimated to be \$3.6 million.

City Financial Information

Budgetary Processes. The fiscal year of the City begins on the first day of July of each year and ends on the thirtieth day of June of the following year. The City adopts its Financial Plan and Budget on an annual basis. Each annual budgetary cycle begins with departments submitting revenue and expenditure estimates in March for the upcoming fiscal year. Budget division staff assembles the data and meet with the departments and City Manager to refine the estimates and develop a draft budget. Public meetings are held with the City Council during the month of May and all issues related to each budget unit are discussed. A draft budget is typically released to the Council and publically posted in mid-May. The City Council adopts a balanced budget in June for the fiscal year that starts the following July 1. In January or February, staff brings forward a mid-year review of the entire budget for the City and Council adopts any changes necessary based upon the projected financial conditions of the time. Throughout the year, adjustments to the budget are brought to Council as needed.

The City’s 2012-13 Financial Plan and Budget was approved by the City Council on June 6, 2012. The following table sets forth the original and final budget for fiscal year 2011-12, and estimated actual revenues and expenditures, as well as the adopted budget for Fiscal Year 2012-13.

CITY OF LODI
SCHEDULE OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL
GENERAL FUND
Year Ended June 30, 2012

	<i>Budget</i>			<i>Variance with Final Budget</i>	<i>Fiscal Year</i>
	<i>Original</i>	<i>Final</i>	<i>Estimate</i>		<i>2011-12</i>
Revenues					
Taxes	\$ 22,830,840	\$ 22,830,840	\$ 22,714,850	(115,990)	\$ 22,556,080
Licenses and Permits	73,800	73,800	75,600	1,800	94,880
Intergovernmental Revenues	10,130,400	10,160,300	10,137,526	(22,774)	10,084,330
Charges for Services	816,510	816,510	698,884	(117,626)	1,769,350
Fines, Forfeits and penalties	1,342,000	1,342,000	1,257,600	(84,400)	1,318,200
Investment and rental income	451,370	451,370	667,181	215,811	452,600
Miscellaneous Revenue	<u>228,970</u>	<u>228,970</u>	<u>289,260</u>	<u>60,290</u>	<u>279,760</u>
Total Revenues	\$ 35,873,890	\$ 35,903,790	\$ 35,840,901	(62,889)	\$ 36,555,200
Expenditures					
Current:					
General Government					
City Council	\$155,540	\$155,540	\$133,460	\$22,080	\$160,690
City Manager	979,400	979,400	997,439	(18,039)	1,036,730
City Clerk	356,430	356,430	351,545	4,885	424,650
City Attorney	445,940	445,940	418,343	27,597	466,730
Human Resources	516,120	516,120	517,970	(1,850)	514,090
Information Systems	972,160	972,160	947,250	24,910	983,540
Financial Services	1,528,780	1,528,780	1,454,625	74,155	1,517,320
Budget and Treasury	352,580	352,580	345,845	6,735	359,470
Non Departmental	<u>1,069,820</u>	<u>1,069,820</u>	<u>994,758</u>	<u>75,062</u>	<u>986,520</u>
Total General Government	\$6,376,770	\$6,376,770	\$6,161,235	\$215,535	\$6,449,740
Public Protection					
Police	\$16,000,270	\$16,392,270	\$16,318,523	\$73,747	\$16,891,930
Fire	9,320,840	9,528,840	9,525,474	3,366	9,581,630
Total Public Protection	25,321,110	25,921,110	25,843,997	77,113	26,473,560
Public Works	1,559,390	1,559,390	1,526,858	32,532	1,570,400
Library	1,361,950	1,381,000	1,391,000	(10,000)	1,355,530
Parks	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Expenditures	\$34,619,220	\$35,238,270	\$34,923,090	\$315,180	\$35,849,230
Excess (Deficiency) of Revenues Over (Under)					
Expenditures	\$1,254,670	\$665,520	\$917,811	\$252,291	\$705,970
Other Financing Sources (Uses)					
Transfers In	5,367,990	5,367,990	5,367,990	0	5,367,990
Transfers Out	<u>(6,648,890)</u>	<u>(7,929,962)</u>	<u>(7,929,962)</u>	<u>0</u>	<u>(6,067,060)</u>
Total Other Financing Sources (Uses)	\$(1,280,900)	\$(2,561,972)	\$(2,561,972)	\$0	\$(699,070)
Net Change in Fund Balance	(26,230)	(1,896,452)	(1,644,161)	252,291	6,900
Fund Balance, Beginning of Year	\$5,654,136	\$5,654,136	\$5,654,136	\$0	\$4,009,975
Fund Balance, End of Year	\$5,627,906	\$3,757,684	\$4,009,975	\$252,291	\$4,016,875

General Economic Condition and Outlook of the City

General Fund. Commencing in 2008, the City has taken a number of steps to address the negative impacts of the economic downturn on the financial condition of the City. In November 2008, as a result of actual year-end results for Fiscal Year 2007-08 being worse than assumed when the Fiscal Year 2008-09 budget was adopted, as well as rapid declines in revenues coupled with increased expenditures, the City took action mid-year to reduce the general fund budget for Fiscal

Year 2008-09 by approximately \$1.855 million. Although the City utilized approximately \$1.0 million in reserves to balance the Fiscal Year 2008-09 budget, it ended the year with a \$5.3 million reserve. In early 2009, the City entered into discussions with all of its bargaining units seeking concessions to help balance the City budget. At the time, the City anticipated that the economy would recover quickly, and the concessions would be temporary. As the Fiscal Year 2009-10 budget was being prepared, the City sought, and obtained, concessions from bargaining groups valued at approximately \$2.3 million. Concessions continued in 2010-11 (valued at about \$2.7 million) and in 2011-12 (valued at about \$3.0 million). Additionally, over the period commencing in Fiscal Year 2008-09, the City has evaluated positions and strategically reduced positions primarily through retirement incentives and attrition. A total of 38 individuals have taken advantage of the retirement incentive and their positions have been left vacant, representing an annual salary and benefit savings of \$2.6 million. Consequently, the City has largely avoided employee layoffs and drastic service cuts common in other cities.

Fiscal Year 2010-11 ended with an unrestricted fund balance of approximately \$5.6 million, an increase of about \$1.9 million over the estimated fund balance for the year contained in the adopted budget. This increase in fund balance was driven by increased levels of property tax collections over budgeted levels and a one time repayment to the general fund of rental revenue originally posted to other funds combined with reduced expenditure levels associated with salary and benefits savings from vacant positions and reduced service and supply expenditures.

The adopted budget for Fiscal Year 2011-12 projected an unrestricted fund balance of just over \$4 million. The Council and City Manager had committed to the City's bargaining units that they would not significantly increase fund balance during the period that bargaining unit members were providing concessions to the City to enable it to balance its budget. During the mid-year budget review, City staff brought forward proposals to allocate the one-time fund balance increase (i.e., the \$1.9 million excess of actual year-end fund balance over projections in the Fiscal Year 2010-11 budget) to one-time uses. Council approved the following four uses of the one-time increase: 1) allocate \$600,000 toward buying down Compensating Time Off leave balances for public safety that had grown as a result of concessions regarding limiting the amount of paid overtime; 2) allocate \$643,072 for the write-off of receivables related to the City's failed attempts to create a Redevelopment Agency project area; 3) allocate \$138,000 to fully fund the liability associated with the purchase of property for the Police Building; and 4) allocate \$500,000 to the reserve for replacing Fire Station 2.

The estimated actual results for Fiscal Year 2011-12 reflect an increase to fund balance of just over \$250,000. Although total actual revenues are estimated to be about \$62,000 below budgetary levels, expenditure levels are projected at about \$315,000 below budgeted levels. Revenue reduction in taxes and charges for services are offset by expenditure savings in salary and benefits and services and supply accounts.

The adopted Fiscal Year 2012-13 budget projects a nominal increase in fund balance. Revenues are expected to be \$651,410 higher than the prior year budget. The primary increase in revenue is coming from the sale of treated wastewater (\$960,000) to the Northern California Power Agency (NCPA). This revenue source is new to the General Fund and is associated with the NCPA's operation of a new power generation plant on City owned property. Expenditures include the value of changes made to bargaining group agreements mentioned earlier offset by increases to budgeted overtime payments that had previously been subject to concession agreements. The reduction in

Transfers out relates to the one-time increase in such expenditures approved in the 2011-12 mid-year adjustments discussed above.

The following table illustrates the City’s primary General Fund sources over the last five years.

**Primary General Fund Revenue Sources
Fiscal Year Ended June 30**

Revenue Source	2008-09	2009-10	2010-11	2011-12 Estimated Actual*	2012-13 Budget
Sales Tax	\$8,027,678	\$6,872,696	\$8,663,301	\$8,961,000	\$8,880,440
Property Tax	8,887,149	8,342,161	8,285,589	8,010,300	7,850,100
Electric In Lieu	<u>6,941,960</u>	<u>6,976,670</u>	<u>6,976,670</u>	<u>6,976,690</u>	<u>6,976,690</u>
Total	\$23,856,787	\$22,191,527	\$23,925,560	\$23,947,970	\$23,707,210

* Unaudited.

Sales tax revenue has fluctuated over the past five years as the effects of the Great Recession and the subsequent recovery process continue. In Fiscal Year 2009-10, a number of businesses folded, with corresponding decreases in sales tax revenues. The City has been fortunate that NCPA began construction of its Lodi Energy Center (“LEC”) power plant during this period. The LEC project provided approximately \$1.5 million of construction-related sales tax revenue to the City over a three fiscal year period. The final sales tax payments for this project are reflected in Fiscal Year 2011-12 estimates. The bulk of these payments came in Fiscal Year 2010-11. Late in Fiscal Year 2010-11, Costco opened a store in Lodi. To date, actual sales have exceeded projections and have cushioned the end of the revenues associated with LEC. In March 2012, Home Depot opened a store in Lodi. While actual results are not yet available, estimated revenues for Fiscal Year 2011-12 are slightly ahead of budgeted levels. Budgeted levels for Fiscal Year 2012-13 are commensurate with Fiscal Year 2011-12 levels and reflect the end of LEC one-time payments.

Property tax revenues for Fiscal 2012-13 are based upon a 2 percent decline in assessed values. The City has fared very well in relation to surrounding areas in this regard, primarily because of the City low growth rate and strong property ownership. Over 30 percent of homes in Lodi are owned outright, minimizing the number of foreclosure and revaluations. In Fiscal Year 2009-10 assessed valuation in the City decreased 6.2 percent, due in part to the impact of reductions pursuant to Proposition 8. Assessed value in the City declined 0.7 percent for Fiscal Year 2010-11, 3.3 percent for Fiscal Year 2011-12, and 2.0 percent for Fiscal Year 2012-13.

The Electric In Lieu payment is based upon a formula adopted by Council in 2007. The formula is based upon the prior year value increased by any increase in customers. As reflected in the table above, there has not been an increase in customer counts over the past four years. See “Payments to General Fund from Electric Utility” and “RISK FACTORS - Limitations on Taxes and Fees.”

General Fund Financial Summary. All governmental funds are accounted for using the modified accrual basis of accounting. The City’s revenues are recognized when they become measurable and available as net current assets.

Expenditures are generally recognized under the modified accrual basis of accounting when the related fund liability is incurred. The exception to this general rule is principal and interest on general long-term debt, which is recognized when due. Some debts and obligations may be payable from self-supporting enterprises or revenue sources other than property taxation. Special assessment bonds are not included in the tabulation; lease revenue obligations payable from the General Fund or equivalent sources are included.

All proprietary funds are accounted for using the accrual basis for accounting. Revenues are recognized when they are earned, and expenses are recognized when they are incurred. Receivables are recorded and determined at the time of consumption, and unbilled receivables are not recorded.

The following five-year summary of the City's General Fund has been prepared by the City of Lodi Finance division from audited financial statements and estimated amounts for June 30 2012. The City's audited financial statements for the fiscal year ended June 30, 2011 are attached hereto as Appendix B. The City has retained the firm of Macias, Gini & O'Connell LLP, Sacramento, California to prepare the audit report for the fiscal year ended June 30, 2012.

"Operating Transfers In" in the following table generally represent amounts paid to the General Fund for services provided to enterprise fund activities of the City (Water, Wastewater and Electric Utilities). "Operating Transfers Out" generally represent amounts paid by the General Fund to Special Revenue Funds to support activities. Operating Transfers Out initially budgeted for Fiscal Year 2011-12 included \$3.9 million to Parks, Recreation and Cultural Service, \$554,600 to Streets per contract, \$1,053,750 for capital improvements/replacements, \$1.0 million for debt service on the 2002 Certificates and \$150,200 to Community Development. Additionally, as a result of mid-year adjustments discussed earlier to address the one-time \$1.9 million fund balance increase, Operating Transfers Out were increased by an additional \$1.3 million, resulting in total transfers out for Fiscal Year 2011-12 of \$7.9 million.

"Debt Service" expenditures reflected in the table below are related to capital lease payments for equipment. The final payment under these leases was made in Fiscal Year 2010-11. Debt service payments related to the 2002 Certificates are reflected in debt service funds, not the General Fund. Funding for the portion of 2002 Certificates related to General Fund departments is reflected in the Transfers Out line item as discussed above.

It should also be noted that the Parks and Recreation function was merged with the Community Services function and established as a Special Revenue Fund effective July 1, 2011. As a result, the Parks and Recreation function reflects no expenditures in Fiscal Year 2011-12.

**CITY OF LODI
GENERAL FUND
COMPARATIVE STATEMENTS OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCE
Fiscal Years ended June 30, 2008 through 2012**

	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012 Esimated.</u>
Revenues:					
Taxes	\$ 24,712,405	\$ 23,516,164	\$ 23,118,461	\$ 23,061,164	\$ 22,714,850
License and permits	80,925	61,783	72,171	83,395	75,600
Intergovernmental revenues	10,642,600	8,967,410	7,772,071	10,032,523	10,137,526
Charges for services	2,510,207	1,055,137	1,343,199	1,035,220	698,884
Fines, forfeits and penalties	1,317,407	1,415,174	1,441,354	1,404,307	1,257,600
Investment and rental income	662,164	231,181	516,304	455,923	667,181
Miscellaneous revenue	<u>630,413</u>	<u>446,404</u>	<u>462,592</u>	<u>480,028</u>	<u>289,260</u>
Total revenues	<u>\$ 40,556,121</u>	<u>\$ 35,693,253</u>	<u>\$ 34,726,152</u>	<u>\$ 36,552,560</u>	<u>35,840,901</u>
Expenditure:					
Current					
General government	\$9,545,370	\$6,922,096	\$6,411,741	\$6,478,159	\$6,161,235
Public protection	23,771,574	24,463,771	23,854,905	24,091,472	25,843,997
Public works	3,935,366	2,967,402	1,471,779	1,421,238	1,526,858
Library	1,672,910	1,499,720	1,322,052	1,357,473	1,391,000
Parks and Recreation	3,826,450	2,160,035	2,234,349	2,191,102	0
Debt Service:					
Interest and fiscal charges	29,724	18,516	12,578	6,427	0
Principal Payments	<u>249,624</u>	<u>129,487</u>	<u>135,425</u>	<u>141,576</u>	<u>0</u>
Total expenditures	\$43,031,018	\$38,161,027	\$35,442,829	\$35,687,447	\$34,923,090
Deficiency of Revenues Under Expenditures	(2,474,897)	(2,467,774)	(716,677)	865,113	917,811
Other Financing Sources (uses):					
Operating transfers in	4,040,166	5,367,983	5,867,983	5,379,186	5,367,990
Operating transfers out	<u>\$(2,575,809)</u>	<u>\$(4,442,883)</u>	<u>\$(4,632,278)</u>	<u>\$(4,383,110)</u>	<u>\$(7,929,962)</u>
Total other financing sources (uses)	\$1,464,357	\$925,100	\$1,235,705	\$996,076	\$(2,561,972)
Net Change in Fund Balances	(1,010,540)	(1,542,674)	519,028	1,861,189	(1,644,161)
Fund Balance, Beginning of Year	\$6,319,402	\$5,308,862	\$3,766,188	\$4,285,216	\$5,564,136
Fund Balance End of Year	\$5,308,862	\$3,766,188	\$4,285,216	\$6,146,405	\$4,009,975

Source: City of Lodi Finance Division

Interfund Borrowing and Cash Flows. General Fund expenditures tend to occur in level amounts throughout the Fiscal Year. Conversely, General Fund receipts have followed an uneven pattern primarily as a result of secured property tax installment payment due dates in April and December and as a result of delays in payments from other governmental agencies, which represent the largest sources of City revenues. As a result, General Fund cash balances have typically declined or been negative for part of the Fiscal Year and, if negative, have been covered by interfund borrowings pursuant to Section 6 of Article XVI of the California Constitution or Tax and Revenue Anticipation Notes. The State Constitution prohibits interfund borrowings by cities after the last Monday of April of each Fiscal Year of amounts that exceed 85% of taxes accrued.

Assessed Valuation and Tax Collections. Taxes are levied for each Fiscal Year on taxable real and personal property which is situated in the City as of the preceding March 1. For assessment and collection purposes, property is classified either as “secured” or “unsecured” and is listed accordingly on separate parts of the assessment roll. The “secured roll” is that part of the assessment roll containing State-assessed property and real property having a tax lien that is sufficient, in the

opinion of the County Assessor, to secure payment of the taxes. Other property is assessed on the “unsecured roll.”

Property taxes on the secured roll are due as of the March 1 lien date and become delinquent, if unpaid, on August 31. A 10% penalty attaches to delinquent taxes on property of the unsecured roll, and an additional penalty of 1.5% per month begins to accrue commencing on November 1 of the Fiscal Year. Collection of delinquent unsecured taxes is the responsibility of the County of San Joaquin using the several means legally available to it.

In 1993, the City made an agreement with San Joaquin County to participate in the Teeter Plan pursuant to provisions of Sections 4701-4717 of the California Revenue and Taxation Code. The Teeter Plan is an alternative method of apportioning property tax money. Pursuant to those sections the accounts of all political subdivisions that levy taxes on the County tax rolls are credited with 100% of their respective tax levies regardless of actual payments and delinquencies. The cities covered under the plan receive 95% of the property taxes in advance from the County and the 5% remaining after reconciling the cities’ balances at June 30. As part of the agreement, the County keeps the penalties and interest on the delinquent taxes.

Until the recent economic downturn, while severe in the surrounding area and on its housing market, the assessed values in the City had grown each year from Fiscal Year 2000-01 through Fiscal Year 2008-09. Notices of default and foreclosures of property within the City have increased beginning in Fiscal Year 2007-08, but have tracked closer to the state levels than that of San Joaquin County. In particular as of May 2012, foreclosure notices and actions affected 0.37% of Lodi households, while the state rate was 0.33% of households. In contrast, the San Joaquin County rate of foreclosure notices and actions was 0.54%. In addition, the assessed values of a number of properties in the City have been reduced pursuant to Proposition 8, which generally provides for temporary reductions in assessed valuations of properties to reflect current market- values.

Assessed valuation in the City declined by approximately 9.5% from Fiscal Year 2008-09 to Fiscal Year 2011-12. The Adopted Budget for Fiscal Year 2012-13 anticipates a 2.0 percent reduction in assessed value.

CITY OF LODI
ASSESSED VALUATIONS
For Fiscal Years 2008 through 2012
(In thousands)

Fiscal Year	Land	Improvements	Personal Property	Total	Less Exemptions	Net Assessed Value
2008	\$ 1,537,554	\$ 3,503,186	\$ 289,779	\$ 5,330,510	\$ 243,259	\$ 5,087,251
2009	1,562,729	3,577,741	281,915	5,422,385	265,154	5,157,231
2010	1,345,815	3,600,824	312,792	5,259,431	332,701	4,926,730
2011	1,322,830	3,534,778	323,003	5,180,611	321,138	4,859,473
2012	1,264,884	3,401,792	301,180	4,967,856	314,448	4,653,408

Source: City of Lodi audited financial statements, except 2012.

The following table shows the City's secured property tax charges and delinquencies.

CITY OF LODI
PROPERTY TAX LEVIES AND COLLECTIONS
Last Ten Fiscal Years
(\$ in thousands)

Fiscal Year	Taxes Levied for the Fiscal Year	Collected within the Fiscal Year of the Levy		Total Collections to Date	
		Amount	Percent of Levy ⁽¹⁾	Amount	Percent of Levy
2002	\$5,757	\$5,757	100%	\$5,757	100 %
2003	5,832	5,832	100	5,832	100
2004	6,570	6,570	100	6,570	100
2005	7,057	7,057	100	7,057	100
2006	7,815	7,815	100	7,815	100
2007	8,170	8,170	100	8,170	100
2008	8,167	8,167	100	8,167	100
2009	7,966	7,966	100	7,966	100
2010	8,291	8,291	100	8,291	100
2011	8,143	8,143	100	8,143	100
2012 (estimated)	8,010	8,010	100	8,010	100

⁽¹⁾ Per agreement with San Joaquin County, the County provides the City of Lodi with 100% of the amount owed to the City for secured properties, regardless of collection status. In exchange, the County is entitled to 100% of revenues collected for interest and penalties. This agreement is commonly referred to as the Teeter Plan.

Source: San Joaquin County Auditor/Controller's Office.

Ten Largest Locally Secured Taxpayers

The following table shows the ten largest locally secured taxpayers of the City for the Fiscal Year ended June 30, 2011, the most recent year for which such information is available.

CITY OF LODI
TEN LARGEST LOCALLY SECURED TAXPAYERS
Fiscal Year Ended June 30, 2011
(\$ in thousands)

Name	Assessed Valuation
1. Lodi Memorial Hospital Assn	\$ 150,937
2. General Mills, Inc.	137,873
3. Pacific Coast Producers	83,481
4. California Physicians Service Corp	55,304
5. Cottage Bakery	40,769
6. Westcore Vine LP	23,173
7. Dart Container Corporation	18,379
8. Certainteed Corp	17,519
9. Archer Daniels Midland Co Corp	16,843
10. Wine & Roses LLC	15,581
TOTAL	<u>\$ 559,859</u>

Source: City of Lodi audited financial statements; San Joaquin County Assessor's Office.

These ten largest locally secured taxpayers represent 11.5% of the City's assessed valuation.

Payments to General Fund from Electric Utility

As detailed more particularly in the City's financial statements, starting in 2007 the City's Electric Utility has made an annual payment to the City's general fund as a payment in lieu of taxes ("PILOT"). The City Council established a formula in 2007 for the preexisting PILOT by Resolution 2007-25. The formula is based upon the net amount of the PILOT in 2006-07 budget year as adjusted by the annual percentage increase in the number of accounts. As expressly intended and anticipated by Resolution 2007-25, the new formula has effectively reduced the PILOT as a percentage of Electric Utility revenues since its adoption. Pursuant to the formula, the PILOT has been \$6,976,670 for Fiscal Years 2009-10 through 2012-13. California voters passed Proposition 26 in November of 2010 adding to the Constitution new definitions of the term "tax" and—as a result—added new limitations on the adoption of revenue measures defined by Proposition 26 to be a tax. As the City interprets Proposition 26, it is neither retroactive as to local government; nor does it apply to formulas for increasing revenue measures which formulas were established prior to the November 3, 2010 effective date of Proposition 26. Litigation is presently pending involving the City of Redding, California alleging that its unique PILOT formula violates Proposition 26. In the consolidated cases captioned *Citizens for Fair REU Rates v. City of Redding*, Shasta Superior Court Case No. 171377 and *Feefighter LLC v. City of Redding*, Shasta Superior Court Case No. 172960, the court concluded that Redding's PILOT is not a new or increased tax because it has been maintained without legislative change or change in methodology since before Proposition 26 was

adopted; granting judgment for the City in both cases. However, the City of Redding anticipates an appeal by fall 2012. The City of Lodi believes that only adjustments to the PILOT after November 3, 2010 pursuant to Resolution 2007-25 would be at risk pursuant to Proposition 26. However because the City has not seen any statistically significant increase in its number of account holders since the inception of Proposition 26, it has not increased the PILOT payment since the inception of Proposition 26. Accordingly, the City does not believe that the PILOT payments are violative of Proposition 26. However, the provisions of Proposition 26 are subject to judicial interpretation, and there can be no assurances that, if challenged, a court would not find that the PILOT violates Proposition 26. In such circumstances there can be no assurances that the City would not be required to discontinue the collection of the PILOT, and refund all or a portion of the PILOT collected after the passage of Proposition 26. The PILOT is projected to constitute approximately 16.6% of general fund revenues in Fiscal Year 2012-13.

Certain Revenues from the Sale of Recycled Water

The City is a party to (i) an Agreement to Supply Recycled Water dated March 22, 2010 (the “NCPA Recycled Water Agreement”) with the Northern California Power Agency (“NCPA”) and (ii) an Amended and Restated Ground Lease dated March 22, 2010 (the “NCPA Ground Lease”).

The City owns certain real property adjacent to the White Slough Facility that it purchased prior to 1990. Under the NCPA Ground Lease, the City leases that real property (the “NCPA-Leased Property”) to NCPA, and NCPA uses the NCPA-Leased Property for operation of a gas turbine power generation plant and ancillary uses. The term of the NCPA Ground Lease commenced on January 1, 1993 and continues for 50 years; NCPA has a right to extend the lease for another 50 years. In fiscal year 2010-11, the City received approximately \$61,000 of rent from NCPA under the NCPA Ground Lease.

Pursuant to the NCPA Recycled Water Agreement, the City supplies NCPA with recycled water and NCPA agrees to use recycled water to generate electricity or to irrigate landscaping associated with its generating facilities. NCPA pays (i) a base price per acre foot per year (“afy”) for 1600 afy of recycled water, which NCPA pays for whether or not it uses it, (ii) 125% of the base price for any incremental quantity of recycled water greater than 1600 afy up to 1800 afy, and (iii) 150% of the base price for any incremental quantity of recycled water above 1800 afy; the base price increases 2.5% annually (subject to a 10-year price review procedure). In fiscal year 2012-13, the City expects to receive \$960,000 from NCPA under the NCPA Recycled Water Agreement. The term of the NCPA Recycled Water Agreement is tied to the term of the NCPA Ground Lease.

The aggregate payments received by the City from NCPA under the two agreements do not exceed the fair rental value for the NCPA-Leased Property (which is not an asset of the System), and the recycled water provided to NCPA does not have any value (the transfer of recycled water to NCPA avoids the cost of alternative disposal methods). Consequently, the City deposits the payments it receives from NCPA under the NCPA Recycled Water Agreement and the NCPA Ground Lease in its general fund rather than as revenues of its wastewater system (“Wastewater System Revenues”).

No claim has been filed or threatened alleging that all or a portion of the payments received by the City from NCPA and deposited into the City’s general fund are Wastewater System Revenues. Although the City believes that the payments received from NCPA may legally be deposited into its general fund, it cannot predict the outcome of any litigation of the issue. If a court were to conclude that all or a portion of the payments received by the City from NCPA were Wastewater System

Revenues, then the City would be obligated to deposit future such payments into the System Revenue Fund rather than the City's general fund, and, because the statute of limitations applicable to any such claim would be three years, the City could be obligated to reimburse the Wastewater System for any such payments for the preceding three years. The City believes that the obligation to deposit all or portion of the payments it receives from NCPA into the Wastewater System rather than the general fund, or to reimburse the Wastewater System for up to three years' prior payments, would not adversely impact its ability to pay the Lease Payments when due. The total amount received from NCPA in fiscal year 2010-11 constituted approximately 2.5% of total general fund revenues.

Outstanding General Fund Debt and Lease Obligations

The City currently has no outstanding general fund general obligation bonds outstanding. The Refunded Certificates currently constitute the only certificates of participations payable from the General Fund currently outstanding. In addition, the City has an outstanding promissory note in the amount of \$245,000, relating to the purchase of the real property for the Police Building. Interest is payable quarterly and principal is due on April 1, 2017.

In connection with the City's electric, water and wastewater utilities, the City has entered into installment purchase agreements, leases and other contractual commitments in connection with the financing of various facilities. These obligations are payable from the respective enterprise funds of the City, and are not payable from the General Fund.

Retirement System

All full time employees of the City are members of the California Public Employees Retirement System ("PERS"), an agent multiple-employer public employee defined benefit pension plan. PERS provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. PERS acts as a common investment and administrative agent for participating public entities within the State of California. Benefit provisions and all other requirements are established by state statute and city ordinance.

Funding Policy. Contributions to PERS are divided into employee and employer shares. Employees are required to contribute 7% (9% for safety employees) of their annual covered salary as the employee share. The City has historically made the contributions required of City employees on their behalf and for their account. Effective for Fiscal Year 2011-12, as part of concession agreements with employee bargaining units, each bargaining unit employee began paying all, or a portion, of the employee share of pension costs. Bargaining unit agreements negotiated during the year require that employees pay their full share of pension costs by the end of the term of their agreements, generally December 31, 2013.

The City is required to contribute at an actuarially determined rate; the rate for Fiscal Year 2012-13 is 14.411% for miscellaneous employees, 31.335% for fire and police employees, of annual covered payroll. The contribution requirements of plan members and the City are established and may be amended by PERS.

The following table shows City contributions to PERS (including both the City portion as well as employee contributions paid by the City) for Fiscal Years 2008-09 through 2011-12, as well as the expected contribution for Fiscal Year 2012-13.

**City Payments – Pension Plan
Fiscal Year Ended June 30**

FY Ended June 30	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
<u>Safety</u>					
Employee-Employer Paid	\$1,026,013	\$1,010,099	\$1,018,017	\$638,555	\$584,960
Employee-Employee Paid				406,075	419,340
Employer	<u>2,749,845</u>	<u>2,677,415</u>	<u>2,824,761</u>	<u>3,520,851</u>	<u>3,498,290</u>
Subtotal	\$3,775,858	\$3,687,554	\$3,842,778	\$4,565,481	\$4,502,590
<u>Miscellaneous</u>					
Employee-Employer Paid	\$548,255	\$505,652	\$514,472	\$285,242	\$260,660
Employee-Employee Paid				165,615	152,840
Employer	<u>980,743</u>	<u>857,257</u>	<u>900,513</u>	<u>833,481</u>	<u>856,530</u>
Subtotal	<u>\$1,528,998</u>	<u>\$1,362,909</u>	<u>\$1,414,985</u>	<u>\$1,257,338</u>	<u>\$1,270,030</u>
Total	\$5,304,856	\$5,050,463	\$5,257,763	\$5,822,819	\$5,772,620

As of June 30, 2010, the most recent actuarial valuation date, the Safety Plan was 76.0% funded on an actuarial value basis and 59.6% funded on a market value basis; the Miscellaneous Plan was 86.1% funded on an actuarial basis and 67.2% funded on a market value basis. The actuarial accrued liability for benefits was approximately \$122 million for the Safety Plan and \$134 million for the Miscellaneous Plan. The actuarial value of assets were approximately \$93 million for the Safety Plan and \$115 million for the Miscellaneous Plan; resulting in an unfunded actuarial accrued liability (UAAL) of \$29 million for the Safety Plan and \$19 million for the Miscellaneous Plan.

The market value of assets were approximately \$73 million for the Safety Plan and \$90 million for the Miscellaneous Plan; resulting in an unfunded liability (market value basis) of \$49 million for the Safety Plan and \$44 million for the Miscellaneous Plan.

The covered payroll (annual payroll of active employees covered by the plans) were \$11 million for the Safety Plan and \$18 million for the Miscellaneous Plan, and the ratio of the UAAL to the covered payroll was 258.2% and 104.3% for the Safety and Miscellaneous plans, respectively.

In Fiscal Year 2011-12, the PERS board voted to decrease the actuarially assumed investment rate of return from 7.75% to 7.5%, effective July 1, 2013. This reduction will result in an estimated increase of the City’s employer contributions of approximately \$480,000 beginning in Fiscal Year 2013-14 (approximately \$293,000 of which is attributable to the General Fund). Also, PERS recently announced that investment earnings for PERS fiscal year ended June 30, 2012, were approximately 1%, significantly lower than the assumed actuarially assumed investment earnings rate of 7.5%. Although not quantified at this time, this is also expected to result in increased City contributions.

In addition to this expected increase, there can be no assurances that the City’s annual contributions to PERS will not significantly increase in the future. The actual amount of any

increases will depend on a variety of factors, including but not limited to investment returns, actuarial assumptions, experience and retirement benefit adjustments.

For further information relating to the City's retirement plans, see Note 9 to the financials statement contained in "APPENDIX B: AUDITED FINANCIAL STATEMENTS OF THE CITY FOR THE FISCAL YEAR ENDED JUNE 30, 2011."

OPEB. The City sponsors a single-employer defined-benefit post employment healthcare plan (Plan) to provide medical insurance benefits to eligible retired employees and their spouses. The Plan does not issue a publicly available financial report. Medical coverage is provided through PERS healthcare program. Employees who retire from the City and receive a PERS pension are eligible for post employment medical benefits. The City contributes the minimum amount provided under Government Code Section 22825 of the Public Employees Medical and Hospital Care Act. In general, retirees must contribute any premium amounts in excess of the City contribution. However, as described in the City's financial statement, a closed group of active employees and retirees receive additional post employment benefits. Contribution requirements of the post employment benefit are based on pay-as-you-go financing. For fiscal year 2010-11, the City contributed \$469,593, or 33.16%, of the actuarially required contributions. For Fiscal Year 2011-12, the City contributed approximately \$700,000.

For further information relating to the City's post employment benefits, see Note 10 to the financials statement contained in "APPENDIX B: AUDITED FINANCIAL STATEMENTS OF THE CITY FOR THE FISCAL YEAR ENDED JUNE 30, 2011."

City Investments

All funds of the City are invested by the City in accordance with the investment guidelines of the California Government Code (Section 53601 and 53635) and the City's Investment Policy, which is presented annually to the City Council for approval.

Pursuant to the Investment Policy, the City strives to maintain a level of investment of idle funds, less required reserves, as near 100% as possible, through daily and projected cash flow determinations. The City's cash management system is designed to monitor and forecast expenditures and revenues accurately in order to enable the City to invest funds to the fullest extent possible.

Idle cash management and investment transactions are the responsibility of the Internal Services Director/City Treasurer. The Investment Policy, as adopted by the City Council on November 2, 2011 permits investment in the following: U.S. Treasury Obligations (bills, notes and bonds); U.S. Government Agency securities and instrumentalities; bankers acceptances; certificates of deposit; negotiable certificates of deposit; commercial paper; California State Local Agency Investment Fund; passbook deposits; mutual funds; medium term notes and CalTRUST pooled accounts. The Investment Policy provides that safety is given the highest priority, followed by liquidity and yield. Investments are selected to achieve a "market average" rate of return, or the annual rate of return on the one-year U.S. Treasury Bill.

The Investment Policy may be changed at any time at the discretion of the City Council (subject to State of California law provisions relating to authorized investments) and as the California Government Code is amended. There can be no assurance, therefore, that the State of California law

and/or the Investment Policy will not be amended in the future to allow for investments which are not currently permitted under such State law or the Investment Policy, or that the objectives of the City with respect to investments will not change. All investments, including the Authorized Investments and those authorized by law from time to time for investments by public agencies, contain a certain degree of risk. Such risks include, but are not limited to, a lower rate of return than expected and loss or delayed receipt of principal. The occurrence of these events with respect to amounts held under the Indenture and the Installment Purchase Agreement, or other amounts held by the City, could have a material adverse affect on the City's finances.

A summary of the City's pooled investment portfolio as of June 30, 2012 is set forth below.

**CITY OF LODI
Investment Portfolio Summary**

<u>Type of Investment</u>	<u>Amount</u>	<u>Percent of Total</u>
Local Agency Investment Fund (City)	\$46,782,586	60.09%
Certificates of Deposit	500,000	0.64
Passbook/Checking Accounts	6,553,652	8.42
CalTRUST Pooled Accounts	<u>24,021,622</u>	<u>30.85</u>
Total	\$77,857,860	100.0%

Estimated Direct and Overlapping Bonded Debt

The estimated direct and overlapping bonded debt of the City as of June 30, 2011 is set forth below.

**CITY OF LODI
ESTIMATED DIRECT AND OVERLAPPING BONDED DEBT
as of June 30, 2011**

[JUNE 30, 2012 ON ORDER]

2010-11 Assessed Valuation: \$5,259,431,000

OVERLAPPING DEBT:	Total Debt ⁽³⁾	% Applicable ⁽¹⁾	City's Share of Debt
San Joaquin Community College District	\$ 143,540,616	8.664	\$ 12,436,359
Lodi Unified School District	101,265,000	37.03	37,498,430
City of Lodi 1915 Act Bonds	165,000	100.00	165,000
San Joaquin County Certificates of Participation	183,520,000	9.703	17,806,946
Lodi Unified School District Certificates of Participation	41,665,000	37.03	<u>15,428,550</u>
SUBTOTAL OVERLAPPING DEBT:			83,335,285
DIRECT DEBT			
City of Lodi Certificates of Participation	21,655,000	100.00	<u>21,665,000</u>
TOTAL DIRECT AND OVERLAPPING DEBT⁽²⁾			<u>\$ 104,990,285</u>

2010-11 Assessed Valuation	\$ 5,259,431,000		
2010-11 Population	63,549	<u>Per Capita</u>	<u>Value</u>
DEBT RATIOS	Total Gross Debt	\$ 104,990,285	\$ 1,652
			2.00%

- (1) Percent of overlapping agency's assessed valuation located within the boundaries of the City.
- (2) Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue and tax allocation bonds and non-bonded capital lease obligations.
- (3) The June 30, 2010 information is not available so data as of August 1, 2010 was used to approximate the June 30, 2010 information.

Source: California Municipal Statistics, San Francisco, CA
 San Joaquin County Auditors-Controller Office
 State of California, Department of Finance, Demographic Research Unit

City Economic and Demographic Information

Population. The following chart indicates the growth in the population of the City since 1992.

**CITY OF LODI
POPULATION
For Fiscal Years 2002 through 2011**

Fiscal Year	Population
2002	59,431
2003	60,500
2004	60,769
2005	62,467
2006	62,817
2007	63,395
2008	63,362
2009	63,313
2010	63,549
2011	62,473

Source: State of California, Department of Finance.

Employment. The following table contains certain information concerning employment in the City and State.

**CITY OF LODI
EMPLOYMENT, UNEMPLOYMENT AND LABOR FORCE
Averages for each of the Calendar Years 2007-2011**

	2007	2008	2009	2010	2011
Employment	29,500	29,200	28,000	27,600	27,500
Unemployment	1,900	2,500	3,700	4,200	4,100
Civilian Labor Force	31,400	31,600	31,700	31,800	31,500
Unemployment Rate	6.0	7.8	11.6	13.2	12.9
State Unemployment Rate	5.4	7.2	11.3	12.4	11.7

Source: State of California, Employment Development Department.

Major Employers. There are several manufacturing plants in the community producing a wide variety of products: cereals, food mixes, wines, rubber products, steel framing and industrial shelving, foundry items, recreational vehicle components, electronic substrates, and plastic piping and injection molded products. In addition, Lodi has a number of small businesses located within the City. The main businesses in Lodi, however, are food processes and plastics.

The largest employers in Lodi as of June 30, 2012 are as follows:

**CITY OF LODI
LARGEST EMPLOYERS**

Employer	Business	Number of Employees
Lodi Unified School District	Education	3,687
Lodi Memorial Hospital	Health Care	1,340
Pacific Coast Producers	Can Manufacture and Cannery	1,000
Blue Shield	Health Care	915
Cottage Bakery	General Merchant	527
General Mills	Cereals and Food Mixes	478
City of Lodi	Government	381
Farmers & Merchants Bank	Banking	283
Walmart	General Merchant	240
Target	General Merchant	205

Source: City of Lodi audited financial statements.

Building Permit Activity. The following table shows the value of building permits issued in the City between 2007 and 2011.

**CITY OF LODI
BUILDING PERMIT VALUATION
for Fiscal Years Ended June 30, 2008 through 2012**

	2008	2009	2010	2011	2012
Residential Valuation					
Single Family	\$2,502,146	\$1,497,859	\$33,884	\$1,2041,695	\$1,526,810
Multifamily	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL	\$2,502,146	\$1,497,859	\$33,884	\$1,204,695	\$1,526,810
New Dwelling Units					
Single Family	12	7	1	8	6
Multiple Family	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL	12	7	1	8	6

Source: City of Lodi.

Taxable Sales. The following table indicates taxable transactions in the City by type of business during the calendar years 2007 through 2011.

CITY OF LODI
TAXABLE TRANSACTIONS BY TYPE OF BUSINESS
for Calendar Years 2007 through 2011
(in Thousands of Dollars)

	2007	2008	2009	2010	2011 ⁽¹⁾
Motor Vehicle & Parts Dealers	\$ 12,774	\$ 15,341	\$ 83,420	\$ 76,930	\$ 18,920
Home Furn. & Appliances	144,252	131,757	14,176	13,634	3,485
Bldg. Mat. & Garden Equip. & Supplies	57,101	51,196	54,016	54,603	14,308
Food & Beverage Stores	84,753	81,370	44,467	43,928	9,960
Service Stations	13,434	13,683	73,954	87,959	25,229
Apparel Stores	68,954	55,678	19,687	19,441	4,580
General Merchandise	182,395	135,866	107,491	110,821	23,709
Food Services & Drinking Places	65,697	85,670	76,253	75,517	18,582
Other Retail Stores	<u>58,249</u>	<u>51,722</u>	<u>51,292</u>	<u>48,978</u>	<u>11,315</u>
Retail Stores Total	\$687,609	\$622,282	\$524,757	\$531,811	\$130,089
All Other Outlets	<u>167,463</u>	<u>154,277</u>	<u>123,371</u>	<u>213,405</u>	<u>46,779</u>
TOTAL ALL OUTLETS	\$ 855,072	\$ 776,559	\$ 648,128	\$ 745,216	\$ 176,868

⁽¹⁾ First Quarter of 2011

Source: California State Board of Equalization.

Agriculture. Lodi is a worldwide agricultural shipping center for the San Joaquin Valley. The surrounding prime agricultural land is a major producer of wine grapes. The following table shows agriculture production in the County from 2007 through 2011.

COUNTY OF SAN JOAQUIN
AGRICULTURAL PRODUCTION
2007 to 2011

	2007	2008	2009	2010	2011
Field Crops	217,347,000	294,773,000	202,872,000	208,729,000	
Seed Crops	4,115,000	6,730,000	4,813,000	5,628,000	
Fruit and Nut Crops	791,291,000	893,485,000	951,004,000	935,155,000	
Vegetable Crops	249,651,000	277,136,000	368,327,000	256,261,000	
Nursery Products	137,259,000	85,539,000	75,844,000	76,951,000	
Apiary Products	15,010,000	15,790,000	25,059,000	13,349,000	
Livestock and Poultry	119,138,000	120,547,000	98,348,000	95,010,000	
Livestock and Poultry Products	471,982,000	435,725,000	274,207,000	369,003,000	
Total	<u>2,005,793,000</u>	<u>2,129,725,000</u>	<u>2,000,474,000</u>	<u>1,960,086,000</u>	

Source San Joaquin Office of the Agricultural Commissioner.

Community Facilities. The City has a central library, one community center, 26 parks and five specific use facilities, covering 263 developed areas and 110 undeveloped areas, and 16

playgrounds. Lodi Lake Park is connected to the Mokelumne River and features boating, fishing, beach swimming, boat rentals, nature walks, group picnic sites, an RV park and the Discovery Nature Center. Micke Grove Park is located between Lodi and Stockton. The park is home to a Japanese garden, the San Joaquin Historical Museum, rides, picnic areas, and a five-acre zoo featuring mammals, birds, reptiles and vertebrates.

Community recreation programs cover a wide range of interests and activities including youth and adult sports and special interest classes, youth-at-risk programs, aquatics, special events, camps/clinics and tournaments.

Lodi Memorial Hospital offers a 270-bed, non-profit, independent, acute-care hospital to the residents of Lodi. Its mission is to provide quality medical care, education and support services to the community. Two hospital campuses and six satellite clinics are used to provide a variety of inpatient, outpatient, urgent, emergency and primary care services.

Education. The Lodi Unified School District provides K-12 and special education programs. The area also is served by several private and parochial schools. The University of the Pacific, San Joaquin Delta Community College, California State University-Stanislaus/Turlock/Stockton Center, and the University of San Francisco satellite center are all within a 20-minute drive of Lodi. The University of California-Davis, California State University-Sacramento and the University of Southern California satellite center are within an hour's drive from Lodi.

Transportation. Lodi is served by Interstate highway 5 and State highways 12 and 99 and is located on the main line of the Union Pacific Railroad. Lodi has Amtrak passenger rail service and local, regional and national bus service. A deep-water seaport and airport with commercial passenger travel are located approximately 15 miles south.

APPENDIX B

**AUDITED FINANCIAL STATEMENTS OF THE CITY
FOR THE FISCAL YEAR ENDED JUNE 30, 2011**

APPENDIX C
SUMMARY OF PRINCIPAL LEGAL DOCUMENTS

APPENDIX D
FORM OF OPINION OF BOND COUNSEL

APPENDIX E
FORM OF CONTINUING DISCLOSURE AGREEMENT

APPENDIX F
DTC AND THE BOOK-ENTRY ONLY SYSTEM

RESOLUTION NO. 2012-____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
DOCUMENTS AND OFFICIAL ACTIONS RELATING TO THE
REFINANCING OF AN OUTSTANDING INSTALLMENT PAYMENT
OBLIGATION OF THE CITY OF LODI RELATING TO ITS
WASTEWATER SYSTEM AND THE ISSUANCE AND SALE OF
REFUNDING WASTEWATER REVENUE BONDS BY THE LODI PUBLIC
FINANCING AUTHORITY

=====

WHEREAS, the City of Lodi (the "City") owns and operates facilities and property for the collection, treatment and disposal of wastewater within the service area of the City (the "System"); and

WHEREAS, the City previously entered into an Installment Purchase Agreement, dated as of May 1, 2004 (the "2004 Installment Purchase Agreement") with the Lodi Public Improvement Corporation (the "Corporation"), pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$27,360,000 (the "2004 Installment Payments"), and caused execution and delivery of Wastewater System Revenue Certificates of Participation, 2004 Series A (the "2004 Certificates"), pursuant to a Trust Agreement, dated as of May 1, 2004 (the "2004 Trust Agreement"), between the Corporation and Union Bank, N.A., as successor trustee (the "2004 Trustee"), all for the purpose of financing certain additions, betterments, extensions, replacements and improvements to the System (the "2004 Project"); and

WHEREAS, under current economic conditions, it is possible for the City to refinance the 2004 Installment Payments and achieve savings for the benefit of the customers of the System; and

WHEREAS, in order to provide funds to refinance the 2004 Installment Payments, the Authority proposes to issue its 2012 Refunding Wastewater Revenue Bonds (the "Bonds") under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law"); and

WHEREAS, in order to provide revenues which are sufficient to pay debt service on the Bonds, the City proposes to sell the 2004 Project to the Authority and the Authority proposes to sell the 2004 Project back to the City under an Installment Purchase Agreement, with the purchase price to be paid by the City in semiannual installments during the term of the Bonds; and

WHEREAS, the obligations of the City under the proposed Installment Purchase Agreement will be secured by a pledge of and lien on the net revenues of the System, on a parity with a pledge of and lien on the net revenues securing a 2003 installment payment obligation and a 2007 installment payment obligation; and

WHEREAS, the City Council wishes at this time to take action approving such financing transactions and all related documents and actions.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi as follows:

Section 1. Approval of Refinancing Plan; Authorization of Bonds. The City Council hereby approves the refinancing plan described in the recitals of this Resolution. To that end, the City Council hereby approves the issuance of the Bonds by the Authority under the Bond Law in the aggregate principal amount of not to exceed \$22,000,000.

Section 2. Approval of Installment Purchase Agreement. The City Council hereby approves the Installment Purchase Agreement between the Authority and the City, under which the City agrees to sell the 2004 Project to the Authority and the Authority agrees to sell the 2004 Project back to the City for a purchase price to be paid in semiannual installment payments. As provided in the Installment Purchase Agreement, the installment payments thereunder shall be payable from and secured by a pledge of and lien on the net revenues of the System on a parity with a pledge of and lien on the net revenues securing a 2003 installment payment obligation and a 2007 installment payment obligation.

The Installment Purchase Agreement is hereby approved in substantially the form on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the City Manager, the Deputy City Manager/Internal Services Director or the City Attorney (each, an "Authorized Officer"). An Authorized Officer is hereby authorized and directed for and in the name and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest, the final form of the Installment Purchase Agreement, and such execution shall be conclusive evidence of the approval of the final form thereof.

Section 3. Approval of Escrow Deposit and Agreement. The City Council hereby approves an Escrow Deposit and Trust Agreement between the City and the 2004 Trustee, as escrow bank, providing for the deposit, investment and application of funds to refinance the 2004 Installment Payments and defease and prepay the 2004 Certificates. The Escrow Deposit and Trust Agreement is hereby approved in substantially the form on file with the City Clerk together with any changes therein or additions thereto deemed advisable by an Authorized Officer. An Authorized Officer is hereby authorized and directed for and in the name and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest, the final form of the Escrow Deposit and Trust Agreement, and such execution shall be conclusive evidence of the approval of the final form thereof.

Section 4. Sale of Bonds; Approval of Bond Purchase Agreement. The City Council hereby approves the negotiated sale of the Bonds by the Authority to JP Morgan and Stifel, Nicolaus & Company, Incorporated dba Stone & Youngberg, a Division of Stifel Nicolaus (collectively, the "Underwriter"). The Bonds shall be sold pursuant to the terms and provisions of a Bond Purchase Agreement among the Authority, the City and the Underwriter in substantially the form on file with the City Clerk together with any changes therein or additions thereto deemed advisable by an Authorized Officer. The Refunding Bonds shall be sold at such price and shall bear interest at such rates as shall produce a minimum net present value savings to the City of at least 3% of the principal component of the outstanding 2004 Installment Payments, as such savings shall be verified and conclusively determined by the City's financial advisor (the "Minimum Savings Requirement"). The Underwriter's discount shall not exceed 1.0%. The final form of the Bond Purchase Agreement shall be executed in the name and on behalf of the City by an Authorized Officer.

Section 5. Official Statement; Continuing Disclosure Certificate. The City Council hereby approves and deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the Preliminary Official Statement describing the Bonds in the form on file with the City Clerk, together with such modifications thereof as may be approved by an Authorized Officer. An Authorized Officer is hereby authorized and directed to (a) execute and

deliver to the purchaser of the Bonds a certificate deeming the Preliminary Official Statement to be nearly final as of its date within the meaning of such Rule, (b) approve any changes in or additions to cause the Official Statement to be put in final form, and (c) execute the final Official Statement for and in the name and on behalf of the City. The City Council hereby authorizes the distribution of the Preliminary Official Statement and the Final Official Statement by the Underwriter.

The City Council hereby approves execution by an Authorized Officer of a Continuing Disclosure Certificate in substantially the form attached as an appendix to the Preliminary Official Statement.

Section 6. Official Actions. The Mayor, the City Manager, the Deputy City Manager/Internal Services Director, the City Clerk, the City Attorney and all other officers of the City are each authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution, including any documentation relating to municipal bond insurance if an Authorized Officer concludes, after consultation with the City's bond counsel, the City's financial advisor and the Underwriter, that it would be cost-effective to purchase such insurance. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in case such officer is absent or unavailable.

Section 7. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

Dated: August 1, 2012

=====

I hereby certify that Resolution No. 2012-____ was passed and adopted by the City Council of the City of Lodi in a regular/special joint meeting held August 1, 2012, by the following vote:

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

RANDI JOHL
City Clerk

2012-____

RESOLUTION NO. 2012-_____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LODI PUBLIC FINANCING AUTHORITY AUTHORIZING THE ISSUANCE AND SALE OF REFUNDING WASTEWATER REVENUE BONDS TO REFINANCE AN INSTALLMENT PAYMENT OBLIGATION OF THE CITY OF LODI, AND APPROVING RELATED DOCUMENTS AND OFFICIAL ACTIONS

=====

WHEREAS, the City of Lodi (the "City") owns and operates facilities and property for the collection, treatment and disposal of wastewater within the service area of the City (the "System"); and

WHEREAS, the City previously entered into an Installment Purchase Agreement, dated as of May 1, 2004 (the "2004 Installment Purchase Agreement") with the Lodi Public Improvement Corporation (the "Corporation"), pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$27,360,000 (the "2004 Installment Payments"), and caused execution and delivery of Wastewater System Revenue Certificates of Participation, 2004 Series A (the "2004 Certificates"), pursuant to a Trust Agreement, dated as of May 1, 2004 (the "2004 Trust Agreement"), between the Corporation and Union Bank, N.A., as successor trustee (the "2004 Trustee"), all for the purpose of financing certain additions, betterments, extensions, replacements and improvements to the System (the "2004 Project"); and

WHEREAS, under current economic conditions, it is possible for the City to refinance the 2004 Installment Payments and achieve savings for the benefit of the customers of the System; and

WHEREAS, in order to provide funds to refinance the 2004 Installment Payments, the Authority proposes to issue its 2012 Refunding Wastewater Revenue Bonds (the "Bonds") under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law"); and

WHEREAS, in order to provide revenues which are sufficient to pay debt service on the Bonds, the City proposes to sell the 2004 Project to the Authority and the Authority proposes to sell the 2004 Project back to the City under an Installment Purchase Agreement, with the purchase price to be paid by the City in semiannual installments during the term of the Bonds; and

WHEREAS, the Authority proposes to sell the Bonds on a negotiated basis to JP Morgan and Stifel, Nicolaus & Company, Incorporated dba Stone & Youngberg, a Division of Stifel Nicolaus (collectively, the "Underwriter"); and

WHEREAS, the Board of Directors of the Authority wishes at this time to take action approving such financing transactions and all related documents and actions;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Lodi Public Financing Authority as follows:

Section 1. Approval of Refinancing Plan; Authorization of Bonds. The Board of Directors hereby approves the refinancing plan described in the recitals of this Resolution. To

that end, the Board of Directors hereby authorizes the issuance of the Bonds under the Bond Law in the aggregate principal amount of not to exceed \$22,000,000.

Section 2. Approval of Related Financing Agreements. The Board of Directors hereby approves each of the following agreements required to implement the financing plan to be accomplished by the Bonds, in substantially the respective forms on file with the Secretary together with any changes therein or additions thereto deemed advisable by the Executive Director, the Treasurer or the General Counsel (each, an "Authorized Officer"), and the execution thereof by an Authorized Officer shall be conclusive evidence of the approval of any such changes or additions.

- (a) Indenture of Trust between the Authority and Union Bank, N.A., as trustee, prescribing the terms and conditions upon which the Bonds will be issued.
- (b) Installment Purchase Agreement between the Authority and the City, under which the City agrees to sell the 2004 Project to the Authority and the Authority agrees to sell the 2004 Project back to the City in consideration of semiannual installment payments.
- (c) Bond Purchase Agreement among the Authority, the City and the Underwriter, under which the Underwriter agrees to purchase the Bonds from the Authority.

An Authorized Officer is hereby authorized and directed for and in the name and on behalf of the Authority to execute, and the Secretary is hereby authorized and directed to attest the final form of each of the foregoing agreements, and such execution shall be conclusive evidence of the approval of the final form thereof.

Section 3. Sale of Bonds. The Board of Directors hereby approves the negotiated sale of the Bonds to the Underwriter. The Bonds shall be sold upon the terms and conditions set forth in the Bond Purchase Agreement that is approved under Section 2. The Refunding Bonds shall be sold at such price and shall bear interest at such rates as shall produce a minimum net present value savings to the City of at least 3% of the principal component of the outstanding 2004 Installment Payments, as such savings shall be verified and conclusively determined by the City's financial advisor (the "Minimum Savings Requirement"). The Underwriter's discount shall not exceed 1.0%. The final form of the Bond Purchase Agreement shall be executed in the name and on behalf of the Authority by an Authorized Officer.

Section 4. Official Statement. The Board of Directors hereby approves and deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the Preliminary Official Statement describing the Bonds in the form on file with the Secretary, together with such modifications thereof as may be approved by an Authorized Officer. An Authorized Officer is hereby authorized and directed to (a) execute and deliver to the purchaser of the Bonds a certificate deeming the Preliminary Official Statement to be nearly final as of its date within the meaning of such Rule, (b) approve any changes in or additions to cause the Official Statement to be put in final form, and (c) execute the Final Official Statement for and in the name and on behalf of the Authority. The Board of Directors hereby authorizes the distribution of the Preliminary Official Statement and the Final Official Statement by the Underwriter.

Section 5. Official Actions. The Chair, the Executive Director, the Treasurer, the Secretary, the General Counsel and all other officers of the Authority are each authorized and

directed in the name and on behalf of the Authority to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution, including any documentation relating to municipal bond insurance if an Authorized Officer concludes, after consultation with the Authority's bond counsel, the Authority's financial advisor and the Underwriter, that it would be cost-effective to purchase such insurance. Whenever in this Resolution any officer of the Authority is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 6. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

Dated: August 1, 2012

=====

I hereby certify that Resolution No. 2012-____ was passed and adopted by the Board of Directors of the Lodi Public Financing Authority in a regular/special joint meeting held August 1, 2012, by the following vote:

AYES: BOARD MEMBERS –
NOES: BOARD MEMBERS –
ABSENT: BOARD MEMBERS –
ABSTAIN: BOARD MEMBERS –

RANDI JOHL
Secretary

LPFA2012-____

[Jones Hall Letterhead]

September __, 2012

Lodi Public Financing Authority
221 West Pine Street
Lodi, CA 95240

OPINION: \$_____ Lodi Public Financing Authority 2012 Refunding Wastewater Revenue Bonds

Members of the Board of Directors of the Authority:

We have acted as bond counsel to the Lodi Public Financing Authority (the "Authority") in connection with the issuance by the Authority of the captioned bonds dated the date hereof (the "Bonds"). In such capacity, we have examined such law and such certified proceedings, certifications and other documents as we have deemed necessary to render this opinion.

The Bonds are issued pursuant to Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Bond Law"), the Indenture of Trust, dated as of September 1, 2012 (the "Indenture"), by and between the Authority and Union Bank, N.A., as trustee (the "Trustee"), and a resolution (the "Resolution") of the Board of Directors of the Authority adopted ____, 2012. Under the Indenture, the Authority has pledged certain revenues (the "Revenues") for the payment of principal, premium (if any), and interest on the Bonds when due, including installment payments made by the City of Lodi (the "City") under an Installment Purchase Agreement dated as of September 1, 2012 (the "Installment Purchase Agreement") between the Authority and the City.

Regarding questions of fact material to our opinion, we have relied on representations of the Authority contained in the Indenture and the City contained in the Installment Purchase Agreement, and in the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

Based on the foregoing, we are of the opinion that, under existing law:

1. The Authority is a duly created and validly existing joint exercise of powers authority with the power to adopt the Resolution, enter into the Indenture and perform the agreements on its part contained therein, and issue the Bonds.

2. The City is a duly created and validly existing general law city with the power to enter into the Installment Purchase Agreement and perform the agreements on its part contained therein.

3. The Indenture has been duly authorized, executed and delivered by the Authority, and constitutes a valid and binding obligation of the Authority, enforceable against the Authority.

4. The Installment Purchase Agreement has been duly authorized, executed and delivered by the Authority and the City, and constitutes a valid and binding obligation of the Authority and the City, enforceable against the Authority and the City.

5. The Indenture creates a valid lien on the Revenues and other funds pledged by the Indenture for the security of the Bonds, on a parity with other bonds (if any) issued or to be issued under the Indenture.

6. The Bonds have been duly authorized and executed by the Authority, and are valid and binding limited obligations of the Authority, payable solely from the Revenues and other funds provided therefor in the Indenture.

7. Interest on the Bonds is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; it should be noted, however, that for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings. The opinions set forth in the preceding sentence are subject to the condition that the Authority and the City comply with all requirements of the Internal Revenue Code of 1986 that must be satisfied subsequent to the delivery of the Bonds in order that such interest be, or continue to be, excluded from gross income for federal income tax purposes. The Authority and the City have covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bonds in gross income for federal income tax purposes to be retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

8. Interest on the Bonds is exempt from personal income taxation imposed by the State of California.

The rights of the owners of the Bonds and the enforceability of the Bonds and the Indenture are limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur. Our engagement with respect to this matter has terminated as of the date hereof.

Respectfully submitted,

A Professional Law Corporation

ESCROW DEPOSIT AND TRUST AGREEMENT

Relating to

\$27,360,000
Wastewater System Revenue
Certificates of Participation,
2004 Series A

This ESCROW DEPOSIT AND TRUST AGREEMENT (this “**Agreement**”), dated as of September 1, 2012, is between the CITY OF LODI, a general law city and municipal corporation organized and existing under the Constitution and laws of the State of California (the “**City**”), and UNION BANK, N.A., a national banking association organized and existing under the laws of the United States of America, acting as escrow agent for the 2004 Certificates described below (the “**Escrow Agent**”) and as successor trustee (the “**2004 Trustee**”) for the 2004 Certificates.

BACKGROUND:

1. The City previously entered into an Installment Purchase Agreement, dated as of May 1, 2004 (the “**2004 Installment Purchase Agreement**”) with the Lodi Public Improvement Corporation (the “**Corporation**”), pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$27,360,000 (the “**2004 Installment Payments**”) and caused execution and delivery of Wastewater System Revenue Certificates of Participation, 2004 Series A (the “**2004 Certificates**”), pursuant to a Trust Agreement, dated as of May 1, 2004 (the “**2004 Trust Agreement**”), between the Corporation and the 2004 Trustee, all for the purpose of financing certain additions, betterments, extensions, replacements and improvements to the wastewater collection, treatment and disposal system of the City (the “**2004 Project**”).

2. In order to take advantage of prevailing bond market conditions, the City wishes to refinance the 2004 Certificates.

3. To that end, the City has proposed to sell the 2004 Project to the Lodi Public Financing Authority (the “**Authority**”) and the Authority will sell the 2004 Project Back to the City.

4. In order to refinance the 2004 Installment Payments, the Authority proposes to issue and sell its Lodi Public Financing Authority 2012 Refunding Wastewater Revenue Bonds (the “**Refunding Bonds**”), pursuant to an Indenture of Trust, dated as of September 1, 2012 (the “**Refunding Bonds Indenture**”),

5. The City wishes to appoint the Escrow Agent for the purpose of establishing an irrevocable escrow fund to be funded, invested, held and administered for the purpose of providing for the payment in full of the 2004 Installment Payments and the payment in full of the principal and interest and premium (if any) with respect to the outstanding 2004 Certificates, and to provide certain directions to the 2004 Trustee with respect to the 2004 Certificates.

6. As a result of the deposit and investment of funds in accordance with this Agreement, the 2004 Installment Payments will be deemed paid and prepaid under Section 7.1 and Section 9.1 of the 2004 Installment Purchase Agreement, and the 2004 Certificates will be discharged and defeased in accordance with the provisions of

Section 9.01 of the 2004 Trust Agreement and prepaid in accordance with the provisions of Section 2.04 of the 2004 Trust Agreement.

A G R E E M E N T :

In consideration of the premises and the material covenants contained herein, the City and Union Bank, N.A., as Escrow Bank and 2004 Trustee, hereby agree as follows:

SECTION 1. *Appointment of Escrow Agent; Establishment of Escrow Fund.* The City hereby appoints the Escrow Agent to act as escrow agent for purposes of administering the funds required to defease and prepay the 2004 Certificates in accordance with the 2004 Trust Agreement. The Escrow Agent is directed to establish an escrow fund (the "**Escrow Fund**") to be held by the Escrow Agent in trust as an irrevocable escrow securing the payment of the 2004 Installment Payments and the 2004 Certificates as set forth below. All cash and securities in the Escrow Fund are hereby irrevocably pledged as a special fund for the payment of the 2004 Installment Payments in accordance with the 2004 Installment Purchase Agreement and the payment of the principal of and interest and premium (if any) with respect to the 2004 Certificates in accordance with the 2004 Trust Agreement.

If at any time the Escrow Agent receives actual knowledge that the cash and securities in the Escrow Fund will not be sufficient to make any payment required by Section 4 in respect of the 2004 Certificates, the Escrow Agent shall notify the City of such fact and the City shall immediately cure such deficiency from any source of legally available funds. The Escrow Agent has no liability for any such insufficiency.

SECTION 2. *Deposit and Investment of Amounts in Escrow Fund.* On September __, 2012 (the "**Closing Date**"), the Authority, pursuant to the Refunding Bonds Indenture, will cause to be transferred to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____ in immediately available funds, to be derived from the proceeds of the Refunding Bonds.

In addition, the City hereby directs the 2004 Trustee to transfer to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____, to be derived from moneys related to the 2004 Certificates that are available as a result of the defeasance of the 2004 Certificates.

On the Closing Date, the Escrow Agent shall invest \$_____ of the amounts deposited in the Escrow Fund in the federal securities listed on Exhibit A; the federal securities listed on Exhibit A are "Defeasance Securities" as defined in the 2004 Trust Agreement. The Escrow Agent shall hold the remaining \$_____ in cash, uninvested.

SECTION 3. *Application of Amounts in Escrow Fund.* The Escrow Agent is hereby instructed to withdraw from the Escrow Fund and transfer to the 2004 Trustee an amount required to pay the principal of and interest and prepayment premium (if any) on the 2004 Certificates, in accordance with the schedule attached as Exhibit B hereto, which payment shall also constitute payment of the 2004 Installment Payments.

Following the payment and prepayment of the 2004 Installment Payments and the 2004 Certificates in full, the Escrow Bank shall transfer any amounts remaining on deposit in the Escrow Fund to Union Bank, N.A., as trustee for the Refunding Bonds, for

deposit in the Bond Fund established under the Refunding Bonds Indenture, to be applied to pay interest next coming due and payable on the Refunding Bonds.

SECTION 4. *Irrevocable Election to Prepay 2004 Certificates; Defeasance Notice.* The City has irrevocably elected to pay and prepay all of the unpaid 2004 Installment Payments and all of the outstanding 2004 Certificates on the date set forth in Exhibit B, in accordance with the provisions of the 2004 Trust Agreement. The City hereby directs the 2004 Trustee to give notice of the prepayment of the 2004 Certificates in accordance with the requirements of the 2004 Trust Agreement, at the expense of the City, using the form set forth in Exhibit C.

The City further hereby directs the 2004 Trustee to file on the Closing Date the notice attached as Exhibit D on the Municipal Securities Rulemaking Board's EMMA system.

SECTION 5. *Compensation to Escrow Agent.* The City shall pay the Escrow Agent full compensation for its services under this Agreement, including out-of-pocket costs such as publication costs, prepayment expenses, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to the purchase, substitution or withdrawal of any securities after the date hereof. Under no circumstances shall amounts deposited in or credited to the Escrow Fund be deemed to be available for said purposes. The Escrow Agent has no lien upon or right of set off against the cash and securities at any time on deposit in the Escrow Fund.

SECTION 6. *Immunities and Liability of Escrow Bank.* The Escrow Bank undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties, covenants or obligations shall be read into this Agreement against the Escrow Bank. The Escrow Bank shall not have any liability hereunder except to the extent of its negligence or willful misconduct. In no event shall the Escrow Bank be liable for any special, indirect or consequential damages. The Escrow Bank shall not be liable for any loss from any investment made by it in accordance with the terms of this Agreement. The Escrow Bank may consult with legal counsel of its own choice and the Escrow Bank shall not be liable for any action taken or not taken by it in good faith in reliance upon the opinion or advice of such counsel. The Escrow Bank shall not be liable for the recitals or representations contained in this Agreement and shall not be responsible for the validity of this Agreement, the sufficiency of the Escrow Fund or the moneys and securities to pay the principal, interest and prepayment premium with respect to the 2004 Certificates.

Whenever in the administration of this Agreement the Escrow Bank deems it necessary or desirable that a matter be proved or established prior to taking or not taking any action, such matter may be deemed to be conclusively proved and established by a certificate of an authorized representative of the City and shall be full protection for any action taken or not taken by the Escrow Bank in good faith reliance thereon.

The Escrow Bank may conclusively rely as to the truth and accuracy of the statements and correctness of any opinions or calculations provided to it in connection with this Agreement and shall be protected in acting, or refraining from acting, upon any notice, instruction, request, certificate, document, opinion or other writing furnished to the Escrow Bank in connection with this Agreement and believed by the Escrow Bank to be signed by the proper party, and it need not investigate any fact or matter stated therein.

None of the provisions of this Agreement shall require the Escrow Bank to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Escrow Bank may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care.

The Escrow Bank may at any time resign by giving 30 days written notice of resignation to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor and, upon the acceptance by the successor of such appointment, release the resigning Escrow Bank from its obligations hereunder by written instrument, a copy of which instrument shall be delivered to the resigning Escrow Bank and the successor. If no successor shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Escrow Bank may petition any court of competent jurisdiction for the appointment of a successor.

Any bank, corporation or association into which the Escrow Bank may be merged or converted or with which it may be consolidated, or any bank, corporation or association resulting from any merger, conversion or consolidation to which the Escrow Bank shall be a party, or any bank, corporation or association succeeding to all or substantially all of the corporate trust business of the Escrow Bank shall be the successor of the Escrow Bank hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except on the part of any of the parties hereto where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

The City shall indemnify, defend and hold harmless the Escrow Bank and its officers, directors, employees, representatives and agents, from and against and reimburse the Escrow Bank for any and all claims, obligations, liabilities, losses, damages, actions, suits, judgments, reasonable costs and expenses (including reasonable attorneys' and agents' fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against the Escrow Bank directly or indirectly relating to, or arising from, claims against the Escrow Bank by reason of its participation in the transactions contemplated hereby except to the extent caused by the Escrow Bank's negligence or willful misconduct. The provisions of the foregoing sentence shall survive the termination of this Agreement or the earlier resignation or removal of the Escrow Bank.

The Escrow Bank agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail (provided, that for purposes of this Agreement, an e-mail does not constitute a notice, request or other communication hereunder but rather the portable document format or similar attachment attached to such e-mail shall constitute a notice, request or other communication hereunder), facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Escrow Bank shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the City elects to give the Escrow Bank e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Bank in its discretion elects to act upon such instructions, the Escrow Bank's understanding of such instructions shall be deemed controlling. The Escrow Bank shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Bank's reliance upon and

compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Bank, including without limitation the risk of the Escrow Bank acting on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 7. *Termination of Agreement.* Upon payment in full of the principal of and interest and prepayment premium on the 2004 Certificates and all fees, expense and charges of the Escrow Bank as described above, this Agreement shall terminate and the Escrow Bank shall be discharged from any further obligation or responsibility hereunder.

SECTION 8. *Execution in Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 9. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

CITY OF LODI

By: _____
KONRADT BARTLAM
City Manager

UNION BANK, N.A., as Escrow Agent
and as 2004 Trustee

By _____
Authorized Officer

EXHIBIT B

ESCROW REQUIREMENTS

<u>Payment Date</u>	<u>Interest Payment</u>	<u>Prepaid Principal</u>	<u>Prepayment Premium</u>	<u>Total Payment</u>
10/1/12				
4/1/13				
10/1/13				
4/1/14				
10/1/14			\$0	

EXHIBIT C

FORM OF NOTICE OF PREPAYMENT

\$27,360,000
Wastewater System Revenue
Certificates of Participation,
2004 Series A

NOTICE IS HEREBY GIVEN, by the City of Lodi (the "City") that the captioned certificates of participation (the "2004 Certificates") have been defeased and discharged under and within the meaning of the Trust Agreement, dated as of May 1, 2004, relating to the 2004 Certificates (the "2004 Trust Agreement"), and that the City has irrevocably elected to prepay all of the outstanding 2004 Certificates on October 1, 2014, at a prepayment price equal to the par amount thereof together with accrued interest thereon to the prepayment date, without premium.

The 2004 Certificates consist of the following:

<u>Maturity Date</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>CUSIP</u>
October 1			
2012	\$1,145,000.00	5.00%	540279AJ5
2013	1,205,000.00	5.00	540279AK2
2014	1,265,000.00	4.75	540279AL0
2015	1,325,000.00	5.25	540279AM8
2016	1,390,000.00	4.50	540279AN6
2017	1,455,000.00	5.50	540279AP1
2018	1,535,000.00	5.50	540279AQ9
2019	1,620,000.00	4.75	540279AR7
2020	1,695,000.00	5.00	540279AS5
2021	1,780,000.00	5.375	540279AT3
2022	1,875,000.00	5.00	540279AU0
2023	1,970,000.00	5.00	540279AV8
2024	2,070,000.00	4.75	540279AW6

Funds for the payment of the 2004 Certificates have been deposited with Union Bank, N.A., as escrow bank, and the sufficiency of the funds and investments for the purpose of paying the principal of and interest on the 2004 Certificates has been verified by Causey Demgen & Moore, certified public accountants.

Additional information regarding the foregoing actions may be obtained from contacting Union Bank, N.A., Corporate Trust Dept. 350 California Street, 11th Floor, San Francisco, CA 94707 or by fax at (415) 273-2492.

Payment of interest on the 2004 Certificates shall be made by check or, at the option of any owner of at least \$1,000,000 aggregate principal amount of 2004 Certificates, by wire transfer to a bank account in the United States of America. The principal and premium (if any) payable will be payable by check upon surrender of the Certificates at the Principal Office of Union Bank, N.A., at 120 South San Pedro Street, 4th Floor, Los Angeles, CA 90012.

Dated: September __, 2014

UNION BANK, N.A.

EXHIBIT D

FORM OF NOTICE OF DEFEASANCE

**\$27,360,000
Wastewater System Revenue
Certificates of Participation,
2004 Series A**

NOTICE IS HEREBY GIVEN, by the City of Lodi (the "City") that the captioned certificates of participation (the "2004 Certificates") have been defeased and discharged under and within the meaning of the Trust Agreement, dated as of May 1, 2004, relating to the 2004 Certificates (the "2004 Trust Agreement"). Funds for the payment of the 2004 Certificates have been deposited with Union Bank, N.A., as escrow bank, and the sufficiency of the funds and investments for the purpose of paying the principal of and interest on the 2004 Certificates has been verified by Causey Demgen & Moore, certified public accountants.

As a consequence of the foregoing actions and in accordance with the 2004 Trust Agreement, all obligations of Union Bank, N.A., as successor trustee for the 2004 Certificates, the Lodi Public Improvement Corporation and the City with respect to the 2004 Certificates has ceased and terminated, except the obligation to use moneys set aside in escrow as described above and, if necessary, from other legally available funds of the City.

The outstanding 2004 Certificates consist of the following:

<u>Maturity Date</u> <u>October 1</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>CUSIP</u>
2012	\$1,145,000.00	5.00%	540279AJ5
2013	1,205,000.00	5.00	540279AK2
2014	1,265,000.00	4.75	540279AL0
2015	1,325,000.00	5.25	540279AM8
2016	1,390,000.00	4.50	540279AN6
2017	1,455,000.00	5.50	540279AP1
2018	1,535,000.00	5.50	540279AQ9
2019	1,620,000.00	4.75	540279AR7
2020	1,695,000.00	5.00	540279AS5
2021	1,780,000.00	5.375	540279AT3
2022	1,875,000.00	5.00	540279AU0
2023	1,970,000.00	5.00	540279AV8
2024	2,070,000.00	4.75	540279AW6

The City has irrevocably elected to prepay all of the outstanding 2004 Certificates on October 1, 2014, at a prepayment price equal to the par amount thereof together with accrued interest thereon to the prepayment date, without premium.

Additional information regarding the foregoing actions may be obtained from contacting Union Bank, N.A., Corporate Trust Dept. 350 California Street, 11th Floor, San Francisco, CA 94707 or by fax at (415) 273-2492.

Dated: September 5, 2012

UNION BANK, N.A.

INSTALLMENT PURCHASE AGREEMENT

Dated as of September 1, 2012

between the

LODI PUBLIC FINANCING AUTHORITY,
as Seller

and the

CITY OF LODI,
as Purchaser

Relating to

\$ _____
Lodi Public Financing Authority
2012 Refunding Wastewater Revenue Bonds,
Series A

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INSTALLMENT PURCHASE AGREEMENT

This INSTALLMENT PURCHASE AGREEMENT (this “**Agreement**”), dated as of September 1, 2012, is between the LODI PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the “**Authority**”), as seller, and the CITY OF LODI, a municipal corporation duly organized and existing under the laws of the State of California (the “**City**”), as purchaser.

BACKGROUND:

1. The City owns and operates a public enterprise for the collection, treatment and disposal of wastewater within the service area of the City (as defined more completely below, the “**System**”).

2. The City previously entered into an Installment Purchase Agreement, dated as of October 1, 2003 (the “**2003 Installment Purchase Agreement**”) with the California Statewide Communities Development Authority (“**CSCDA**”), pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$5,000,000 (the “**2003 Installment Payments**”) and caused CSCDA to issue its California Statewide Communities Development Authority Water and Wastewater Revenue Bonds (Pooled Financing Program), Series 2003B (the “**2003 Bonds**”), pursuant to an Indenture, dated as of October 1, 2003 (the “**2003 Indenture**”), between CSCDA and Union Bank, N.A. (formerly known as Union Bank of California, N.A.), as trustee, all for the purpose of financing certain additions, betterments, extensions, replacements and improvements to the System.

3. The City previously entered into an Installment Purchase Agreement, dated as of May 1, 2004 (the “**2004 Installment Purchase Agreement**”) with the Lodi Public Improvement Corporation (the “**Corporation**”), pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$27,360,000 (the “**2004 Installment Payments**”) and caused execution and delivery of Wastewater System Revenue Certificates of Participation, 2004 Series A (the “**2004 Certificates**”), pursuant to a Trust Agreement, dated as of May 1, 2004 (the “**2004 Trust Agreement**”), between the Corporation and Union Bank, N.A., as successor trustee (the “**2004 Trustee**”), all for the purpose of financing certain additions, betterments, extensions, replacements and improvements to the System (the “**2004 Project**”).

4. The City previously entered into an Installment Purchase Agreement, dated as of December 1, 2007 (the “**2007 Installment Purchase Agreement**”) with the Corporation, pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$30,320,000 (the “**2007 Installment Payments**”) and caused execution and delivery of Wastewater System Revenue Certificates of Participation, 2007 Series A (the “**2007 Certificates**”), pursuant to a Trust Agreement, dated as of December 1, 2007 (the “**2007 Trust Agreement**”), between the Corporation and the Trustee, as trustee, all for the purpose of (i) financing certain additions, betterments, extensions, replacements and improvements to the System and (ii) prepaying on a current basis all outstanding installment payments under an Installment Purchase Agreement, dated as of December 1, 1991.

5. The City wishes to refinance the 2004 Installment Payments.

6. The Authority has been formed for the purpose of assisting the City in the financing and refinancing of public capital improvements, and in order to accomplish the refunding plan described in the previous paragraph, the Authority has proposed to enter into this Agreement with the City.

7. Pursuant to Section 7.1 of the 2004 Installment Purchase Agreement, the City has the right to prepay the 2004 Installment Payments on any date, provided that any prepayment of a principal component of the 2004 Installment Payments to be applied to the prepayment or defeasance of the 2004 Certificates must be in an amount sufficient to provide for the prepayment or defeasance of the 2004 Certificates and must be otherwise in accordance with the provisions of the 2004 Trust Agreement.

8. Under Section 9.1 of the 2004 Installment Purchase Agreement, the 2004 Installment Payments will be deemed paid and all obligations of the City with respect to the 2004 Installment Payments will cease and terminate (except for the obligation to make payment from deposited funds and Defeasance Securities (as defined in the 2004 Trust Agreement) as provided in Article IX of the 2004 Trust Agreement) when the 2004 Certificates have been paid or deemed paid in accordance with Article IX of the 2004 Trust Agreement.

9. The 2004 Certificates maturing on and after October 1, 2015, are subject to prepayment on October 1, 2014, at a prepayment price equal to the principal amount of the 2004 Certificates plus unpaid accrued interest to the prepayment date, without premium.

10. Under Article IX of the 2004 Trust Agreement, the obligations of the Corporation, the Trustee and the City with respect to the 2004 Certificates will cease and terminate when cash and/or Defeasance Securities have been deposited with the 2004 Trustee in an amount sufficient to pay the Certificates when they become due, whether at maturity or earlier prepayment.

11. The City wishes at this time to make such deposit of funds for the purpose of paying and prepaying the 2004 Installment Payments and thereby discharging its obligations under the 2004 Installment Purchase Agreement

12. The Authority will raise funds for the payment and prepayment of the 2004 Installment Payments and, as a result, the defeasance and prepayment of the 2004 Certificates, by issuing its Lodi Public Financing Authority 2012 Refunding Wastewater Revenue Bonds, Series A in the aggregate principal amount of \$_____ (the "**Bonds**") under an Indenture of Trust dated as of September 1, 2012 (the "**Indenture**"), between the Authority and Union Bank, N.A., as trustee (the "**Trustee**"), which are payable from revenues consisting primarily of installment payments payable by the City hereunder.

13. In order to provide revenues which are sufficient to pay the principal of and interest on the Bonds when due, the Authority and the City wish to enter into this Agreement under which the Authority agrees to sell the 2004 Project to the City, in consideration of which the City agrees to pay the Installment Payments (the "**Installment Payments**") which are secured by a pledge of and lien on the System Net Revenues of the System.

AGREEMENT:

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Authority formally agree as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement have the respective meanings given such terms in this Section 1.1. Capitalized terms used in this Agreement and not otherwise defined in this Section 1.1 have the respective meanings given them in Appendix A to the Indenture.

“Additional Payments” means the amounts payable by the City under Section 4.8.

“Annual Debt Service” means, for any Fiscal Year, the sum of (1) the interest accruing on all Parity Debt during such Fiscal Year, assuming that all such Parity Debt is retired as scheduled, plus (2) the principal amount (including principal due as sinking fund installment payments) allocable to all Parity Debt in such Fiscal Year, calculated as if such principal amounts were deemed to accrue daily during such Fiscal Year in equal amounts from, in each case, the immediately preceding payment date for such principal or, with respect to the initial principal payment date for such Parity Debt, the date of delivery of such Parity Debt (provided that principal shall not be deemed to accrue for greater than a 365-day period prior to any principal payment date), as the case may be, to the next succeeding payment date for principal, provided, that the following adjustments shall be made to the foregoing amounts in the calculation of Annual Debt Service:

(A) with respect to any Parity Debt bearing or comprising interest at other than a fixed interest rate, the rate of interest used to calculate Annual Debt Service shall be (i) with respect to such Parity Debt then outstanding, one hundred ten per cent (110%) of the greater of (1) the daily average interest rate on such Parity Debt during the twelve (12) calendar months next preceding the date of such calculation (or the portion of such twelve (12) calendar months that such Parity Debt has borne interest) or (2) the most recent effective interest rate on such Parity Debt prior to the date of such calculation or (ii) with respect to Parity Debt then proposed to be issued, the then current Municipal Market Data General Obligation Yield for a maturity comparable to the maturity of the applicable Parity Debt as published in The Bond Buyer (or if The Bond Buyer or such yield is no longer published, such other published similar index as shall be selected by the City);

(B) with respect to any issue or series of Parity Debt having twenty-five per cent (25%) or more of the aggregate principal amount thereof due in any one Fiscal Year, Annual Debt Service shall be calculated as if the interest on and principal of the Parity Debt of such issue or series were being paid in substantially equal annual amounts over the term of such Parity Debt; provided, however that the full amount of scheduled payments of interest and principal of such Parity Debt shall be included in

Annual Debt Service if the date of calculation is within 24 months of the date on which such twenty-five percent (25%) or more of aggregate principal amount becomes due;

(C) with respect to any Parity Debt or portions thereof bearing no interest but which are sold at a discount and which discount accretes with respect to such Parity Debt or portions thereof, such accreted discount shall be treated as due when scheduled to be paid;

(D) Annual Debt Service shall not include interest on Parity Debt which is to be paid from amounts constituting capitalized interest;

(E) if an interest rate swap agreement is in effect with respect to, and is payable on a parity with, any Parity Debt, no amounts payable under such interest rate swap agreement in addition to debt service payable with respect to such Parity Debt shall be included in the calculation of Annual Debt Service unless, in the applicable Fiscal Year, the sum of (i) the interest payable on such Parity Debt, plus (ii) the amounts payable by the City under such interest rate swap agreement, less (iii) the amounts receivable by the City under such interest rate swap agreement, is greater than the interest payable on such Parity Debt, in which case the net amount of payments to be made by the City under such interest rate swap agreement that exceed the interest to be paid on such Parity Debt shall be included in such calculation, and for this purpose, the variable amount under any such interest rate swap agreement shall be determined in accordance with the procedure set forth in subparagraph (A) of this definition; and

(F) Repayment Obligations payable on a parity with Parity Debt shall be deemed to be payable at the scheduled amount due under such Repayment Obligation and for this purpose, the variable interest amount included in any such Repayment Obligation shall be determined in accordance with the procedure set forth in subparagraph (A) of this definition.

“Certificate of the City” means an instrument in writing signed by the Mayor, the City Manager, the Deputy City Manager/Internal Services Director, or the City Attorney of the City, or by any other officer of the City duly authorized by the City for that purpose, such authorization to be evidenced by a certificate verifying the specimen signatures of such officers at the request of the Trustee.

“City Administrative Costs” means those costs and expenses of the City that are charged directly or apportioned to the operation of the System, such as salaries and wages of employees, overhead, taxes (if any) and insurance premiums (including payments required to be paid into any self-insurance funds not maintained from System Revenues).

“Continuing Disclosure Certificate” means the Continuing Disclosure Certificate which is executed and delivered by the City on the Closing Date.

“Corporation” means the Lodi Public Improvement Corporation.

“Event of Default” means any of the events specified in Section 6.1.

“Generally Accepted Accounting Principles” means the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such

procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

“Independent Accountant” means any certified public accountant or firm of certified public accountants appointed and paid by the Authority or the City, and who, or each of whom (a) is in fact independent and not under domination of the Authority or the City; (b) does not have any substantial interest, direct or indirect, in the Authority or the City; and (c) is not connected with the Authority or the City as an officer or employee of the Authority or the City but who may be regularly retained to make annual or other audits of the books of or reports to the Authority or the City.

“Installment Payment Date” means, with respect to any Interest Payment Date, the Business Day immediately preceding such Interest Payment Date.

“Installment Payments” means the payments the City is required to pay pursuant to Section 4.4(a) as the purchase price of the 2004 Project.

“Maximum Annual Debt Service” means, as of any date of calculation, the largest Annual Debt Service during the period from the date of such calculation through the final maturity date of all Parity Debt.

“Net Proceeds” means, when used with respect to any casualty insurance or condemnation award, the proceeds from such insurance or condemnation award remaining after payment of all expenses (including attorneys’ fees) incurred in the collection of such proceeds.

“Operation and Maintenance Costs” means the reasonable and necessary costs paid or incurred by the City for maintaining and operating the System, determined in accordance with Generally Accepted Accounting Principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms hereof or of any Supplemental Agreement or of any resolution authorizing the execution of any Parity Obligations, such as compensation, reimbursement and indemnification of the Trustee and the Authority, fees and expenses of Independent Certified Public Accountants and deposits to the Rebate Fund; but excluding in all cases (i) payment of Parity Debt and Subordinate Obligations, (ii) costs of capital additions, replacements, betterments, extensions or improvements which under Generally Accepted Accounting Principles are chargeable to a capital account, (iii) depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, (iv) City Administrative Costs, and (v) transfers from the System Revenue Fund to other funds or accounts of the City.

“Overdue Rate” means the highest rate of interest on any of the Outstanding Bonds.

“Parity Debt” means the Installment Payments and any Parity Obligations.

“Parity Obligation Payments” means the payments scheduled to be paid by the City under and pursuant to the Parity Obligations, which payments are secured by a pledge of System Net Revenues on a parity with the Installment Payments.

“Parity Obligations” means all obligations of the City authorized and executed by the City, other than the Installment Payments, the Parity Obligation Payments under which are secured by a pledge of the System Net Revenues on a parity with the Installment Payments, including but not limited to any Repayment Obligations secured by System Net Revenues on a parity with the Installment Payments. On the date of issuance of the Bonds, Parity Obligations consist of the 2003 Installment Payments and the 2007 Installment Payments.

“Rate Stabilization Fund” means any fund established and held by the City as a fund for the stabilization of rates and charges imposed by the City with respect to the System, which fund is established, held and maintained in accordance with Section 4.6.

“Repayment Obligation” means the reimbursement obligation or any other payment obligation of the City under a written agreement between the City and a credit provider to reimburse the credit provider for amounts paid pursuant to a credit facility for the payment of the principal amount or purchase price of and/or interest on any Parity Debt.

“Subordinate Obligations” means the obligations of the City that are payable from System Net Revenues on a basis that is subordinate to the payment of Parity Debt.

“System” means the whole and each and every part of the system of the City for the collection, treatment and disposal of wastewater, including the portion thereof existing on the date hereof, and including all additions, betterments, extensions and improvements to such system or any part thereof hereafter acquired or constructed.

“System Net Revenues” means for any period System Revenues less Operation and Maintenance Costs for such period; provided that certain adjustments in the amount of System Net Revenue for a Fiscal Year may be made in connection with amounts deposited in and transferred from the Rate Stabilization Fund as provided in Section 4.6 of the Agreement.

“System Revenue Fund” means the fund established and held by the City pursuant to Section 4.5 of this Agreement.

“System Revenues” means all gross income and revenue received or receivable by the City from the ownership or operation of the System, determined in accordance with Generally Accepted Accounting Principles, including all fees (including connection fees), rates, charges and all amounts paid under any contracts received by or owed to the City in connection with the operation of the System and all proceeds of insurance relating to the System and investment income allocable to the System and all other income and revenue howsoever derived by the City from the ownership or operation of the System or arising from the System. System Revenues for any Fiscal Year shall include, for the purposes permitted by the Agreement, amounts transferred to the System Revenue Fund from the Rate Stabilization Fund during such Fiscal Year.

“2003 Bonds” means the California Statewide Communities Development Authority Water and Wastewater Revenue Bonds (Pooled Financing Program), Series 2003B.

“2003 Indenture” means an Indenture, dated as of October 1, 2003, between CSCDA and the 2003 Trustee.

"2003 Installment Payments" means the installment payments made by the City to CSCDA under the 2003 Installment Purchase Agreement.

"2003 Installment Purchase Agreement" means the Installment Purchase Agreement, dated as of October 1, 2003, between the City and CSCDA.

"2003 Trustee" means Union Bank, N.A. (formerly known as Union Bank of California, N.A.),

"2004 Certificates" means the Wastewater System Revenue Certificates of Participation, 2004 Series A.

"2004 Installment Payments" means the installment payments made by the City under the 2004 Installment Purchase Agreement.

"2004 Installment Purchase Agreement" means the Installment Purchase Agreement, dated as of May 1, 2004, between the Corporation and the City.

"2004 Trust Agreement" means the Trust Agreement, dated as of May 1, 2004, between the Corporation and the 2004 Trustee.

"2004 Trustee" means Union Bank, N.A., as successor trustee.

"2007 Certificates" means the Wastewater System Revenue Certificates of Participation, 2007 Series A.

"2007 Installment Payments" means the installment payments made by the City under the 2007 Installment Purchase Agreement.

"2007 Installment Purchase Agreement" means the Installment Purchase Agreement, dated as of December 1, 2007, between the Corporation and the City.

"2007 Trust Agreement" means the Trust Agreement, dated as of December 1, 2007, between the Corporation and the 2007 Trustee.

"2007 Trustee" means Union Bank, N.A.

SECTION 1.2. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words

“herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

SECTION 2.1. *Representations, Covenants and Warranties of the City.* The City represents, covenants and warrants to the Authority as follows:

- (a) Due Organization and Existence. The City is a municipal corporation duly organized and validly existing under the laws of the State of California, has full legal right, power and authority under said laws to enter into this Agreement and to carry out and consummate all transactions contemplated hereby and thereby, and by proper action the City Council of the City has duly authorized the execution and delivery of this Agreement.
- (b) Due Execution. The representatives of the City executing this Agreement are fully authorized to execute the same.
- (c) Valid, Binding and Enforceable Obligations. This Agreement has been duly authorized, executed and delivered by the City and constitutes the legal, valid and binding agreement of the City enforceable against the City in accordance with its terms; except as the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.
- (d) No Conflicts. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the financial condition, assets, properties or operations of the City, including but not limited to the performance of the City's obligations under this Agreement.

- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement, or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement, or the financial conditions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under this Agreement.
- (g) Prior Indebtedness. Upon issuance of the Bonds, the City will remain obligated to make the 2003 Installment Payments and the 2007 Installment Payments on a parity with the Installment Payments.

SECTION 2.2. *Representations, Covenants and Warranties of Authority.* The Authority represents, covenants and warrants to the City as follows:

- (a) Due Organization and Existence. The Authority is a joint exercise of powers authority organized and existing under the laws of the State of California, and has power to enter into this Agreement and the Indenture and to perform the duties and obligations imposed on it hereunder and thereunder. The Board of Directors of the Authority has duly authorized the execution and delivery of this Agreement and the Indenture.
- (b) Due Execution. The representatives of the Authority executing this Agreement and the Indenture are fully authorized to execute the same.
- (c) Valid, Binding and Enforceable Obligations. This Agreement and the Indenture have been duly authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority with the Authority, enforceable against the Authority in accordance with their respective terms; except as the

enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and except as such enforceability may be subject to the exercise of judicial discretion in accordance with principles of equity.

- (d) No Conflicts. The execution and delivery hereof and of the Indenture, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially adversely affect the consummation of the transactions contemplated hereby and by the Indenture or the financial condition, assets, properties or operations of the Authority, including but not limited to the performance of the Authority's obligations under this Agreement and the Indenture.
- (e) Consents and Approvals. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery hereof or of the Indenture, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.
- (f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement or the Indenture, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions contemplated by this Agreement or the Indenture or the financial conditions, assets, properties or operations of the

Authority, including but not limited to the performance of the Authority's obligations hereunder and under the Indenture.

ARTICLE III

ISSUANCE OF BONDS; REFINANCING OF THE 2004 INSTALLMENT PAYMENTS

SECTION 3.1. *Issuance of Bonds; Deposit of Proceeds.* The Authority shall cause the Bonds to be issued under the Indenture in the aggregate principal amount set forth in the Indenture. The Trustee shall deposit the proceeds of sale of the Bonds received by it on the Closing Date in accordance with the Indenture. The City hereby approves the Indenture, the assignment thereunder to the Trustee of certain rights of the Authority, and the issuance of the Bonds.

SECTION 3.2. *Payment and Prepayment of the 2004 Installment Payments; Defeasance and Prepayment of the 2004 Certificates.* The proceeds received by the Trustee from the sale of the Bonds to the Original Purchaser shall be deposited in the respective funds and accounts, and in the respective amounts, as set forth in Section 3.02 of the Indenture.

ARTICLE IV

SALE OF 2004 PROJECT; INSTALLMENT PAYMENTS

SECTION 4.1. *Term.* The Term of this Agreement commences on the Closing Date, and ends on October 1, _____, or such later or earlier date on which the Bonds cease to be Outstanding under and within the meaning of the Indenture.

SECTION 4.2. *Sale of 2004 Project* In consideration of the Authority's assistance with the refinancing of the 2004 Installment Payments, the City hereby sells the 2004 Project to the Authority, and the Authority, subject to the terms and conditions hereof, hereby sells the 2004 Project back to the City. This Agreement shall supersede the 2004 Installment Purchase Agreement in connection with the sale of the 2004 Project.

SECTION 4.3. *Title.* Title to the 2004 Project, and each component thereof, will be deemed conveyed by the Authority to and vested in the City upon execution and delivery of this Agreement. The Authority and the City will execute, deliver and cause to be recorded any and all documents reasonably required by the City to consummate the transfer of title to the 2004 Project.

SECTION 4.4. *Installment Payments.*

(a) Obligation to Pay Installment Payments to Purchase the 2004 Project. The City hereby agrees to pay to the Authority, as the purchase price of the 2004 Project hereunder, the aggregate principal amount of \$_____ together with interest (calculated on the basis of a 360-day year of twelve 30-day months) on the unpaid principal balance thereof, payable in semiannual installment payments in the respective amounts and on the respective Installment Payment Dates specified in Appendix A.

(b) Payment Provisions. The City shall deposit the Installment Payment coming due and payable on any Interest Payment Date with the Trustee, as assignee of the Authority under the Indenture, on the related Installment Payment Date. In determining the amount required to be deposited with the Trustee on any Installment Payment Date, all amounts then held by the Trustee in the Bond Fund and the accounts therein shall be credited towards the Installment Payment then due. The Installment Payments are secured by and payable solely from the sources specified in Section 4.5.

(c) Effect of Prepayment. If the City prepays all remaining Installment Payments in full under Section 7.2, the City's obligations under this Agreement will thereupon cease and terminate, including but not limited to the City's obligation to pay Installment Payments therefor under this Section 4.4; *provided, however,* that the City's obligations to compensate and indemnify the Trustee under Sections 4.8 and 5.2 will survive such prepayment. If the City prepays the Installment Payments in part but not in whole under Section 7.2, the principal component of each succeeding Installment Payment will be reduced as provided in such Sections, and the interest component of each remaining Installment Payment will be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Bonds thereby redeemed under the applicable provisions of Section 4.01 of the Indenture.

(d) Rate on Overdue Payments. If the City fails to make any of the payments required under this Section 4.4 and Section 4.8, the payment in default will continue as an obligation of the City until fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment, at the Overdue Rate.

(e) Assignment. Certain rights of the Authority, including but not limited to the right of the Authority to receive payment of the Installment Payments, have been assigned by the Authority to the Trustee in trust under the Indenture, for the benefit of the Owners of the Bonds, and the City hereby consents to such assignment. The Authority hereby directs the City, and the City hereby agrees, to pay to the Trustee at its Trust Office, all payments payable by the City under this Section 4.4 and all amounts payable by the City under Article VII.

SECTION 4.5. *Pledge and Application of System Net Revenues.*

(a) Pledge. All System Net Revenues and all amounts on deposit in the System Revenue Fund are, pursuant to Section 5451 of the Government Code of the State of California and all laws amendatory thereof or supplemental thereto, hereby irrevocably pledged to the payment of the Installment Payments and may not be used for any other purpose until all Installment Payments have been fully paid or provision has been made for such payment in accordance with Section 7.1; provided that out of the System Revenues and amounts on deposit in the System Revenue Fund there may be apportioned such sums for such purposes as are expressly permitted in this Agreement.

This pledge, together with the pledge of System Net Revenues and amounts in the System Revenue Fund securing all other Parity Obligations, shall, subject to application as permitted herein, constitute a first lien on System Net Revenues and amounts on deposit in the System Revenue Fund.

(b) Deposit of System Revenues Into System Revenue Fund; Transfers to Make Payments. In order to carry out and effectuate the pledge and lien contained in this Agreement, the City agrees and covenants that all System Revenues shall be received by the City in trust hereunder and, except for Net Proceeds, shall be deposited when and as received in a special fund designated as the "**System Revenue Fund**", which fund the City has previously established and which fund the City agrees and covenants to maintain and to hold separate and apart from other funds until all Installment Payments have been fully paid or provision has been made therefor in accordance with Section 7.1. To the extent the City has an existing fund which satisfies the foregoing requirements, then such fund shall be deemed to be the "System Revenue Fund" and the City shall not be required to create a new fund. The City may maintain separate accounts within the System Revenue Fund. The amounts in the System Revenue Fund shall be invested in Permitted Investments. Moneys in the System Revenue Fund shall be used and applied by the City as provided in this Agreement.

The City shall, from the moneys in the System Revenue Fund, pay all Operation and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs, the payment of which is not then immediately required) as such Operation and Maintenance Costs become due and payable. Thereafter, all remaining moneys in the System Revenue Fund shall be set aside by the City at the following times for the transfer to the following respective special funds in the following order of priority; and all moneys in each of such funds shall be held in trust and shall be applied, used and withdrawn only for the purposes set forth in this Section and, as to funds held under the Indenture, the Indenture:

(i) Installment Payment. Not later than each Installment Payment Date, the City shall, from the moneys in the System Revenue Fund, transfer to the Trustee the Installment Payment due and payable on that Installment Payment Date. The City shall also, from the moneys in the System Revenue Fund, transfer when due to the applicable trustee for deposit in the respective payment fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any Parity Obligation Payments in accordance with the provisions of the applicable Parity Obligations.

(ii) Debt Service Reserve Funds. On or before the first Business Day of each month, the City shall, from the remaining moneys in the System Revenue Fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, transfer to the applicable trustee for such debt service reserve funds, if any, as may have been established in connection with Parity Obligations that sum, if any, necessary to restore such debt service reserve funds for Parity Obligations to an amount equal to the amount required to be maintained therein (including to reimburse the provider for a draw on a reserve account credit instrument).

(iii) Surplus. Moneys on deposit in the System Revenue Fund not necessary to make any of the payments required above in a Fiscal Year may be

expended by the City at any time for any purpose permitted by law, including but not limited to payments with respect to Subordinate Obligations and deposits to the Rate Stabilization Fund.

(c) No Preference or Priority. Payment of the Installment Payments and Parity Obligation Payments will be made without preference or priority among the Installment Payments and such Parity Obligation Payments. If the amount of System Net Revenues on deposit in the System Revenue Fund is at any time insufficient to enable the City to pay when due the Installment Payments and any Parity Obligation Payments, such payments will be made on a pro rata basis.

(d) Other Uses of System Net Revenues Permitted. The City shall manage, conserve and apply the System Net Revenues on deposit in the System Revenue Fund in such a manner that all deposits required to be made under the preceding subsection (b) will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default has occurred and is continuing, the City may use and apply moneys in the System Revenue Fund for (i) the payment of any Subordinate Obligations or any unsecured obligations, (ii) the acquisition and construction of improvements to the System, (iii) the prepayment of any other obligations of the City relating to the System, or (iv) any other lawful purposes of the City.

(e) Budget and Appropriation of Installment Payments. During the Term of this Agreement, the City shall adopt all necessary budgets and make all necessary appropriations of the Installment Payments from the System Net Revenues. If any Installment Payment requires the adoption by the City of any supplemental budget or appropriation, the City shall promptly adopt the same. The covenants on the part of the City contained in this subsection (e) constitute duties imposed by law and it is the duty of each and every public official of the City to take such actions and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this subsection (e).

SECTION 4.6. *Establishment of Rate Stabilization Fund*. The City previously established a special fund known as the "Rate Stabilization Fund" which shall be held and maintained by the City until all Installment Payments have been fully paid or provision has been made therefor in accordance with, Section 7.1. The City may, subject to the provisions of Section 4.5, during or within 210 days after a Fiscal Year, transfer surplus System Net Revenues attributable to such Fiscal Year (on the basis of Generally Accepted Accounting Principles) from the System Revenue Fund to the Rate Stabilization Fund. The City may at any time transfer moneys from the Rate Stabilization Fund to the System Revenue Fund.

Notwithstanding anything to the contrary provided in this Agreement, for purposes of the calculations required under Sections 5.8 and 5.6(b), (i) System Net Revenues deposited into the Rate Stabilization Fund shall not be taken into account as System Revenues for the Fiscal Year to which such deposited System Net Revenues are attributable and (ii) amounts withdrawn from the Rate Stabilization Fund and deposited into the System Revenue Fund may be taken into account as System Revenues for the Fiscal Year in which such deposit into the System Revenue Fund is made; provided that, for purposes of the calculation required under Section 5.6(b), the amount of System Net Revenues before any credits for transfers from the Rate Stabilization Fund to the System Revenue Fund may not be less than 100% of Annual

Debt Service for such Fiscal Year. The amounts in the Rate Stabilization Fund shall be invested in Permitted Investments.

SECTION 4.7. *Special Obligation of the City; Obligations Absolute.* The City's obligation to pay the Installment Payments and any other amounts coming due and payable hereunder is a special obligation of the City limited solely to the System Net Revenues. Under no circumstances is the City required to advance moneys derived from any source of income other than the System Net Revenues and other sources specifically identified herein for the payment of the Installment Payments and such other amounts. No other funds or property of the City are liable for the payment of the Installment Payments and any other amounts coming due and payable hereunder.

The obligations of the City to pay the Installment Payments from the System Net Revenues and to perform and observe the other agreements contained herein are absolute and unconditional and are not subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the Authority or the Trustee of any obligation to the City or otherwise with respect to the System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Authority or the Trustee. Until all of the Installment Payments, all of the Additional Payments and all other amounts coming due and payable hereunder are fully paid or prepaid, the City (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts, (b) will perform and observe all other agreements contained in this Agreement, and (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the System, sale of the System, the taking by eminent domain of title to or temporary use of any component of the System, commercial frustration of purpose, any change in the tax or law other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Authority or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture or this Agreement.

The foregoing provisions of this Section 4.7 do not release the Authority from the performance of any of the agreements on its part contained herein or in the Indenture, and if the Authority fails to perform any such agreements, the City may institute such action against the Authority as the City deems necessary to compel performance, so long as such action does not abrogate the obligations of the City contained in the preceding paragraph. The City may, however, at its cost and expense and in its name or in the name of the Authority, prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect the City's rights hereunder, and in such event the Authority shall cooperate fully with the City and shall take such action necessary to effect the substitution of the City for the Authority in such action or proceeding if the City may request.

SECTION 4.8. *Additional Payments.* In addition to the Installment Payments, the City shall pay when due the following amounts to the following parties:

- (a) to the Authority, all costs and expenses incurred by the Authority to comply with the provisions of this Agreement and the Indenture; and

- (b) to the Trustee upon request therefor, all of its costs and expenses payable as a result of the performance of and compliance with its duties hereunder or under the Indenture or any related documents;
- (c) to the Authority and the Trustee, all amounts required to indemnify the Authority and the Trustee under Section 5.2 hereof and Section 8.07 of the Indenture;
- (d) all costs and expenses of auditors, engineers and accountants for professional services relating to the System or the Bonds; and
- (e) all Excess Investment Earnings payable under Section 5.11(e).

The Additional Payments are payable from, but are not secured by a pledge or lien upon, the System Net Revenues. The rights of the Trustee and the Authority under this Section 4.8, and the obligations of the City under this Section 4.8, shall survive the termination of this Agreement.

ARTICLE V

COVENANTS OF THE CITY

SECTION 5.1. *Disclaimer of Warranties.* The Authority makes no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the 2004 Project or any component thereof, or any other representation or warranty with respect to the 2004 Project or any component thereof. In no event is the Authority liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Agreement or the Indenture for the existence, furnishing, functioning or use of the 2004 Project.

SECTION 5.2. *Release and Indemnification Covenants.* The City agrees to indemnify the Authority, the Trustee and their respective officers, agents, successors and assigns, against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on or about the System by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Agreement or the Indenture, (c) any act or omission of the City or of any of its agents, contractors, servants, employees or licensees with respect to the System, (d) any act or omission of any lessee of the City with respect to the System, and (e) the Trustee's exercise and performance of its powers and duties hereunder, under the Indenture, and any other document or transaction contemplated in connection herewith or therewith. No indemnification is made under this Section 5.2 or elsewhere in this Agreement for willful misconduct or negligence under this Agreement by the Authority, the Trustee or their respective officers, agents, employees, successors or assigns. The provisions of this Section 5.2 shall survive the expiration of the Term of this Agreement.

SECTION 5.3. *Sale or Eminent Domain of System.* Except as provided herein, the City covenants that the System will not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole

if such encumbrance, sale, lease, pledge, charge or other disposition would materially impair the ability of the City to pay the Installment Payments or the principal of or interest on any Parity Debt, or would materially adversely affect its ability to comply with the terms of this Agreement or any Parity Debt. The City may not enter into any agreement which impairs the operation of the System or any part of it necessary to secure adequate System Net Revenues to pay the Installment Payments or any Parity Debt, or which otherwise would impair the rights of the Bond Owners or the Trustee with respect to the System Net Revenues.

If all or any part of the System shall be taken by eminent domain proceedings, the Net Proceeds realized by the City therefrom shall be deposited by the City with the Trustee in a special fund which the Trustee shall establish as needed in trust and applied by the City to the cost of acquiring and constructing additions, betterments, extensions or improvements to the System if (A) the City first secures and files with the Trustee a Certificate of the City showing (i) the loss in annual System Revenues, if any, suffered, or to be suffered, by the City by reason of such eminent domain proceedings, (ii) a general description of the additions, betterments, extensions or improvements to the System then proposed to be acquired and constructed by the City from such proceeds, and (iii) an estimate of the additional System Revenues to be derived from such additions, betterments, extensions or improvements; and (B) the Trustee has been furnished a Certificate of the City, certifying that such additional System Revenues will sufficiently offset on a timely basis the loss of System Revenues resulting from such eminent domain proceedings so that the ability of the City to pay all Parity Debt when due will not be substantially impaired, and such Certificate of the City shall be final and conclusive, and any balance of such proceeds not required by the City of such purpose shall be deposited in the System Revenue Fund and applied as provided in Section 4.5, provided, that if the foregoing conditions are not met, then such proceeds shall be deposited with the Trustee and applied to make Installment Payments and Parity Obligation Payments as they shall become due ratably without any discrimination or preference; provided further that the foregoing procedures for the application of Net Proceeds consisting of awards under eminent domain proceedings shall be subject to any similar provisions for Parity Debt on a pro rata basis.

If such eminent domain proceedings have had no effect, or at most an immaterial effect, upon the System Revenues and the security of the Parity Debt, and a Certificate of the City to such effect has been filed with the Trustee, then the City shall forthwith deposit such proceeds in the System Revenue Fund, to be applied as provided in Section 4.5.

SECTION 5.4. *Insurance.* The City shall at all times maintain with responsible insurers all such insurance on the System as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to the System.

The City shall also maintain, with responsible insurers, worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the City, the Authority, the Trustee and the Owners of the Bonds.

Any policy of insurance required under this Section 5.4 may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City or in the form

of the participation by the City in a joint powers agency or other program providing pooled insurance.

If all or any part of the System shall be damaged or destroyed, the Net Proceeds realized by the City as a result thereof shall be deposited by the City with the Trustee in a special fund which the Trustee shall establish as needed in trust and applied by the City to the cost of acquiring and constructing repairs, replacements, additions, betterments, extensions or improvements to the System if (A) the City first secures and files with the Trustee a Certificate of the City showing (i) the loss in annual System Revenues, if any, suffered, or to be suffered, by the City by reason of such damage or destruction, (ii) a general description of the repairs, replacements, additions, betterment, extensions or improvements to the System then proposed to be acquired and constructed by the City from such proceeds, and (iii) an estimate of the System Revenues to be derived after the completions of such repairs, replacements, additions, betterment, extensions or improvements; and (B) the Trustee has been furnished a Certificate of the City, certifying that the System Revenues after such repair, replacement, addition, betterment, extension or improvement of the System will sufficiently offset on a timely basis the loss of System Revenues resulting from such damage or destruction so that the ability of the City to pay all Parity Debt when due will not be substantially impaired, and such Certificate of the City shall be final and conclusive, and any balance of such proceeds not required by the City for such purpose shall be deposited in the System Revenue Fund and applied as provided in Section 4.5; provided, that if the foregoing conditions are not met, then such proceeds shall be deposited with the Trustee and applied to make Installment Payments and Parity Obligation Payments as they shall become due ratably without any discrimination or preference; provided further that the foregoing procedures for the application of Net Proceeds consisting of insurance payments shall be subject to any similar provisions for Parity Debt on a pro rata basis.

If such damage or destruction has had no effect, or at most an immaterial effect, upon the System Revenues and tile security of the Parity Debt, and a Certificate of the City to such effect has been filed with the Trustee, then the City shall forthwith deposit such proceeds in the System Revenue Fund, to be applied as provided in Section 4.5.

SECTION 5.5. *Records and Accounts.* The City shall keep proper books of record and accounts of the System in which complete and correct entries are made of all transactions relating to the System. Said books shall, upon prior request, be subject to the reasonable inspection of the Owners of not less than 10% of the Outstanding Bonds, or their representatives authorized in writing, upon not less than two Business Days' prior notice to the City.

The City shall cause the books and accounts of the System to be audited annually by an Independent Accountant not more than nine months after the close of each Fiscal Year, and shall make a copy of such report available for inspection by the Bond Owners at the office of the City and at the Trust Office of the Trustee. Such report may be part of a combined financial audit or report covering all or part of the City's finances.

SECTION 5.6. *Rates and Charges.*

(a) The City will, at all times until all Installment Payments have been fully paid or provision has been made therefor in accordance with Section 7.1, fix, prescribe

and collect rates, fees and charges and manage the operation of the System for each Fiscal Year so as to yield System Revenues at least sufficient, after making reasonable allowances for contingencies and errors in the estimates, to pay the following amounts during such Fiscal Year:

- (i) All current Operation and Maintenance Costs.
- (ii) The Installment Payments, all other Parity Obligation Payments and all payments on Subordinate Obligations as they become due and payable.
- (iii) All payments required for compliance with the terms of the Indenture and this Agreement.
- (iv) All payments to meet any other obligations of the City which are charges, liens or encumbrances upon, or payable from, the System Revenues.

(b) In addition to the requirements of the foregoing subsection (a) of this Section, the City will, at all times until all Installment Payments have been fully paid or provision has been made therefor in accordance with Section 7.1, to the maximum extent permitted by law, fix, prescribe and collect rates, fees and charges and manage the operation of the System for each Fiscal Year so as to yield System Net Revenues during such Fiscal Year equal to at least 110% per cent of the Annual Debt Service in such Fiscal Year; provided, an adjustment shall be made to the amount of System Net Revenues as provided in Section 4.6.

The City may make or permit to be made adjustments from time to time in such rates, fees and charges and may make or permit to be made such classification thereof as it deems necessary, but shall not reduce or permit to be reduced such rates, fees and charges below those then in effect unless the System Revenues from such reduced rates, fees and charges will at all times be sufficient to meet the requirements of this Section.

SECTION 5.7. *Superior and Subordinate Obligations.* The City may not issue or incur any additional bonds or other obligations during the Term of this Agreement having any priority in payment of principal or interest out of the System Revenues or the System Net Revenues over the Installment Payments.

Nothing herein limits or affects the ability of the City to issue or incur (a) Parity Obligations under Section 5.8, or (b) Subordinate Obligations.

SECTION 5.8. *Issuance of Parity Obligations.* The City may at any time enter into or otherwise incur Parity Obligations in addition to the obligations under this Agreement and the Parity Payment Obligations under the 2003 Installment Purchase Agreement and the 2007 Installment Purchase Agreement; provided:

- (a) The City shall be in compliance with all agreements, conditions, covenants and terms contained in this Agreement required to be observed or performed by it, and a Certificate of the City to that effect shall have been filed with the Trustee.
- (b) Any debt service reserve fund established for such Parity Debt shall satisfy the following criteria: (i) such debt service reserve fund shall be held

by an independent trustee (who may be other than the Trustee); (ii) the required amount of such debt service reserve fund shall not exceed the lesser of the maximum annual debt service of such Parity Debt (calculated on the basis of a year ending on the principal payment date of such Parity Debt) or the maximum amount permitted under the Code, provided that, if such Parity Debt is a loan from a governmental agency, then a debt service reserve fund shall be established in the amount, if any, required or permitted by such governmental agency; and (iii) the City shall not be required to replenish withdrawals from such debt service reserve fund in greater than monthly installments equal to 1/12 of the aggregate amount needed to restore the debt service reserve fund to the required level.

(c) The System Net Revenues for the last completed Fiscal Year or any 12 consecutive months within the last 18 months preceding the date of entry into or incurrence of such Parity Debt, as shown by a Certificate of the City on file with the Trustee, plus an allowance for increased System Net Revenues arising from any increase in the rates, fees and charges of the System which was duly adopted by the City Council of the City prior to the date of the entry into or incurrence of such Parity Debt but which, during all or any part of such 12 month period was not in effect in an amount equal to the amount by which the System Net Revenues would have been increased if such increase in rates, fees and charges had been in effect during the whole of such 12 month period, as shown by a Certificate of the City on file with the Trustee, shall have produced a sum equal to at least 110% of the Maximum Annual Debt Service as calculated after the entry into or incurrence of such Parity Debt; provided that in the event that all or a portion of such Parity Debt is to be issued for the purpose of refunding and retiring any Parity Debt then outstanding, interest and principal payments on the Parity Debt to be so refunded and retired from the proceeds of such Parity Debt being issued shall be excluded from the foregoing computation of Maximum Annual Debt Service; provided further, that the City may at any time enter into or incur Parity Debt without compliance with the foregoing conditions if the Annual Debt Service for each Fiscal Year during which such Parity Debt is outstanding will not be increased by reason of the entry into or incurrence of such Parity Debt; and provided further, an adjustment shall be made in the amount of System Net Revenues as provided in Section 4.6.

Nothing contained in this Section shall limit the issuance of any revenue bonds, notes or other evidences of indebtedness or the entry into any installment purchase agreement by the City payable from the System Net Revenues and secured by a lien and charge on the System Net Revenues if, after the issuance of such revenue bonds or entry into such installment purchase agreement, all of the Installment Payments shall have been fully paid or provision has been made therefor in accordance with Section 7.1. Furthermore, nothing contained in this Section shall limit the issuance or incurrence of any Subordinate Obligations.

SECTION 5.9. *Operation of System in Efficient and Economical Manner.* The City covenants and agrees to operate the System in an efficient and economical manner and to operate, maintain and preserve the System in good repair and working order.

SECTION 5.10. *Assignment and Amendment Hereof.* The Authority and the City may at any time amend or modify any of the provisions of this Agreement, but only: (a) with the prior written consent of the Owners of a majority in aggregate principal amount

of the Outstanding Bonds; or (b) without the consent of the Trustee or any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the City contained in this Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;
- (ii) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, to conform to the original intention of the City and the Authority;
- (iii) to modify, amend or supplement this Agreement in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Tax Code; and
- (iv) in any other respect whatsoever as the Authority and the City deem necessary or desirable, if in the opinion of Bond Counsel such modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds.

No such modification or amendment may (a) extend or have the effect of extending any Installment Payment Date or reducing any Installment Payment or any premium payable upon the prepayment thereof, without the express consent of the Owners of the affected Bonds, or (b) modify any of the rights or obligations of the Trustee without its written assent thereto.

SECTION 5.11. *Tax Covenants.*

(a) Private Business Use Limitation. The City shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(b) Federal Guarantee Prohibition. The City may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(c) No Arbitrage. The City may not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(d) Maintenance of Tax Exemption. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

(e) Rebate of Excess Investment Earnings to United States. The City shall calculate or cause to be calculated the Excess Investment Earnings in all respects at the times and in the manner required under the Tax Code. The City shall pay the full amount of Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code. Such payments shall be made by the City from any source of legally available funds of the City, and shall constitute Additional Payments hereunder.

The City shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subsection (e). In order to provide for the administration of this subsection (e), the City may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the City may deem appropriate. The Trustee has no duty or obligation to monitor or enforce compliance by the City of any of the requirements under this subsection (e).

SECTION 5.12. *Continuing Disclosure* The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Agreement, failure of the City to comply with the Continuing Disclosure Certificate does not constitute an Event of Default. However, any Participating Underwriter (as that term is defined in the Continuing Disclosure Certificate) or any holder or beneficial owner of the Bonds may take such actions as may be necessary and appropriate to compel the City to perform its obligations under the Continuing Disclosure Certificate, including seeking mandate or specific performance by court order.

ARTICLE VI

EVENTS OF DEFAULT

SECTION 6.1. *Events of Default Defined.* The following events constitute Events of Default hereunder:

- (a) Failure by the City to pay any Installment Payment when due and payable hereunder.
- (b) Failure by the City to pay any Additional Payment when due and payable hereunder, and the continuation of such failure for a period of 30 days.
- (c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding clauses (a) or (b), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee; *provided, however,* that if the City notifies the Authority and the Trustee that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 30-day period, such failure will not constitute an event of default hereunder if the City commences to cure such failure within such 30 day period and

thereafter diligently and in good faith cures the failure in a reasonable period of time.

- (d) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.
- (e) The occurrence of any event of default under and as defined with respect to any Parity Debt.

SECTION 6.2. *Remedies on Default.* If an Event of Default occurs and is continuing, the Trustee as assignee of the Authority has the right, at its option and without any further demand or notice, to take any one or more of the following actions:

- (a) Declare all principal components of the unpaid Installment Payments, together with accrued interest thereon at the Overdue Rate from the immediately preceding Interest Payment Date on which payment was made, to be immediately due and payable, whereupon the same shall immediately become due and payable.

The Trustee shall rescind and annul such declaration and its consequences if, before any judgment or decree for the payment of the moneys due has been obtained or entered, (i) the City deposits with the Trustee a sum sufficient to pay all principal components of the Installment Payments coming due prior to such declaration and all matured interest components (if any) of the Installment Payments, with interest on such overdue principal and interest components calculated at the Overdue Rate, and (ii) the City pays the reasonable expenses of the Trustee (including any fees and expenses of its attorneys), and (iii) any and all other defaults known to the Trustee (other than in the payment of the principal and interest components of the Installment Payments due and payable solely by reason of such declaration) have been made good. No such rescission and annulment will extend to or shall affect any subsequent default, or impair or exhaust any right or power consequent thereon.

- (b) Take whatever action at law or in equity may appear necessary or desirable to collect the Installment Payments then due or thereafter to become due during the Term of this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement.
- (c) As a matter of right, in connection with the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and the Bond Owners hereunder, cause the appointment of

a receiver or receivers of the System Revenues and other amounts pledged hereunder, with such powers as the court making such appointment may confer.

SECTION 6.3. *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the Authority is intended to be exclusive. Every such remedy is cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default impairs any such right or power or operates as a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article VI, it is not necessary to give any notice, other than such notice as may be required in this Article VI or by law.

SECTION 6.4. *Agreement to Pay Attorneys' Fees and Expenses.* If either party to this Agreement defaults under any of the provisions hereof and the nondefaulting party, the Trustee or the Owner of any Bonds employs attorneys or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party, the Trustee or such Owner, as the case may be, the reasonable fees of such attorneys and such other expenses so incurred. The provisions of this Section 6.4 survive the expiration of the Term of this Agreement.

SECTION 6.5. *No Additional Waiver Implied by One Waiver.* If any agreement contained in this Agreement is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and does not waive any other breach hereunder.

SECTION 6.6. *Trustee and Bond Owners to Exercise Rights.* Such rights and remedies as are given to the Authority under this Article VI have been assigned by the Authority to the Trustee under the Indenture, to which assignment the City hereby consents. Such rights and remedies will be exercised by the Trustee and the Owners of the Bonds as provided in the Indenture.

ARTICLE VII

PREPAYMENT OF INSTALLMENT PAYMENTS

SECTION 7.1. *Security Deposit.* Notwithstanding any other provision hereof, the City may on any date secure the payment of Installment Payments, in whole or in part, by irrevocably depositing with the Trustee an amount of cash which, together with other available amounts, is either:

- (a) sufficient to pay all such Installment Payments, including the principal and interest components thereof, when due under Section 4.4(a), or
- (b) invested in whole or in part in non-callable Federal Securities in such amount as will, in the opinion of an Independent Accountant

(which opinion is addressed and delivered to the Trustee), together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay all such Installment Payments when due under Section 4.4(a) or when due on any optional prepayment date under Section 7.2, as the City instructs at the time of said deposit.

If the City makes a security deposit under this Section for the payment of all remaining Installment Payments, all obligations of the City hereunder, and the pledge of System Net Revenues and all other security provided by this Agreement for said obligations, will thereupon cease and terminate, excepting only the obligation of the City to make, or cause to be made, all Installment Payments from the security deposit. The security deposit will be deemed to be and will constitute a special fund for the payment of the Installment Payments in accordance with the provisions hereof.

SECTION 7.2. *Optional Prepayment.* The City may exercise its option to prepay the principal components of the Installment Payments in whole or in part on any date on or after the Installment Payment Date relating to the October 1, 2022 Interest Payment Date. The City may exercise such option by payment of a prepayment price equal to the sum of (a) the aggregate principal components of the Installment Payments to be prepaid, (b) the interest component of the Installment Payment required to be paid on or accrued to such date, and (c) the premium (if any) then required to be paid upon the corresponding redemption of the Bonds under Section 4.01(a) of the Indenture. The Trustee shall deposit the prepayment price in the Installment Payment Fund to be applied to the redemption of Bonds under Section 4.01(a) of the Indenture. If the City prepays the Installment Payments in part but not in whole, the principal components will be prepaid among such maturities and in such integral multiples of \$5,000 as the City designates in written notice to the Trustee. The City shall give the Trustee written notice of its intention to exercise its option in sufficient time to enable the Trustee to give notice of redemption as required by the Indenture.

The Installment Payments will otherwise be subject to prepayment in the amounts and at the times necessary to provide for redemption of the Bonds as set forth in the Indenture.

SECTION 7.3. *Credit for Amounts on Deposit.* If the City prepays the Installment Payments in full under this Article VII, such that the Indenture is discharged by its terms as a result of the prepayment, and upon payment in full of all Additional Payments and other amounts then due and payable hereunder, all available amounts then on deposit in the funds and accounts established under the Indenture will be credited towards the amounts then required to be so prepaid.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1. *Further Assurances.* The City agrees that it will execute and deliver any and all such further agreements, instruments, financing statements or other assurances as may be reasonably necessary or requested by the Authority or the Trustee to carry out the intention or to facilitate the performance of this Agreement, including, without limitation, to perfect and continue the security interests herein intended to be created.

SECTION 8.2. *Notices.* Any notice, request, complaint, demand or other communication under this Agreement must be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopier or other form of telecommunication, at its number set forth below. Notice is effective either (a) upon transmission by fax or other form of telecommunication, (b) upon actual receipt after deposit in the United States of America mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the City
or the Authority:*

City of Lodi
P.O. Box 3006
Lodi, California 95241-1910
Attention: Deputy City Manager/
Internal Services Director

If to the Trustee:

Union Bank, N.A.
350 California St., 11th Fl.
San Francisco, California 94104
Attention: Corporate Trust Department

SECTION 8.3. *Governing Law.* This Agreement will be construed in accordance with and governed by the laws of the State of California.

SECTION 8.4. *Binding Effect.* This Agreement inures to the benefit of and is binding upon the Authority, the City and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 8.5. *Severability of Invalid Provisions.* If any one or more of the provisions contained in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, then such provision or provisions will be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and this Agreement will be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority and the City each hereby declares that it would have entered into this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

SECTION 8.6. *Article and Section Headings and References.* The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, are solely for convenience of reference and do not affect the meaning, construction or effect of this Agreement. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender mean and include words of the feminine and neuter genders.

SECTION 8.7. *Payment on Non-Business Days.* Whenever any payment is required to be made hereunder on a day which is not a Business Day, such payment will be made on the immediate preceding Business Day.

SECTION 8.8. *Execution of Counterparts.* This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original and all of which together constitute but one and the same instrument.

SECTION 8.9. *Waiver of Personal Liability.* No member of the City Council, officer, agent or employee of the City has any individual or personal liability for the payment of Installment Payments or Additional Payments or be subject to any personal liability or accountability by reason of this Agreement; but nothing herein contained relieves any such member of the City Council, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

SECTION 8.10. *Trustee as Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary hereof and is entitled to the benefits of this Agreement with the same force and effect as if the Trustee were a party hereto.

IN WITNESS WHEREOF, the Authority and the City have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

LODI PUBLIC FINANCING AUTHORITY,
as Seller

By _____
Executive Director

ATTEST:

By _____
RANDI JOHL, Secretary

CITY OF LODI, as Purchaser

By _____
City Manager

ATTEST:

By _____
City Clerk

APPENDIX A

SCHEDULE OF INSTALLMENT PAYMENTS

<u>Installment Payment Date</u> ⁽¹⁾	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Payment</u>
--	--------------------------------	-------------------------------	--------------------------

- (1) Installment Payment Dates are the Business Day immediately preceding each Interest Payment Date shown in the table.

INDENTURE OF TRUST

Dated as of September 1, 2012

between

UNION BANK, N.A.,
as Trustee

and the

LODI PUBLIC FINANCING AUTHORITY

Authorizing the Issuance of

\$ _____
Lodi Public Financing Authority
2012 Refunding Wastewater Revenue Bonds,
Series A

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APPENDIX A DEFINITIONS

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INDENTURE OF TRUST

This INDENTURE OF TRUST (this “**Indenture**”), dated for convenience as of September 1, 2012, is between the LODI PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the “**Authority**”), and UNION BANK, N.A., a national banking association organized and existing under the laws of the United States of America, with a corporate trust office in San Francisco, California, being qualified to accept and administer the trusts hereby created (the “**Trustee**”).

BACKGROUND:

1. The City owns and operates a public enterprise for the collection, treatment and disposal of wastewater within the service area of the City (as defined more completely below, the “**System**”).

2. The City previously entered into an Installment Purchase Agreement, dated as of May 1, 2004 (the “**2004 Installment Purchase Agreement**”) with the Lodi Public Improvement Corporation (the “**Corporation**”), pursuant to which the City agreed to make certain installment payments in the aggregate principal amount of \$27,360,000 (the “**2004 Installment Payments**”), and caused execution and delivery of Wastewater System Revenue Certificates of Participation, 2004 Series A (the “**2004 Certificates**”), pursuant to a Trust Agreement, dated as of May 1, 2004 (the “**2004 Trust Agreement**”), between the Corporation and Union Bank, N.A., as successor trustee (the “**2004 Trustee**”), all for the purpose of financing certain additions, betterments, extensions, replacements and improvements to the System (the “**2004 Project**”).

3. The City wishes to refinance the 2004 Installment Payments.

4. The Authority has been formed for the purpose of assisting the City in the financing and refinancing of public capital improvements, and in order to accomplish the refinancing described in the previous paragraph, the Authority and the City have entered into an Installment Purchase Agreement dated as of September 1, 2012 (the “**Installment Purchase Agreement**”), under which the City will sell the 2004 Project to the Authority and the Authority will sell the 2004 Project to the City in consideration of the agreement by the City to pay the purchase price thereof in semiannual installment payments.

5. For the purpose of obtaining funds to refinance the 2004 Installment Payments, the Authority has authorized the issuance of its Lodi Public Financing Authority 2012 Refunding Wastewater Revenue Bonds, Series A in the aggregate principal amount of \$_____ (the “**Bonds**”) under this Indenture and under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the “**Bond Law**”).

6. In order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and to secure the payment of the principal thereof, premium (if any) and interest thereon, the Authority has authorized the execution and delivery of this Indenture.

7. The Authority has found and determines, and hereby affirms, that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Indenture have been in all respects duly authorized.

A G R E E M E N T :

In order to secure the payment of the principal of and the interest and redemption premium (if any) on all the Outstanding Bonds under this Indenture according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the Authority and the Trustee do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in Appendix A attached to this Indenture have the respective meanings specified in that Appendix when used in this Indenture. Capitalized terms in this Indenture and not otherwise defined in this Section 1.01 have the respective meanings given them in Section 1.1 of the Installment Purchase Agreement.

SECTION 1.02. *Authorization.* Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Indenture, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

SECTION 1.03. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

THE BONDS

SECTION 2.01. *Authorization of Bonds.* The Authority has reviewed all proceedings heretofore taken and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now duly empowered, under each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture.

The Authority hereby authorizes the issuance of a series of Bonds, designated the "Lodi Public Financing Authority 2012 Refunding Wastewater Revenue Bonds, Series A" in the aggregate principal amount of \$_____ under the Bond Law for the purposes of providing funds to refinance the 2004 Installment Payments. The Bonds are authorized and issued under, and are subject to the terms of, this Indenture and the Bond Law.

SECTION 2.02. *Terms of the Bonds.*

(a) Payment Provisions. The Bonds shall be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof, so long as no Bond has more than one maturity date. The Bonds shall mature on October 1 in each of the years and in the amounts, and bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rates, as follows:

Maturity Date <u>(October 1)</u>	Principal <u>Amount</u>	Interest <u>Rate</u>
-------------------------------------	----------------------------	-------------------------

Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- (a) a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,
- (b) a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date, or
- (c) interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Interest is payable on each Interest Payment Date to the persons in whose names the ownership of the Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any Bond which is not punctually paid or duly provided for on any Interest Payment Date is payable to the person in whose name the ownership of such Bond is registered on the Registration Books at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice of which is given to such Owner by first-class mail not less than 10 days prior to such special record date.

The Trustee will pay interest on the Bonds by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. At the written request of the Owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date, the Trustee will pay interest on such Bonds on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as specified in such written request, which written request will remain in effect until rescinded in writing by the Owner. The Trustee will pay principal of the Bonds in lawful money of the United States of America by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee.

SECTION 2.03. *Transfer and Exchange of Bonds.*

(a) Transfer. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. The Trustee shall collect any tax or other governmental charge on the transfer of any Bonds under this Section 2.03. Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like series, interest rate, maturity and aggregate principal amount. The Authority shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer of Bonds.

(b) Exchange. The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations and of the same series, interest rate and maturity. The Trustee shall collect any tax or other governmental charge on the exchange of any Bonds under this subsection (b). The Authority shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange of Bonds.

(c) Limitations. The Trustee may refuse to transfer or exchange, under the provisions of this Section 2.03, any Bonds selected by the Trustee for redemption under Article IV, or any Bonds during the period established by the Trustee for the selection of Bonds for redemption.

SECTION 2.04. *Book-Entry System.*

(a) Original Delivery. The Bonds will be initially delivered in the form of a separate single fully registered bond (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the Trustee shall register the ownership of each Bond on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, the Authority and the Trustee has no responsibility or obligation to any Depository System Participant or to any person on behalf of which the Nominee holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, the Authority and the Trustee has no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed if the Authority elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest on the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds. The Authority and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal of and premium, if any, and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal of and the interest and premium, if any, on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest and premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner shall receive a Bond evidencing the obligation of the Authority to make payments of principal, interest and premium, if any, under this Indenture. Upon delivery by the Depository to the Authority of written notice to the effect that the Depository has determined to substitute a new Nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes; and upon receipt of such a notice the Authority shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the Authority shall execute and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the Authority or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Bond Owners. Upon the written acceptance by the Trustee, the Trustee shall agree to take all action reasonably necessary for all representations of the Trustee in such letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of such letter, the Authority may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. If either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the Authority determines to terminate the Depository as such, then the Authority shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the Authority and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the Authority fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions hereof.

If the Authority determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Authority may notify the Depository System Participants of the availability of such certificated Bonds through the Depository. In such event, the Trustee will issue, transfer and exchange Bonds as required by the Depository and others in appropriate amounts; and whenever the Depository requests, the Trustee and the Authority shall cooperate with the Depository in taking appropriate action (i) to make available one or more separate certificates evidencing the Bonds to any Depository System Participant having Bonds credited to its account with the Depository, or (ii) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Bonds, all at the Authority's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

SECTION 2.05. *Registration Books*. The Trustee will keep or cause to be kept, at the Office of the Trustee, sufficient records for the registration and transfer of ownership of the Bonds, which shall upon reasonable notice as agreed to by the Trustee, be open to inspection during regular business hours by the Authority; and, upon

presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds as hereinbefore provided.

SECTION 2.06. *Form and Execution of Bonds.* The Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, are set forth in Appendix B attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The Chair of the Authority shall execute, and the Secretary of the Authority shall attest each Bond. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Bond ceases to be such officer before the Closing Date, such signature will nevertheless be as effective as if the officer had remained in office until the Closing Date. Any Bond may be signed and attested on behalf of the Authority by such persons as at the actual date of the execution of such Bond are the proper officers of the Authority, duly authorized to execute debt instruments on behalf of the Authority, although on the date of such Bond any such person was not an officer of the Authority.

Only those Bonds bearing a certificate of authentication in the form set forth in Appendix B, manually executed and dated by the Trustee, are valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee is conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.07. *Bonds Mutilated, Lost, Destroyed or Stolen.* If any Bond is mutilated, the Authority, at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. The Trustee shall cancel every mutilated Bond surrendered to it and deliver such mutilated Bond to, or upon the order of, the Authority. If any Bond is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence is satisfactory and if indemnity satisfactory to the Trustee is given, the Authority, at the expense of the Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Trustee in connection therewith. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen will constitute an original additional contractual obligation on the part of the Authority whether or not the Bond so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds issued under this Indenture.

Notwithstanding any other provision of this Section 2.07, in lieu of delivering a new Bond for which principal has become due for a Bond which has been mutilated, lost, destroyed or stolen, the Trustee may make payment of such Bond in accordance with its terms upon receipt of indemnity satisfactory to the Trustee.

ARTICLE III

ISSUANCE OF BONDS; APPLICATION OF PROCEEDS

SECTION 3.01. *Issuance of the Bonds.* At any time after the execution of this Indenture, the Authority may execute and the Trustee shall authenticate and, upon the Written Request of the Authority, deliver the Bonds to the Original Purchaser.

SECTION 3.02. *Application of Proceeds of Sale of the Bonds.* Upon the receipt of payment for the Bonds on the Closing Date, in the amount of \$_____, representing the aggregate principal amount (\$_____), plus a net original issue premium of \$_____, less an underwriter's discount of \$_____, the Trustee shall apply the proceeds of sale thereof as follows:

- (a) The Trustee will deposit the amount of \$_____ in the Costs of Issuance Fund.
- (b) The Trustee will transfer the amount of \$_____, constituting the remainder of such proceeds, to the 2004 Trustee for deposit into the Escrow Fund established under the Escrow Agreement.

SECTION 3.03. *Establishment and Application of Costs of Issuance Fund.* The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Costs of Issuance Fund" into which the Trustee shall deposit a portion of the proceeds of sale of the Bonds under Section 3.02. The Trustee shall disburse amounts in the Costs of Issuance Fund from time to time to pay the Costs of Issuance of the Bonds upon submission of a Written Requisition of the Authority stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. The Trustee may conclusively rely on the representations and certifications set forth in such Written Requisitions and shall be fully protected in relying thereon. All such payments shall be made by check or wire transfer in accordance with payment instructions contained in the Written Requisition or in any invoice attached thereto, and the Trustee has no duty or obligation to authenticate such payment instructions or the authorization thereof. On November 1, 2012, or upon the earlier Written Request of the Authority, the Trustee shall transfer all amounts remaining in the Costs of Issuance Fund to the Interest Account, and the Trustee shall thereupon close the Costs of Issuance Fund.

SECTION 3.04. *Validity of Bonds.* The recital contained in the Bonds that the same are issued under the Constitution and laws of the State of California shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

ARTICLE IV

REDEMPTION OF BONDS

SECTION 4.01. *Terms of Redemption.*

(a) Optional Redemption. The Bonds maturing on or before October 1, 2022, are not subject to optional redemption prior to their respective stated maturity dates. The Bonds maturing on or after October 1, 2023, are subject to redemption in whole, or in part at the Written Request of the Authority among maturities on such basis as the Authority may designate and within a maturity as set forth in Section 4.02, at the option of the Authority, on any date on or after October 1, 2022, from any available source of funds, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, plus accrued interest to the date of redemption, without premium.

(b) Notice of Optional Redemption to the Trustee. The Authority shall give the Trustee written notice of its intention to redeem Bonds under subsection (a), and the manner of selecting such Bonds for redemption from among the maturities thereof, in sufficient time to enable the Trustee to give notice of such redemption in accordance with Section 4.03.

(c) Mandatory Sinking Fund Redemption. The Term Bonds are subject to mandatory redemption in part by lot, at a redemption price equal to 100% of the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on October 1 in the respective years as set forth in the following tables; *provided, however,* that if some but not all of the Term Bonds have been redeemed under subsection (a) of this Section, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of the Term Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of \$5,000 (as set forth in a schedule provided by the Authority to the Trustee).

Bonds Maturing October 1, _____

Sinking Fund Redemption Date <u>(October 1)</u>	Principal Amount <u>To Be Redeemed</u>
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SECTION 4.02. *Selection of Bonds for Redemption.* Whenever provision is made in this Indenture for the redemption of less than all of the Bonds of a single maturity, the Trustee shall select the Bonds of that maturity to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate \$5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond.

SECTION 4.03. *Notice of Redemption; Rescission.* The Trustee shall mail notice of redemption of the Bonds by first class mail, postage prepaid, not less than 30 nor

more than 60 days before any redemption date, to the respective Owners of any Bonds designated for redemption at their addresses appearing on the Registration Books and to one or more Securities Depositories and to the Municipal Securities Rulemaking Board. Each notice of redemption shall state the date of the notice, the redemption date, the place or places of redemption, whether less than all of the Bonds (or all Bonds of a single maturity) are to be redeemed, the CUSIP numbers and (in the event that not all Bonds within a maturity are called for redemption) Bond numbers of the Bonds to be redeemed and the maturity or maturities of the Bonds to be redeemed, and in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on the redemption date there will become due and payable on each of said Bonds the redemption price thereof, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered. Neither the failure to receive any notice nor any defect therein shall affect the sufficiency of the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date. Notice of redemption of Bonds shall be given by the Trustee, at the expense of the Authority, for and on behalf of the Authority.

The Authority has the right to rescind any notice of the redemption of Bonds under Section 4.01(a) by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default. The Authority and the Trustee have no liability to the Bond Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this Section.

SECTION 4.04. *Partial Redemption of Bonds.* Upon surrender of any Bonds redeemed in part only, the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bonds surrendered.

SECTION 4.05. *Effect of Redemption.* Notice of redemption having been duly given as aforesaid, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, including any applicable premium, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Bonds redeemed under the provisions of this Article shall be canceled by the Trustee upon surrender thereof and destroyed in accordance with the retention policy of the Trustee then in effect.

ARTICLE V

AUTHORITY REVENUES; FUNDS AND ACCOUNTS; PAYMENT OF PRINCIPAL AND INTEREST

SECTION 5.01. *Security for the Bonds; Bond Fund.*

(a) Pledge of Authority Revenues and Other Amounts. Subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, all of the Authority Revenues and all amounts (including proceeds of the sale of the Bonds) held in any fund or account established under this Indenture are hereby pledged to secure the payment of the principal of and interest and premium (if any) on the Bonds in accordance with their terms and the provisions of this Indenture. Said pledge constitutes a lien on and security interest in the Authority Revenues and such amounts and shall attach, be perfected and be valid and binding from and after the Closing Date, without the need for any physical delivery thereof or further act.

(b) Assignment to Trustee. The Authority hereby irrevocably transfers, assigns and sets over to the Trustee, without recourse to the Authority, all of its rights in the Installment Purchase Agreement (excepting only the Authority's rights under Sections 4.8, 5.2 and 6.4 thereof), including but not limited to all of the Authority's rights to receive and collect all of the Installment Payments. The Trustee is entitled to collect and receive all of the Installment Payments, and any Installment Payments collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee is also entitled to and shall, subject to the provisions of Article VIII, take all steps, actions and proceedings which the Trustee determines to be reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the City under the Installment Purchase Agreement.

(c) Deposit of Authority Revenues in Bond Fund. All Authority Revenues shall be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the "Bond Fund" which the Trustee shall establish, maintain and hold in trust; except that all moneys received by the Trustee and required hereunder or under the Installment Purchase Agreement to be deposited in the Redemption Fund shall be promptly deposited in such funds. All Authority Revenues deposited with the Trustee shall be held, disbursed, allocated and applied by the Trustee only as provided in this Indenture. Any surplus remaining in the Bond Fund, after payment in full of (i) the principal of and interest on the Bonds or provision therefore under Article X, and (ii) any applicable fees and expenses to the Trustee, shall be withdrawn by the Trustee and remitted to the City.

SECTION 5.02. *Allocation of Authority Revenues.* On or before each Interest Payment Date, the Trustee shall transfer from the Bond Fund and deposit into the following respective accounts (each of which the Trustee shall establish and maintain within the Bond Fund), the following amounts in the following order of priority:

(a) Deposit to Interest Account. The Trustee shall deposit in the Interest Account an amount required to cause the aggregate

amount on deposit in the Interest Account to be at least equal to the amount of interest becoming due and payable on such Interest Payment Date on all Bonds then Outstanding.

- (b) Deposit to Principal Account. The Trustee shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Bonds coming due and payable on such Interest Payment Date, including the principal amount of Term Bonds which are subject to mandatory sinking fund redemption on such Interest Payment Date under Section 4.01(c).

SECTION 5.03. *Interest Account.* All amounts in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it comes due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity).

SECTION 5.04. *Principal Account.* All amounts in the Principal Account shall be used and withdrawn by the Trustee solely to pay the principal amount of the Bonds at their respective maturity dates, and the principal amount of Term Bonds which are subject to mandatory sinking fund redemption on such Interest Payment Date under Section 4.01(c).

SECTION 5.05. *Reserved.*

SECTION 5.06. *Application of Redemption Fund.* Upon the determination by the Authority to redeem any Bonds under Section 4.01(a), the Trustee shall establish and maintain the Redemption Fund, into which the Trustee shall deposit a portion of the Authority Revenues received, in accordance with a Written Request of the Authority, amounts in which shall be used and withdrawn by the Trustee solely for the purpose of paying the principal and premium (if any) of the Bonds to be redeemed under Section 4.01(a). At any time prior to the selection of Bonds for redemption, the Trustee may apply such amounts to the purchase of Bonds at public or private sale, when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as shall be directed under a Written Request of the Authority, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Bonds. The Trustee is entitled to conclusively rely on any Written Request of the Authority received under this Section 5.06, and is fully protected in relying thereon.

SECTION 5.07. *Investments.* Except as otherwise set forth in this Indenture, moneys in any of the funds or accounts established with the Trustee under this Indenture shall be invested by the Trustee solely in Permitted Investments. Such investments shall be directed by the Authority under a Written Request of the Authority filed with the Trustee at least two Business Days in advance of the making of such investments. In the absence of any such directions from the Authority, the Trustee shall invest any such moneys in Permitted Investments designated in paragraph (c) of the definition, provided, however, that any such investment shall be made by the Trustee only if, prior to the date on which such investment is to be made, the Trustee shall have received directions from the Authority specifying a specific money market fund and, if no such directions from the Authority is so received, the Trustee shall hold such moneys uninvested. The Trustee shall notify the Authority in writing within five business days if it

is holding any moneys uninvested. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. To the extent Permitted Investments are registrable, such Permitted Investments must be registered in the name of the Trustee.

All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be retained in such fund or account. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee or any of its affiliates may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made under this Section 5.07.

The Trustee may make any investments hereunder through its own bond or investment department or trust investment department, or those of its parent or any affiliate. The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee hereunder. The Trustee is hereby authorized, in making or disposing of any investment permitted by this Section, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Trustee or for any third person or is dealing as a principal for its own account.

The Trustee shall furnish the Authority periodic cash transaction statements which include detail for all investment transactions effected by the Trustee or brokers selected by the Authority. Upon the Authority's election, such statements will be delivered via the Trustee's Online Trust and Custody service and upon electing such service, paper statements will be provided only upon request. The Authority waives the right to receive brokerage confirmations of security transactions effected by the Trustee as they occur, to the extent permitted by law. The Authority further understands that trade confirmations for securities transactions effected by the Trustee will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

SECTION 5.08. *Valuation and Disposition of Investments.*

(a) Except as otherwise provided in subsection (b) of this Section, the Authority covenants that all investments of amounts deposited in any fund or account created by or under this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of Section 148 of the Tax Code) shall be acquired, disposed of and valued at the Fair Market Value thereof as such term is defined in subsection (d) below. The Trustee shall have no duty in connection with the determination of Fair Market Value other than to follow the investment directions of the Authority in any Written Request of the Authority.

(b) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code; provided that the Authority shall inform the Trustee which funds are subject to a yield restriction.

(c) Except as provided in the preceding subsection (b), for the purpose of determining the amount in any fund or account established hereunder, the value of Permitted Investments credited to such fund shall be valued by the Trustee at least annually on or before September 15. The Trustee may sell or present for redemption,

any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

(d) For purposes of this Section 5.09, the term "Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, or (iii) the investment is a United States Treasury Security -- State and Local Government Series which is acquired in accordance with applicable regulations of the United States Bureau of Public Debt.

(e) To the extent of any valuations made by the Trustee hereunder, the Trustee may utilize and rely upon computerized securities pricing services that may be available to it, including those available through its regular accounting system.

ARTICLE VI

COVENANTS OF THE AUTHORITY

SECTION 6.01. *Punctual Payment.* The Authority shall punctually pay or cause to be paid the principal of and interest and premium (if any) on all the Bonds in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of the Authority Revenues and other amounts pledged for such payment as provided in this Indenture.

SECTION 6.02. *Extension of Payment of Bonds.* The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which have not been so extended. Nothing in this Section 6.02 limits the right of the Authority to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance does not constitute an extension of maturity of the Bonds.

SECTION 6.03. *Against Encumbrances.* The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Authority

Revenues and other assets pledged or assigned under this Indenture while any of the Bonds are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, and reserves the right to issue other obligations for such purposes.

SECTION 6.04. *Power to Issue Bonds and Make Pledge and Assignment.* The Authority is duly authorized under law to issue the Bonds and to enter into this Indenture and to pledge and assign the Authority Revenues and other amounts purported to be pledged and assigned, respectively, under this Indenture in the manner and to the extent provided in this Indenture. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee shall at all times, subject to the provisions of Article VIII and to the extent permitted by law, defend, preserve and protect said pledge and assignment of Authority Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

SECTION 6.05. *Accounting Records.* The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate trust industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds and all funds and accounts established under this Indenture. The Trustee shall make such books of record and account available for inspection by the Authority and the City, during business hours, upon reasonable notice, and under reasonable circumstances.

SECTION 6.06. *Limitation on Additional Obligations.* The Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Authority Revenues.

SECTION 6.07. *Tax Covenants.*

(a) Private Business Use Limitation. The Authority shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(b) Federal Guarantee Prohibition. The Authority shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

(c) No Arbitrage. The Authority shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Tax Code.

(d) Maintenance of Tax Exemption. The Authority shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the

Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

(e) Rebate of Excess Investment Earnings to United States. The Authority shall calculate or cause to be calculated all amounts of Excess Investment Earnings which are required to be rebated to the United States of America under Section 148(f) of the Tax Code, at the times and in the manner required under the Tax Code. The Authority shall pay when due an amount equal to Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code, such payments to be made from any amounts provided by the City for that purpose under Section 4.8(e) of the Installment Purchase Agreement. The Authority shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subsection (e).

SECTION 6.09. *Waiver of Laws.* The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

SECTION 6.10. *Further Assurances.* The Authority will make, execute and deliver any and all such further indentures, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Indenture.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

SECTION 7.01. *Events of Default.* The following events constitute Events of Default hereunder:

- (a) Failure to pay any installment of the principal of any Bonds when due, whether at maturity as therein expressed, by proceedings for redemption, by acceleration, or otherwise.
- (b) Failure to pay any installment of interest on the Bonds when due.
- (c) Failure by the Authority to observe and perform any of the other covenants, agreements or conditions on its part contained in this Indenture or in the Bonds, if such failure has continued for a period of 30 days after written notice thereof, specifying such failure and requiring the same to be remedied, has been given to the Authority by the Trustee; *provided, however*, if in the reasonable opinion of the Authority the failure stated in the notice can be corrected, but not within such 30-day period, such failure shall not constitute an Event of Default if the Authority institutes corrective action within

such 30-day period and thereafter diligently and in good faith cures the failure in a reasonable period of time.

- (d) The commencement by the Authority of a voluntary case under Title 11 of the United States Code or any substitute or successor statute.
- (e) The occurrence and continuation of an event of default under and as defined in the Installment Purchase Agreement.

SECTION 7.02. *Remedies Upon Event of Default.* If any Event of Default occurs, then, and in each and every such case during the continuance of such Event of Default, the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding shall, in each case, upon receipt of indemnification satisfactory to Trustee against the costs, expenses and liabilities to be incurred in connection with such action, upon notice in writing to the Authority, declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding.

Any such declaration is subject to the condition that if, at any time after such declaration and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Authority deposits with the Trustee a sum sufficient to pay all the principal of and installments of interest on the Bonds payment of which is overdue, with interest on such overdue principal at the rate borne by the respective Bonds to the extent permitted by law, and the reasonable fees, charges and expenses (including those of its legal counsel, including the allocated costs of internal attorneys) of the Trustee, and any and all other Events of Default known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate has been made therefor, then, and in every such case, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the Authority, the City and the Trustee, may, on behalf of the Owners of all of the Bonds, rescind and annul such declaration and its consequences and waive such Event of Default; but no such rescission and annulment shall extend to or shall affect any subsequent Event of Default, or shall impair or exhaust any right or power consequent thereon.

SECTION 7.03. *Application of Authority Revenues and Other Funds After Default.* If an Event of Default occurs and is continuing, all Authority Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of this Indenture shall be applied by the Trustee in the following order of priority:

- (a) To the payment of reasonable fees, charges and expenses of the Trustee (including reasonable fees and disbursements of its legal counsel including outside counsel and the allocated costs of internal attorneys) incurred in and about the performance of its powers and duties under this Indenture;
- (b) To the payment of the principal of and interest then due on the Bonds (upon presentation of the Bonds to be paid, and stamping or otherwise noting thereon of the payment if only partially paid, or

surrender thereof if fully paid) in accordance with the provisions of this Indenture, as follows:

First: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference;

Second: To the payment to the persons entitled thereto of the unpaid principal of any Bonds which shall have become due, whether at maturity or by acceleration or redemption, with interest on the overdue principal at the rate borne by the respective Bonds (to the extent permitted by law), and, if the amount available shall not be sufficient to pay in full all the Bonds, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference; and

SECTION 7.04. *Trustee to Represent Bond Owners.* The Trustee is hereby irrevocably appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Owners of the Bonds for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, this Indenture and applicable provisions of any law. All rights of action under this Indenture or the Bonds or otherwise may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Owners of such Bonds, subject to the provisions of this Indenture.

SECTION 7.05. *Limitation on Bond Owners' Right to Sue.* Notwithstanding any other provision hereof, no Owner of any Bonds has the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Indenture, the Installment Purchase Agreement or any other applicable law with respect to such Bonds, unless (a) such Owner has given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of the Bonds then Outstanding have requested the Trustee in writing to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (c) such Owner or Owners have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee has failed to comply with such request for a period of 60 days after such written request has been received by, and said tender of indemnity has been made to, the Trustee; and (e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder or under law; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Owners of Bonds, or to enforce any right under the Bonds, this Indenture, the Installment Purchase Agreement or other applicable law with respect to the Bonds, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Owners of the Outstanding Bonds, subject to the provisions of this Indenture.

SECTION 7.06. *Absolute Obligation of Authority.* Nothing in Section 7.06 or in any other provision of this Indenture or in the Bonds contained affects or impairs the obligation of the Authority, which is absolute and unconditional, to pay the principal of and interest and premium (if any) on the Bonds to the respective Owners of the Bonds at their respective dates of maturity, or upon acceleration or call for redemption, as herein provided, but only out of the Authority Revenues and other assets herein pledged therefor, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

SECTION 7.07. *Termination of Proceedings.* In case any proceedings taken by the Trustee or by any one or more Bond Owners on account of any Event of Default have been discontinued or abandoned for any reason or have been determined adversely to the Trustee or the Bond Owners, then in every such case the Authority, the Trustee and the Bond Owners, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the Authority, the Trustee and the Bond Owners shall continue as though no such proceedings had been taken.

SECTION 7.08. *Remedies Not Exclusive.* No remedy herein conferred upon or reserved to the Trustee or the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

SECTION 7.09. *No Waiver of Default.* No delay or omission of the Trustee or any Owner of the Bonds to exercise any right or power arising upon the occurrence of any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or to the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient by the Trustee or the Bond Owners.

SECTION 7.10. *Notice to Bond Owners of Default.* Immediately upon becoming aware of the occurrence of an Event of Default, but in no event later than five Business Days following becoming aware of such occurrence, the Trustee shall promptly give written notice thereof by first class mail, postage prepaid, to the Owner of each Outstanding Bond, unless such Event of Default has been cured before the giving of such notice; *provided, however* that except in the case of an Event of Default described in Sections 7.01(a) or 7.01(b), the Trustee may elect not to give such notice to the Bond

Owners if and so long as the Trustee in good faith determines that it is in the best interests of the Bond Owners not to give such notice.

ARTICLE VIII

THE TRUSTEE

SECTION 8.01. *Appointment of Trustee.* Union Bank, N.A., is hereby appointed Trustee by the Authority for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Indenture. The Authority will maintain a Trustee which is qualified under the provisions of the foregoing provisions of this Article VIII so long as any Bonds are Outstanding.

SECTION 8.02. *Acceptance of Trusts; Removal and Resignation of Trustee.* The Trustee hereby accepts the express trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are expressly and specifically set forth in this Indenture and no implied duties or covenants shall be read into this Indenture against the Trustee. In case an Event of Default has occurred (which has not been cured) the Trustee shall exercise such of the rights and powers vested in it by the Trust Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Authority may remove the Trustee at any time, unless an Event of Default has occurred and is then continuing, and shall remove the Trustee (a) if at any time requested to do so by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or (b) if at any time the Trustee ceases to be eligible in accordance with Section 8.02, or becomes incapable of acting, or is adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property is appointed, or any public officer takes control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation. Any such removal shall be made upon at least 30 days' prior written notice to the Trustee.

(c) The Trustee may at any time resign by giving written notice of such resignation to the Authority and the City, and by giving the Bond Owners notice of such resignation by mail at the addresses shown on the Registration Books.

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. In the event of the removal or resignation of the Trustee under subsections (b) or (d),

respectively, the Authority shall promptly appoint a successor Trustee.

If no successor Trustee has been appointed and accepted appointment within 45 days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture, must signify its acceptance of such appointment by executing and delivering to the Authority and to its predecessor Trustee a written acceptance thereof, and after payment by the Authority of all unpaid fees and expenses of the predecessor Trustee, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein. At the Written Request of the Authority or the request of the successor Trustee, such predecessor Trustee shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Authority shall promptly mail or cause the successor trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating agency which is then rating the Bonds and to the Bond Owners at the addresses shown on the Registration Books. If the Authority fails to mail such notice within 15 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Authority.

- (e) Any Trustee appointed under this Indenture shall be a corporation or association organized and doing business under the laws of any state or the United States of America or the District of Columbia, shall be authorized under such laws to exercise corporate trust powers, shall have (or, in the case of a corporation or association that is a member of a bank holding company system, the related bank holding company has) a combined capital and surplus of at least \$50,000,000, and shall be subject to supervision or examination by a federal or state agency, so long as any Bonds are Outstanding. If such corporation or association publishes a report of condition at least annually under law or to the requirements of any supervising or examining agency above referred to, then for the purpose of this subsection (e), the combined capital and surplus of such corporation or association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If the Trustee at any time ceases to be eligible in

accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section.

- (f) Notwithstanding any other provision of this Indenture, the Trustee may be removed at any time for any breach of the trust set forth herein.

SECTION 8.03. *Merger or Consolidation.* Any national banking association, bank, federal savings association, or trust company into which the Trustee may be merged or converted or with which it may be consolidated or any national banking association, bank, federal savings association, or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any national banking association, bank, federal savings association, or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such national banking association, bank, federal savings association, or trust company shall be eligible under subsection (e) of Section 8.02 shall be the successor to such Trustee, without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

SECTION 8.04. *Liability of Trustee.*

(a) The recitals of facts herein and in the Bonds contained shall be taken as statements of the Authority, and the Trustee shall not assume responsibility for the correctness of the same, or make any representations as to the validity or sufficiency of this Indenture, the Bonds or the Installment Purchase Agreement, nor shall the Trustee incur any responsibility in respect thereof, other than as expressly stated herein in connection with the respective duties or obligations of Trustee herein or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence. The Trustee may become the Owner of Bonds with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bond Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee is not liable for any error of judgment made by a responsible officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

(c) The Trustee is not liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture or assigned to it hereunder.

(d) The Trustee is not liable for any action taken by it and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(e) The Trustee shall not be deemed to have knowledge of any Event of Default hereunder, or any other event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default hereunder unless and until it shall have actual knowledge thereof, or a corporate trust officer shall have received written notice thereof at its Office from the City, the Authority or the Owners of at least 25% in aggregate principal amount of the Outstanding Bonds. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by the Authority or the City of any of the terms, conditions, covenants or agreements herein, under the Installment Purchase Agreement or the Bonds or of any of the documents executed in connection with the Bonds, or as to the existence of a default or an Event of Default or an event which would, with the giving of notice, the passage of time, or both, constitute an Event of Default. The Trustee is not responsible for the validity, effectiveness or priority of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee shall not be required to ascertain or inquire as to the performance or observance by the City or the Authority of the terms, conditions, covenants or agreements set forth in the Installment Purchase Agreement, other than the covenants of the City to make Installment Payments to the Trustee when due and to file with the Trustee when due, such reports and certifications as the City is required to file with the Trustee thereunder.

(f) No provision of this Indenture requires the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, receivers or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, receiver or attorney appointed with due care by it hereunder.

(h) The Trustee has no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of the Bond Owners under this Indenture, unless such Owners have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities (including but not limited to fees and expenses of its attorneys) which might be incurred by it in compliance with such request or direction. No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(i) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of Section 8.02(a), this Section 8.04 and Section 8.05, and shall be applicable to the assignment of any rights to the Trustee hereunder.

(j) The Trustee is not accountable to anyone for the subsequent use or application of any moneys which are released or withdrawn in accordance with the provisions hereof.

(k) The Trustee makes no representation or warranty, expressed or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose for the use contemplated by the Authority or the City of the Project. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection

with or arising from the Installment Purchase Agreement or this Indenture for the existence, furnishing or use of the Project.

(l) The Trustee has no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(m) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail (provided, that for purposes of this Agreement, an e-mail does not constitute a notice, request or other communication hereunder but rather the portable document format or similar attachment attached to such e-mail shall constitute a notice, request or other communication hereunder), facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Authority or the City elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Authority and the City agree to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(n) The Trustee shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of enforced delay ("unavoidable delay") in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, sources of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the Project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event and/or occurrences beyond the control of the Trustee.

SECTION 8.05. *Right to Rely on Documents.* The Trustee shall be protected and shall incur no liability in acting or refraining from acting in reliance upon any notice, resolution, request, consent, order, certificate, report, opinion, bonds or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties. The Trustee is under no duty to make any investigation or inquiry as to any statements contained or matter referred to in any paper or document but may accept and conclusively rely upon the same as conclusive evidence of the truth and accuracy of any such statement or matter and shall be fully protected in relying thereon. The Trustee may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion of such counsel shall be full

and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Trustee may treat the Owners of the Bonds appearing in the Registration Books as the absolute owners of the Bonds for all purposes and the Trustee shall not be affected by any notice to the contrary.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate, Written Request or Written Requisition of the Authority or the City, and such Written Certificate, Written Request or Written Requisition shall be full warrant to the Trustee for any action taken or suffered under the provisions of this Indenture in reliance upon such Written Certificate, Written Request or Written Requisition, and the Trustee shall be fully protected in relying thereon, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

SECTION 8.06. *Preservation and Inspection of Documents.* All documents received by the Trustee under the provisions of this Indenture shall be retained in its respective possession and in accordance with its retention policy then in effect and shall, upon reasonable notice to Trustee, be subject to the inspection of the Authority, the City and any Bond Owner, and their agents and representatives duly authorized in writing, during business hours and under reasonable conditions as agreed to by the Trustee.

SECTION 8.07. *Compensation and Indemnification.* The Authority shall pay to the Trustee from time to time, on demand, the compensation for all services rendered under this Indenture and also all reasonable expenses, advances (including any interest on advances), charges, legal (including outside counsel and the allocated costs of internal attorneys) and consulting fees and other disbursements, incurred in and about the performance of its powers and duties under this Indenture.

The Authority shall indemnify the Trustee, its officers, directors, employees and agents against any cost, loss, liability or expense whatsoever (including but not limited to fees and expenses of its attorneys) incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust and this Indenture, including costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder or under the Installment Purchase Agreement. As security for the performance of the obligations of the Authority under this Section 8.07, the Trustee shall have a lien prior to the lien of the Bonds upon all property and funds held or collected by the Trustee as such. The rights of the Trustee and the obligations of the Authority under this Section 8.07 shall survive the resignation or removal of the Trustee or the discharge of the Bonds and this Indenture and the Installment Purchase Agreement.

ARTICLE IX

MODIFICATION OR AMENDMENT HEREOF

SECTION 9.01. *Amendments Permitted.*

(a) Amendments With Owner Consent. This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time by Supplemental Indenture, which the Authority and the Trustee may enter into when the written consents of the Owners of a majority in aggregate principal amount of all Bonds then Outstanding are filed with the Trustee. No such modification or amendment may (i) extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Owner of each Bond so affected, or (ii) reduce the aforesaid percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Authority Revenues and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture except as permitted herein, or deprive the Owners of the Bonds of the lien created by this Indenture on such Authority Revenues and other assets (except as expressly provided in this Indenture), without the consent of the Owners of all of the Bonds then Outstanding. It is not necessary for the consent of the Bond Owners to approve the particular form of any Supplemental Indenture, but it is sufficient if such consent approves the substance thereof.

(b) Amendments Without Owner Consent. This Indenture and the rights and obligations of the Authority, of the Trustee and the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Authority and the Trustee may enter into without the consent of any Bond Owners, if the Trustee has been furnished an opinion of counsel that the provisions of such Supplemental Indenture shall not materially adversely affect the interests of the Owners of the Bonds, including, without limitation, for any one or more of the following purposes:

- (i) to add to the covenants and agreements of the Authority in this Indenture contained, other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Authority;
- (ii) to cure any ambiguity, inconsistency or omission, or to cure or correct any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the Authority deems necessary or desirable, provided that such modification or amendment does not materially adversely affect the interests of the Bond Owners, in the opinion of Bond Counsel filed with the Trustee;
- (iii) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect,

and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute; and

- (iv) to modify, amend or supplement this Indenture in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Tax Code.

(c) Limitation. The Trustee is not obligated to enter into any Supplemental Indenture authorized by subsections (a) or (b) of this Section 9.01 which materially adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

(d) Bond Counsel Opinion Requirement. Prior to the Trustee entering into any Supplemental Indenture hereunder, the Authority shall deliver to the Trustee an opinion of Bond Counsel stating, in substance, that such Supplemental Indenture has been adopted in compliance with the requirements of this Indenture and that the adoption of such Supplemental Indenture will not, in and of itself, adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxes.

(e) Notice of Amendments. The Authority shall deliver or cause to be delivered a draft of any Supplemental Indenture to each rating agency which then maintains a rating on the Bonds, at least 10 days prior to the effective date of such Supplemental Indenture under this Section 9.01.

SECTION 9.02. *Effect of Supplemental Indenture*. Upon the execution of any Supplemental Indenture under this Article IX, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority, the Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 9.03. *Endorsement of Bonds; Preparation of New Bonds*. Bonds delivered after the execution of any Supplemental Indenture under this Article may, and if the Authority so determines shall, bear a notation by endorsement or otherwise in form approved by the Authority as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand on the Owner of any Bonds Outstanding at the time of such execution and presentation of his Bonds for the purpose at the Office of the Trustee or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Bonds. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Authority, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Authority and authenticated by the Trustee, and upon demand on the Owners of any Bonds then Outstanding shall be exchanged at the Office of the Trustee, without cost to any Bond Owner, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amount of the same maturity.

SECTION 9.04. *Amendment of Particular Bonds*. The provisions of this Article IX do not prevent any Bond Owner from accepting any amendment as to the particular Bonds held by such Owner.

ARTICLE X

DEFEASANCE

SECTION 10.01. *Discharge of Indenture.* Any or all of the Outstanding Bonds may be paid by the Authority in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable hereunder by the Authority:

- (a) by paying or causing to be paid the principal of and interest and premium (if any) on such Bonds, as and when the same become due and payable;
- (b) by depositing with the Trustee, in trust, at or before maturity, money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem such Bonds; or
- (c) by delivering all of such Bonds to the Trustee for cancellation.

If the Authority also pays or causes to be paid all other sums payable hereunder by the Authority, then and in that case, at the election of the Authority (evidenced by a Written Certificate of the Authority, filed with the Trustee, signifying the intention of the Authority to discharge all such indebtedness and this Indenture), and notwithstanding that any of such Bonds shall not have been surrendered for payment, this Indenture and the pledge of Authority Revenues and other assets made under this Indenture with respect to such Bonds and all covenants, agreements and other obligations of the Authority under this Indenture with respect to such Bonds shall cease, terminate, become void and be completely discharged and satisfied, subject to Section 10.02. In such event, upon the Written Request of the Authority, the Trustee shall execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the Authority all moneys or securities or other property held by it under this Indenture which are not required for the payment or redemption of any of such Bonds not theretofore surrendered for such payment or redemption. The Trustee is entitled to conclusively rely on any such Written Certificate or Written Request and, in each case, is fully protected in relying thereon.

SECTION 10.02. *Discharge of Liability on Bonds.* Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem any Outstanding Bonds (whether upon or prior to the maturity or the redemption date of such Bonds), provided that, if such Bonds are to be redeemed prior to maturity, notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the Authority in respect of such Bonds shall cease, terminate and be completely discharged, and the Owners thereof shall thereafter be entitled only to payment out of such money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.04.

Notwithstanding anything to the contrary in this Article X, in the event of defeasance of all Outstanding Bonds, such defeasance will not operate to discharge any of the following:

- (a) the obligation of the Trustee to transfer and exchange Bonds hereunder,
- (b) the obligation of the Authority to pay or cause to be paid to the Owners of such Bonds, from the amounts so deposited with the Trustee, all sums due thereon, and
- (c) the obligations of the Authority to compensate and indemnify the Trustee under Section 8.07.

The Authority may at any time surrender to the Trustee, for cancellation by Trustee, any Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

SECTION 10.03. *Deposit of Money or Securities with Trustee.* Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established under this Indenture and shall be:

- (a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount of such Bonds, premium, if any, and all unpaid interest thereon to the redemption date; or
- (b) non-callable Federal Securities, the principal of and interest on which when due will, in the written opinion of an Independent Accountant filed with the City, the Authority and the Trustee, provide money sufficient to pay the principal of and interest and premium (if any) on the Bonds to be paid or redeemed, as such principal, interest and premium become due, provided that in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee has been made for the giving of such notice;

provided, in each case, that (i) the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Written Request of the Authority) to apply such money to the payment of such principal, interest and premium (if any) with respect to such Bonds, and (ii) the Authority shall have delivered to the Trustee an opinion of Bond Counsel to the effect that such Bonds have been discharged in accordance with this Indenture (which opinion may rely upon and assume the accuracy of the Independent Accountant's

opinion referred to above). The Trustee shall be entitled to conclusively rely on such Written Request or opinion and shall be fully protected, in each case, in relying thereon.

SECTION 10.04. *Unclaimed Funds.* Notwithstanding any provisions of this Indenture, any moneys held by the Trustee in trust for the payment of the principal of, or interest on, any Bonds and remaining unclaimed for two years after the principal of all of the Bonds has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in this Indenture), if such moneys were so held at such date, or two years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall be repaid to the Authority free from the trusts created by this Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease; *provided, however,* that before the repayment of such moneys to the Authority as aforesaid, the Trustee shall (at the cost of the Authority) first mail to the Owners of Bonds which have not yet been paid, at the addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Authority of the moneys held for the payment thereof.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. *Liability of Authority Limited to Authority Revenues .* Notwithstanding anything in this Indenture or in the Bonds contained, the Authority is not required to advance any moneys derived from any source other than the Authority Revenues and other assets pledged under this Indenture for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. Nevertheless, the Authority may, but is not required to, advance for any of the purposes hereof any funds of the Authority which may be made available to it for such purposes.

SECTION 11.02. *Limitation of Rights to Parties and Bond Owners.* Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the Authority, the Trustee, the City and the Owners of the Bonds, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Trustee, the City and the Owners of the Bonds.

SECTION 11.03. *Funds and Accounts.* Any fund or account required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds and accounts shall at all times be maintained in accordance with corporate trust industry standards to the extent practicable, and with due regard for the requirements of Section 6.05 and for the protection of the security of the Bonds and the rights of every Owner thereof. The Trustee may establish such funds

and accounts as it deems necessary or appropriate to perform its obligations under this Indenture.

SECTION 11.04. *Waiver of Notice; Requirement of Mailed Notice.* Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. Whenever in this Indenture any notice is required to be given by mail, such requirement may be satisfied by the deposit of such notice in the United States mail, postage prepaid, by first class mail.

SECTION 11.05. *Destruction of Bonds.* Whenever in this Indenture provision is made for the cancellation by the Trustee, and the delivery to the Authority, of any Bonds, the Trustee shall destroy such Bonds as may be allowed by law and deliver a certificate of such destruction to the Authority.

SECTION 11.06. *Severability of Invalid Provisions.* If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

SECTION 11.07. *Notices.* All notices or communications to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, confirmed by telephone, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

*If to the Authority
or the City:*

City of Lodi
P.O. Box 3006
Lodi, California 95241-1910
Attention: Deputy City Manager/
Internal Services Director
Fax: 209-333-6807

If to the Trustee:

Union Bank, N.A.
350 California St., 11th Floor
San Francisco, California 94104
Attention: Corporate Trust Department

SECTION 11.08. *Evidence of Rights of Bond Owners.* Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Bond Owners in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any person of Bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and the Authority if made in the manner provided in this Section 11.08.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Bonds shall be proved by the Registration Books.

Any request, consent, or other instrument or writing of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in accordance therewith or reliance thereon.

SECTION 11.09. *Disqualified Bonds.* In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are known by the Trustee to be owned or held by or for the account of the Authority or the City, or by any other obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City or any other obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City or any other obligor on the Bonds. In case of a dispute as to such right, the Trustee shall be entitled to rely upon the advice of counsel in any decision by Trustee and shall be fully protected in relying thereon.

Upon request, the Authority and the City shall specify to the Trustee those Bonds disqualified under this Section 11.09 and the Trustee may conclusively rely upon such certificate.

SECTION 11.10. *Money Held for Particular Bonds.* The money held by the Trustee for the payment of the interest, premium, if any, or principal due on any date with respect to particular Bonds (or portions of Bonds in the case of Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto, *subject, however,* to the provisions of Section 10.04 but without any liability for interest thereon.

SECTION 11.11. *Waiver of Personal Liability.* No member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or interest or premium (if any) on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Indenture.

SECTION 11.12. *Successor Is Deemed Included in All References to Predecessor.* Whenever in this Indenture either the Authority, the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority, the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.13. *Execution in Several Counterparts.* This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 11.14. *Payment on Non-Business Day.* In the event any payment is required to be made hereunder on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and with the same effect as if made on such preceding non-Business Day.

SECTION 11.15. *Governing Law.* This Indenture shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the LODI PUBLIC FINANCING AUTHORITY has caused this Indenture to be signed in its name by its Executive Director and attested to by its Secretary, and UNION BANK, N.A. UNION BANK, N.A., in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

LODI PUBLIC FINANCING AUTHORITY

By _____
Executive Director

Attest:

Secretary

UNION BANK, N.A., as Trustee

By _____
Authorized Officer

APPENDIX A

DEFINITIONS

“Authority” means the Lodi Public Financing Authority, a joint exercise of powers authority duly organized and existing under the laws of the State of California.

“Authority Revenues” means: (a) all of the Installment Payments, and (b) all interest, profits or other income derived from the investment of amounts in any fund or account established under this Indenture.

“Authorized Representative” means: (a) with respect to the Authority, its Executive Director, Treasurer, Secretary or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Executive Director, General Counsel or Treasurer and filed with the City and the Trustee; and (b) with respect to the City, its City Manager, Deputy City Manager/Internal Services Director, City Attorney or any other person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its City Manager or Deputy City Manager/Internal Services Director and filed with the Authority and the Trustee.

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the City or the Authority of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Tax Code.

“Bond Fund” means the fund by that name established and held by the Trustee under Section 5.01.

“Bond Law” means the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code, as in effect on the Closing Date or as thereafter amended in accordance with its terms.

“Bond Year” means each twelve-month period extending from October 2 in one calendar year to October 1 of the succeeding calendar year, both dates inclusive; except that the first Bond Year commences on the Closing Date and extends to and including October 1, 2012.

“Bonds” means the \$_____ aggregate principal amount of Lodi Public Financing Authority 2012 Refunding Wastewater Revenue Bonds, Series A authorized by and at any time Outstanding under this Indenture.

“Business Day” means a day (other than a Saturday or a Sunday) on which banks are not required or authorized to remain closed in the City in which the Office of the Trustee is located.

“Closing Date” means the date of delivery of the Bonds to the Original Purchaser.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City or the Authority relating to the authorization, issuance, sale

and delivery of the Bonds, including but not limited to: printing expenses; rating agency fees; filing and recording fees; initial fees, expenses and charges of the Trustee and its counsel, including the Trustee's first annual administrative fee; fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals; fees and charges for preparation, execution and safekeeping of the Bonds; and any other cost, charge or fee in connection with the original issuance of the Bonds.

"Costs of Issuance Fund" means the fund by that name established and held by the Trustee under Section 3.03.

"Depository" means (a) initially, DTC, and (b) any other Securities Depositories acting as Depository under Section 2.04.

"Depository System Participant" means any participant in the Depository's book-entry system.

"City" means the City of Lodi, a municipal corporation organized and existing under the laws of the State of California.

"DTC" means The Depository Trust Company, New York, New York, and its successors and assigns.

"Escrow Agreement" means the Escrow Deposit and Trust Agreement, dated as of September 1, 2012, by and between the City and Union Bank, N.A., as escrow bank.

"Event of Default" means any of the events specified in Section 7.01.

"Federal Securities" means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), the payment of principal of and interest on which are unconditionally and fully guaranteed by the United States of America; and (b) any obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

"Fiscal Year" means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the City as its official fiscal year period.

"Indenture" means this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture under the provisions hereof.

"Interest Account" means the account by that name established and held by the Trustee in the Bond Fund under Section 5.02.

"Installment Purchase Agreement" means the Installment Purchase Agreement dated as of September 1, 2012, between the City and the Authority, together with any duly authorized and executed amendments thereto.

“Installment Payments” means all payments required to be paid by the City on any date under Section 4.4 of the Installment Purchase Agreement, including any amounts payable upon delinquent installments and including any prepayment thereof under Sections 7.2 of the Installment Purchase Agreement.

“Interest Payment Date” means each April 1 and October 1, commencing April 1, 2013, so long as any Bonds remain unpaid.

“Moody’s” means Moody’s Investors Service, its successors and assigns.

“Nominee” means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated under Section 2.04(a).

“Office” means the corporate trust office of the Trustee in San Francisco, California, or such other or additional offices as the Trustee may designate in writing to the Corporation from time to time as the corporate trust office for purposes of this Indenture; except that with respect to presentation of Bonds for payment or for registration of transfer and exchange such term means the office or agency of the Trustee at which, at any particular time, its corporation trust agency business is conducted.

“Original Purchaser” means JP Morgan and Stifel, Nicolaus & Company, Incorporated dba Stone & Youngberg, a Division of Stifel Nicolaus, as original purchasers of the Bonds upon their delivery by the Trustee on the Closing Date.

“Outstanding”, when used as of any particular time with reference to Bonds, means all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with Section 10.02, including Bonds (or portions thereof) described in Section 11.09; and (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee under this Indenture.

“Owner”, whenever used herein with respect to a Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

“Permitted Investments” means any of the following which at the time of investment are determined by the Authority to be legal investments under the laws of the State of California for the moneys proposed to be invested therein (provided that the Trustee shall be entitled to rely conclusively upon any such determination by the Authority):

- (a) Federal Securities.
- (b) Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any federal agencies whose obligations are backed by the full faith and credit of the United States of America.
- (c) Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and which are rated in the highest

short-term rating category by S&P (such funds may include funds for which the Trustee, its affiliates, parent or subsidiaries provide investment advisory or other management services).

- (d) Certificates of deposit (including those of the Trustee, its parent and its affiliates) secured at all times by collateral described in (a) or (b) above, which have a maturity not greater than one year from the date of investment and which are issued by commercial banks, savings and loan associations or mutual savings banks whose short-term obligations are rated A or better by S&P, which collateral must be held by a third party and provided that the Trustee must have a perfected first security interest in such collateral.
- (e) Certificates of deposit, savings accounts, deposit accounts or money market deposits (including those of the Trustee and its affiliates) which are fully insured by the Federal Deposit Insurance Corporation or secured at all times by collateral described in (a) or (b) above.
- (f) Investment agreements with a financial institution the long-term debt or claims paying ability of which, or in the case of a guaranteed corporation the long-term debt, or, in the case of a monoline financial guaranty insurance company, claims paying ability, of the guarantor or the institution is rated AA or better from S&P, by the terms of which the Trustee is permitted to withdraw the invested funds if the rating from S&P falls below AA.
- (g) The Local Agency Investment Fund which is administered by the California Treasurer for the investment of funds belonging to local agencies within the State of California, provided for investment of funds held by the Trustee, the Trustee is entitled to make investments and withdrawals in its own name as Trustee.

“Principal Account” means the account by that name established and held by the Trustee in the Bond Fund under Section 5.02.

“Record Date” means, with respect to any Interest Payment Date, the 15th calendar day of the month preceding such Interest Payment Date, whether or not such day is a Business Day.

“Redemption Fund” means the fund by that name established and held by the Trustee under Section 5.06.

“Registration Books” means the records maintained by the Trustee under Section 2.05 for the registration and transfer of ownership of the Bonds.

“Securities Depositories” means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Authority designates in written notice filed with the Trustee.

“S&P” means Standard & Poor’s, a division of the McGraw Hill Companies, of New York, New York, its successors and assigns.

“Supplemental Indenture” means any indenture hereafter duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending this Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

“Tax Code” means the Internal Revenue Code of 1986 in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under said Code.

“Term” means, when used with respect to the Installment Purchase Agreement, the time during which the Installment Purchase Agreement is in effect, as provided in Section 4.2 thereof.

“Term Bonds” means the Bonds maturing on October 1, _____.

“Trustee” means Union Bank, N.A., a national banking association organized and existing under the laws of the United States of America, or its successor or successors, as Trustee hereunder as provided in Article VIII.

“Written Certificate,” “Written Request” and “Written Requisition” of the Authority or the City mean, respectively, a written certificate, request or requisition signed in the name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

APPENDIX B
BOND FORM

NO. R- _____

***\$ _____ ***

UNITED STATES OF AMERICA
STATE OF CALIFORNIA

LODI PUBLIC FINANCING AUTHORITY
2012 REFUNDING WASTEWATER REVENUE BOND,
SERIES A

INTEREST RATE: _____% MATURITY DATE: October 1, _____
ORIGINAL ISSUE DATE: _____, 2012 CUSIP: 540257 _____

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: *** _____ ***

The LODI PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority"), for value received, hereby promises to pay to the Registered Owner specified above or registered assigns (the "Registered Owner"), on the Maturity Date specified above (subject to any right of prior redemption hereinafter provided for), the Principal Amount specified above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond unless (i) this Bond is authenticated on or before an Interest Payment Date and after the close of business on the 15th day of the month preceding such interest payment date, in which event it shall bear interest from such Interest Payment Date, or (ii) this Bond is authenticated on or before March 15 2013, in which event it shall bear interest from the Original Issue Date specified above; *provided, however*, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on this Bond, at the Interest Rate per annum specified above, payable semiannually on April 1 and October 1 in each year, commencing April 1, 2013 (the "Interest Payment Dates"), calculated on the basis of a 360-day year composed of twelve 30-day months.

Principal hereof and premium, if any, upon early redemption hereof are payable upon presentation and surrender hereof at the corporate trust office of Union Bank, N.A., as trustee (the "Trustee"), in San Francisco, California, or such other place as designated by the Trustee (the "Trust Office"). Interest hereon is payable by check of

the Trustee mailed on the applicable Interest Payment Date to the Registered Owner hereof at the Registered Owner's address as it appears on the registration books of the Trustee as of the close of business on the fifteenth day of the month preceding each Interest Payment Date (a "Record Date"), or, upon written request filed with the Trustee as of such Record Date by a registered owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to an account in the United States designated by such registered owner in such written request.

This Bond is not a debt of the City of Lodi (the "City"), the County of San Joaquin, the State of California, or any of its political subdivisions, and neither the City, said County, said State, nor any of its political subdivisions, is liable hereon nor in any event shall this Bond be payable out of any funds or properties of the Authority other than the Authority Revenues.

This Bond is one of a duly authorized issue of bonds of the Authority designated as the "Lodi Public Financing Authority 2012 Refunding Wastewater Revenue Bonds, Series A (the "Bonds"), in an aggregate principal amount of \$_____, all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption provisions) and all issued under the provisions of Article 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code (the "Bond Law"), and under an Indenture of Trust dated as of September 1, 2012, between the Authority and the Trustee (the "Indenture") and a resolution of the Authority adopted on _____, 2012, authorizing the issuance of the Bonds. Reference is hereby made to the Indenture (copies of which are on file at the office of the Authority) and all supplements thereto for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the security for the Bonds, and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Authority thereunder, to all of the provisions of which the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued by the Authority to refinance an installment payment obligation incurred by the City to finance improvements to the wastewater collection, treatment and disposal system of the City (the "Wastewater System"). The Bonds are special obligations of the Authority which are payable from and secured by a charge and lien on the Authority Revenues as defined in the Indenture, consisting principally of installment payments made by the City under an Installment Purchase Agreement dated as of September 1, 2012, between the Authority and the City (the "Installment Purchase Agreement"). As and to the extent set forth in the Indenture, all of the Authority Revenues are exclusively and irrevocably pledged in accordance with the terms of the Indenture to the payment of the principal of and interest and premium (if any) on the Bonds.

The rights and obligations of the Authority and the owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or premium (if any) thereon, or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the owner of each Bond so affected.

The Bonds maturing on or before October 1, 2022, are not subject to optional redemption prior to their respective stated maturities. The Bonds maturing on or after

October 1, 2023, are subject to redemption at the option of the Authority as a whole, or in part among maturities on such basis as determined by the Authority and within a maturity as set forth below, on any date on or after October 1, 2022, from any available source of funds, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

As provided in the Indenture, notice of redemption will be mailed by the Trustee by first class mail not less than 30 nor more than 60 days prior to the redemption date to the respective owners of any Bonds designated for redemption at their addresses appearing on the registration books of the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption or the cessation of accrual of interest thereon from and after the date fixed for redemption. The Authority has the right to rescind any optional redemption notice as set forth in the Indenture.

Whenever provision is made in the Indenture for the redemption of less than all of the Bonds of a single maturity, the Trustee shall select the Bonds of that maturity to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate \$5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer, a new Series A Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. This Bond may be exchanged at the Trust Office for of the same tenor, aggregate principal amount, interest rate and maturity, of other authorized denominations.

The Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority and the Trustee shall not be affected by any notice to the contrary.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC") to the Authority or the Trustee for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

B-3
SPECTIMEN

It is hereby certified by the Authority that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the Bond Law and the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond is not entitled to any benefit under the Indenture or valid or obligatory for any purpose until the certificate of authentication hereon endorsed has been manually signed by the Trustee.

IN WITNESS WHEREOF, the Lodi Public Financing Authority has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Chair and attested to by the facsimile signature of its Secretary, all as of the Original Issue Date specified above.

LODI PUBLIC FINANCING AUTHORITY

By: _____
Chair

Attest:

Secretary

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated:

UNION BANK, N.A., as Trustee

By: _____
Authorized Signatory

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto _____ whose address and social security or other tax identifying number is _____, the within-mentioned Bond and hereby _____ irrevocably _____ constitute(s) _____ and _____ appoint(s) _____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed: _____

Note: Signature guarantee shall be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

PRELIMINARY OFFICIAL STATEMENT DATED AUGUST __, 2012

NEW ISSUE - FULL BOOK-ENTRY

RATINGS: Fitch: “___”
Standard & Poor’s: “___”
See “Ratings”.

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, although for the purpose of computing the alternative minimum tax imposed on certain corporations, such interest is taken into account in determining certain income and earnings. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. See “TAX MATTERS.”

\$ _____ *
LODI PUBLIC FINANCING AUTHORITY
2012 REFUNDING WASTEWATER REVENUE BONDS, SERIES A

Dated: Date of Delivery

Due: October 1, as shown on inside cover

Authority for Issuance. The 2012 Refunding Wastewater Revenue Bonds, Series A (the “2012 Bonds”) are being issued by the City of Lodi Public Financing Authority (the “Authority”) under a resolution adopted by the Board of Directors of the Authority on August 1, 2012, and an Indenture of Trust dated as of September 1, 2012 (the “Indenture”) by and between the Authority and Union Bank, N.A., as trustee for the 2012 Bonds (the “Trustee”). See “THE 2012 BONDS - Authority for Issuance.”

Use of Proceeds. The proceeds of the 2012 Bonds will be used to (i) refinance \$_____ principal amount of City of Lodi (the “City”) Wastewater System Revenue Certificates of Participation, 2004 Series A (such amount refinanced constituting the “Refunded Certificates”) and a related installment payment obligation of the City; and (ii) pay the costs of issuing the 2012 Bonds. See “THE REFINANCING PLAN.”

Security for the 2012 Bonds. Under the Indenture, the 2012 Bonds will be payable solely from and secured by Authority Revenues and certain funds and accounts held under the Indenture. Authority Revenues consist primarily of installment payments (“2012 Installment Payments”) to be made by the City pursuant to an Installment Purchase Agreement dated as of September 1, 2012 (the “2012 Installment Purchase Agreement”). The obligation of the City to make the 2012 Installment Payments is a special obligation of the City that is secured by a pledge of and payable solely from System Net Revenues relating to the City’s wastewater collection and treatment system (the “System”). The general fund of the City is not liable for, and neither the faith and credit nor the taxing power of the City is pledged to, the payment of the 2012 Installment Payments.

The pledge of System Net Revenues to the 2012 Installment Payments is on a parity with the pledge of System Net Revenues to certain outstanding obligations, which will be outstanding in the principal amount of \$_____ following defeasance of the Refunded Certificates with proceeds of the 2012 Bonds (the “Existing Parity Obligations”). See “SECURITY AND SOURCES OF PAYMENT FOR THE 2012 BONDS - Outstanding Parity Obligations”. The City is also authorized under the 2012 Installment Purchase Agreement to incur other obligations payable from System Net Revenues on a parity with the 2012 Installment Payments and the Existing Parity Obligations. See “SECURITY AND SOURCES OF PAYMENT FOR THE 2012 BONDS” and “THE SYSTEM.”

Bond Terms; Book-Entry Only. The 2012 Bonds will bear interest at the rates shown on the inside cover page, payable semiannually on April 1 and October 1 of each year, commencing on April 1, 2013, and will be issued in fully-registered form without coupons in integral multiples of \$5,000. The 2012 Bonds will be issued in book-entry only form, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). Purchasers of the 2012 Bonds will not receive certificates representing their interests in the 2012 Bonds. Payments of the principal of, premium, if any, and interest on the 2012 Bonds will be made to DTC, which is obligated in turn to remit such principal, premium, if any, and interest to its DTC Participants for subsequent disbursement to the beneficial owners of the 2012 Bonds. See “THE 2012 BONDS - General Provisions.”

Redemption. The 2012 Bonds are subject to redemption prior to maturity. See “THE 2012 BONDS - Redemption.”

NEITHER THE 2012 BONDS, NOR THE OBLIGATION OF THE AUTHORITY TO PAY PRINCIPAL OF OR INTEREST ON THE 2012 BONDS, CONSTITUTES A DEBT OR A LIABILITY OF THE AUTHORITY, THE CITY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL LIMITATION ON INDEBTEDNESS, OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY. THE 2012 BONDS ARE SECURED SOLELY BY THE PLEDGE OF AUTHORITY REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE 2012 BONDS ARE NOT SECURED BY A PLEDGE OF THE TAXING POWER OF THE CITY. THE AUTHORITY HAS NO TAXING POWER.

THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR QUICK REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE OF 2012 BONDS. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION WITH RESPECT TO THE PURCHASE OF THE 2012 BONDS.

The 2012 Bonds are offered when, as and if issued and received by the Underwriters and subject to the approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will be passed upon for the City and the Authority by the City Attorney, and for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, Sacramento, California. It is anticipated that the 2012 Bonds will be delivered in book-entry form through the facilities of DTC on or about September __, 2012.

Stone & Youngberg, a Division of Stifel Nicolaus	J.P. Morgan
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The date of this Official Statement is: August __, 2012.

* Preliminary; subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. These securities may not be sold, nor may offers to buy them be accepted, prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of, these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful.

MATURITY SCHEDULE
(Base CUSIP†: _____)

Maturity Date (October 1)	Principal Amount	Interest Rate	Price or Yield	CUSIP†
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† Copyright 2012, American Bankers Association. CUSIP data provided herein is provided by Standard and Poor's CUSIP Service Bureau, a division of The McGraw Hill Companies, Inc. CUSIP data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Service. CUSIP numbers are provided for convenience of reference only. Neither the Authority, City nor the Underwriters take any responsibility for the accuracy of such numbers.

**LODI PUBLIC FINANCING AUTHORITY
CITY OF LODI**

AUTHORITY BOARD/CITY COUNCIL

JoAnne Mounce /Mayor/Chair
Alan Nakanishi/Mayor Pro Tem/Vice-Chair
Larry Hansen/Councilmember/ Member
Phil Katzakian/Councilmember/Member
Bob Johnson/Councilmember/Member

AUTHORITY/CITY OFFICIALS

Konradt Bartlam/City Manager/Executive Director
Jordan Ayers/Deputy City Manager/Treasurer
Randi Johl/City Clerk/Secretary
Steve Schwabauer, City Attorney/Authority Counsel

BOND COUNSEL

Jones Hall, A Professional Law Corporation
San Francisco, California

FINANCIAL ADVISOR

Lamont Financial Services Corporation
Los Angeles, California

TRUSTEE

Union Bank, N.A.
San Francisco, California

VERIFICATION AGENT

Causey Demgen & Moore Inc.

No dealer, broker, salesperson or other person has been authorized by the Authority, the City or the Underwriters to give any information or to make any representations in connection with the offer or sale of the 2012 Bonds other than those contained herein; and, if given or made, such other information or representations must not be relied upon as having been authorized by the Authority, the City or the Underwriters. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the 2012 Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

This Official Statement is not to be construed as a contract with the purchasers or owners of the 2012 Bonds. Statements contained in this Official Statement that involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representations of fact.

The information set forth herein has been obtained from the Authority and the City and from other sources that the Authority and the City believe to be reliable. The information and expression of opinion herein are subject to change without notice and neither delivery of the Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City or the Authority or any other parties described herein since the date hereof. All summaries of the Resolution or other documents are made subject to the provisions of such documents and do not purport to be complete statements of any or all of such provisions. Reference is hereby made to such documents on file with the City for further information in connection therewith.

The Underwriters have provided the following sentence for inclusion in this Official Statement: The Underwriters have reviewed the information in this Official Statement in accordance with, and as a part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

In connection with the offering of the 2012 Bonds, the Underwriters may overallocate or effect transactions that stabilize or maintain the market price of such Bonds at a level above that which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time. The Underwriters may offer and sell the 2012 Bonds to certain dealers and dealer banks and banks acting as agents at prices lower than the public offering prices stated on the cover page hereof and said public offering prices may be changed from time to time by the Underwriters.

The 2012 Bonds have not been registered under the Securities Act of 1933, as amended, in reliance upon an exemption contained in such act. The 2012 Bonds have not been registered or qualified under the securities laws of any state.

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements." Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "budget" or other similar words. Such forward-looking statements include but are not limited to certain statements contained in the information in "THE SYSTEM" in this Official Statement. The achievement of certain results or other expectations contained in such forward-looking statements involves known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Neither the Authority nor the City plans to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.

The City maintains a website. However, the information presented therein is not part of this Official Statement and should not be relied upon in making an investment decision with respect to the 2012 Bonds.

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OFFICIAL STATEMENT
\$ _____*
LODI PUBLIC FINANCING AUTHORITY
2012 REFUNDING WASTEWATER REVENUE BONDS, SERIES A

INTRODUCTION

This introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page and appendices, and the documents summarized or described in this Official Statement. A full review should be made of the entire Official Statement. The offering to potential investors is made only by means of the entire Official Statement.

Capitalized terms used but not defined in this Official Statement have the meanings set forth in the Indenture (as defined below). See “APPENDIX C - Summary of Principal Legal Documents.”

Authority for Issuance. The Lodi Public Financing Authority (the “Authority”) is issuing its 2012 Refunding Wastewater Revenue Bonds (the “2012 Bonds”) under the following legal authority:

- (i) Articles 10 and 11 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, commencing with Section 6584 (the “Bond Law”),
- (ii) a resolution adopted by the Board of Directors (the “Board”) of the Authority on August 1, 2012 (the “Authority Resolution”), and a resolution adopted by the City Council (the “City Council”) of the City of Lodi (the “City”) on August 1, 2012 (the “City Resolution”), and
- (iii) an Indenture of Trust (the “Indenture”), dated as of September 1, 2012, by and between the Authority and Union Bank, N.A., as trustee (the “Trustee”).

Form of Bonds; Book-Entry Only. The 2012 Bonds will be issued in fully registered form, registered in the name of The Depository Trust Company, New York, New York (“DTC”), or its nominee, which will act as securities depository for the 2012 Bonds. Purchasers of the 2012 Bonds will not receive certificates representing the 2012 Bonds that are purchased. See “THE 2012 BONDS - Book-Entry Only System” and “APPENDIX F - DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

Purpose of the 2012 Bonds. The 2012 Bonds are being issued to provide funds to (i) refinance \$ _____ principal amount of the City’s Wastewater System Revenue Certificates of Participation, 2004 Series A (such amount refinanced constituting the “Refunded Certificates”) and a related installment payment obligation of the City; and (ii) pay the costs of issuing the 2012 Bonds.

Security for the 2012 Bonds. Under the Indenture, the 2012 Bonds will be payable solely from and secured by Authority Revenues and certain funds and accounts held under the Indenture. Authority Revenues consist primarily of installment payments (“Installment Payments”) to be made by the City pursuant to an Installment Purchase Agreement dated as of September 1, 2012 (the “2012 Installment Purchase Agreement”). The obligation of the City to make the 2012 Installment Payments is a special obligation of the City that is secured by a pledge of and payable solely from

* Preliminary; subject to change.

System Net Revenues. The general fund of the City is not liable for, and neither the faith and credit nor the taxing power of the City is pledged to, the payment of the 2012 Installment Payments.

The obligation of the City to make the 2012 Installment Payments does not constitute a debt of the City or of the State of California or of any political subdivision thereof in contravention of any constitutional or statutory debt limitation or restriction.

Existing Parity Obligations. The City's pledge of System Net Revenues to the 2012 Installment Payments is on a parity with the City's pledge of System Net Revenues to certain outstanding obligations (the 2003 Installment Payments and the 2007 Installments Payments, as defined below), which are outstanding in the aggregate principal amount of \$33,290,000 as of August 1, 2012 (the "Existing Parity Obligations "). See "THE FINANCING PLAN" and "SECURITY AND SOURCES OF PAYMENT FOR THE 2012 BONDS - Outstanding Parity Obligations".

Additional Parity Obligations. The City may incur additional obligations payable from and secured by the System Net Revenues on parity with the 2012 Installment Payments and the Existing Parity Obligations. See "SECURITY AND SOURCES OF PAYMENT FOR THE 2012 BONDS - Additional Parity Debt".

Parity Debt. The Existing Parity Obligations, the 2012 Installment Payments and any future Parity Obligations are referred to as Parity Debt in this Official Statement.

Rate Covenant

The City covenants in the 2012 Installment Purchase Agreement that it will, to the maximum extent permitted by law, fix, prescribe and collect rates, fees and charges and manage the operation of the System for each Fiscal Year so as to yield System Net Revenues during such Fiscal Year equal to at least 110% of the Annual Debt Service on all Parity Debt in such Fiscal Year; provided, an adjustment will be made to the amount of System Net Revenues for amounts deposited into or withdrawn from the Rate Stabilization Fund; provided that, for purposes of such calculation, the amount of System Net Revenues before any credits for transfers from the Rate Stabilization Fund to the System Revenue Fund may not be less than 100% of Annual Debt Service for such Fiscal Year. See "SECURITY AND SOURCES OF PAYMENT FOR THE 2012 BONDS— Rate Covenant".

NEITHER THE 2012 BONDS NOR THE OBLIGATION OF THE AUTHORITY TO PAY PRINCIPAL OF OR INTEREST ON THE 2012 BONDS CONSTITUTES A DEBT OR A LIABILITY OF THE AUTHORITY, THE CITY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL LIMITATION ON INDEBTEDNESS, OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY. THE 2012 BONDS ARE SECURED SOLELY BY THE PLEDGE OF AUTHORITY REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE 2012 BONDS ARE NOT SECURED BY A PLEDGE OF THE TAXING POWER OF THE CITY. THE AUTHORITY HAS NO TAXING POWER.

Continuing Disclosure

The City has covenanted for the benefit of the Owners and beneficial owners of the 2012 Bonds to provide certain financial information and operating data relating to the City and the System

annually, and to provide notices of the occurrence of certain enumerated events. See “CONTINUING DISCLOSURE”.

Other Matters

The summaries of and references to documents, statutes, reports and other instruments referred to in this Official Statement do not purport to be complete, comprehensive or definitive, and each such summary and reference is qualified in its entirety by reference to each document, statute, report or instrument. The capitalization of any word not conventionally capitalized or otherwise defined in this Official Statement indicates that such word is defined in a particular agreement or other document and, as used in this Official Statement, has the meaning given it in such agreement or document. See “APPENDIX C - SUMMARY OF PRINCIPAL LEGAL DOCUMENTS”.

THE REFINANCING PLAN

The 2012 Bonds are being issued to provide funds to (i) refinance the Refunded Certificates and a related installment payment obligation of the City, and (ii) pay the costs of issuing the 2012 Bonds.

The Refunded Certificates were executed and delivered for the purpose of (i) financing certain additions, betterments, extensions, replacements and improvements to the System (ii) funding a debt service reserve account for the Refunded Certificates and (iii) paying the costs of execution and delivery of the Refunded Certificates. The Refunded Certificates consist of the following:

**Wastewater System Revenue Certificates of Participation, 2004 Series A
Base CUSIP[†] Number: 540279**

<i>Maturity Date (October 1)</i>	<i>Principal Amount</i>	<i>CUSIP Number[†]</i>	<i>Maturity or Prepayment Date</i>
2012	\$1,145,000	AJ5	10/1/2012
2013	1,205,000	AK2	10/1/2013
2014	1,265,000	AL0	10/1/2014
2015	1,325,000	AM8	10/1/2014
2016	1,390,000	AN6	10/1/2014
2017	1,455,000	AP1	10/1/2014
2018	1,535,000	AQ9	10/1/2014
2019	1,620,000	AR7	10/1/2014
2020	1,695,000	AS5	10/1/2014
2021	1,780,000	AT3	10/1/2014
2022	1,875,000	AU0	10/1/2014
2023	1,970,000	AV8	10/1/2014
2024	2,070,000	AW6	10/1/2014

[†] CUSIP® is a registered trademark of the American Bankers Association. Copyright© 2012 Standard & Poor’s, a Division of the McGraw Hill Companies, Inc. CUSIP® data herein is provided by Standard & Poor’s CUSIP Service Bureau. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Service Bureau. CUSIP® numbers are provided for convenience of reference only. Neither the City, the Authority, nor the Underwriters take any responsibility for the accuracy of such numbers.

Upon the execution and delivery of the Bonds, a portion of the proceeds and available moneys from the Refunded Certificates shall be applied to the purchase of certain direct obligations of the United States of America, which, along with uninvested cash and earnings on the obligations, will satisfy the City's payment obligations with respect to the Refunded Certificates until their payment or prepayment dates. These direct obligations and uninvested cash shall be deposited in an escrow account held by Union Bank, N.A., as escrow agent for the Refunded Certificates (the "Escrow Agent") under an escrow agreement (the "Escrow Agreement") that will require the Escrow Agent to apply the principal of and interest on such obligations, together with other moneys held by the Escrow Agent, to the payment or prepayment of the Refunded Certificates on their respective payment or prepayment dates set forth in the table below.

The obligations of the United States of America so deposited with the Escrow Agent into the escrow account for the Refunded Certificates will bear interest at such rates and will be scheduled to mature at such times and in such amounts that, when paid in accordance with their terms, together with any other funds held by the Escrow Agent under the Escrow Agreement, will be sufficient to make full and timely payment of the principal of and interest evidenced and represented by the Refunded Certificates prior to their respective scheduled payment or prepayment dates and to pay the prepayment price of the outstanding Refunded Certificates on such prepayment date. For information on mathematical verification for the sufficiency of scheduled payments with respect to such obligations of the United States of America and other funds held by the Escrow Agent to make such payments with respect to the Refunded Certificates, see "VERIFICATION OF MATHEMATICAL COMPUTATIONS." Upon such irrevocable deposit with the Escrow Agent and the receipt by the Escrow Agent of irrevocable escrow instructions from the City under the Escrow Agreement, the Refunded Certificates will be defeased and the owners of the Refunded Certificates will no longer be entitled to the benefits of the legal documents under which they were executed and delivered.

The amounts held and invested by the Escrow Agent in the Escrow Fund are pledged solely to the payment of the Refunded Certificates. Neither the funds deposited in the Escrow Fund nor the interest on the invested funds will be available for the payment of debt service on the 2012 Bonds.

Estimated Sources and Uses of Funds

The estimated sources and uses of funds relating to the 2012 Bonds are as follows:

Sources:	
<hr/>	
Principal Amount	
Plus Original Issue Premium	
Less Underwriters' Discount	
Plus Available Money Relating to the Refunded Certificates	
Total Sources	<hr/> \$
Uses:	
<hr/>	
Escrow Fund	\$
Costs of Issuance ⁽¹⁾	\$
Total Uses	<hr/> \$
<hr/>	

⁽¹⁾ Represents funds to be used to pay Costs of Issuance, which include legal fees, printing costs, rating agency fees and other miscellaneous expenses.

THE 2012 BONDS

Authority for Issuance

The 2012 Bonds are being issued under the Bond Law, the Authority Resolution (which was adopted by the Board of Directors of the Authority on August 1, 2012), the City Resolution (which was adopted by the City Council on August 1, 2012), and the Indenture.

General Provisions

Bond Terms. The 2012 Bonds will be dated their date of delivery and issued in fully registered form without coupons in integral multiples of \$5,000. The 2012 Bonds will mature in the amounts and on the dates, and bear interest at the annual rates, set forth on the inside cover page of this Official Statement.

Payments of Principal and Interest. Interest on the 2012 Bonds will be payable on April 1 and October 1 in each year, beginning April 1, 2013 (each an "Interest Payment Date"). Principal on the 2012 Bonds will be payable on October 1 in the amounts and in the years set forth on the inside front cover of this Official Statement.

While the 2012 Bonds are subject to the book-entry system, the principal, interest and any prepayment premium with respect to the 2012 Bonds will be paid by the Trustee to DTC for subsequent disbursement to beneficial owners of the 2012 Bonds. See APPENDIX F – "DTC AND THE BOOK-ENTRY ONLY SYSTEM."

Interest on the 2012 Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,

- a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date, or
- interest on any 2012 Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Principal and premium, if any, with respect to each 2012 Bond is payable upon surrender of such Bond at the Office of the Trustee in San Francisco, California, upon maturity or the earlier redemption thereof. The principal of, premium, if any, and interest on the 2012 Bonds will be payable in lawful money of the United States of America. Interest with respect to the 2012 Bonds will be computed on the basis of a 360 day year composed of twelve 30-day months.

Transfer, Registration and Exchange

See “APPENDIX C - Summary of Principal Legal Documents” for a description of the provisions of the Indenture relating to the transfer, registration and exchange of the 2012 Bonds.

Redemption

Optional Redemption. The 2012 Bonds maturing on or before October 1, 2022, are not subject to optional redemption prior to their respective stated maturity dates. The 2012 Bonds maturing on or after October 1, 2023, are subject to redemption in whole, or in part among maturities on such basis as the Authority may designate and within a maturity as selected by the Trustee, at the option of the Authority, on any date on or after October 1, 2022, from any available source of funds, at a redemption price equal to 100% of the principal amount of the 2012 Bonds to be redeemed, plus accrued interest to the date of redemption, without premium.

Mandatory Sinking Fund Redemption. The Series 2012 Bonds maturing on October __, 20__ (the “Term 2012 Bonds”) are subject to mandatory redemption in part by lot, at a redemption price equal to 100% of the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on October 1 in the respective years as set forth in the following tables; *provided, however,* that if some but not all of the Term 2012 Bonds have been optionally redeemed, the total amount of all future sinking fund payments shall be reduced by the aggregate principal amount of the Term 2012 Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of \$5,000 (as set forth in a schedule provided by the Authority to the Trustee).

Bonds Maturing October 1, ____

Sinking Fund Redemption Date (October 1)	Principal Amount To Be Redeemed
--	------------------------------------

Notice of Redemption. Notice of redemption will be mailed by the Trustee, first class, postage prepaid, not more than 60 and not less than 30 days before any redemption date, to the respective registered Owners of any 2012 Bonds designated for redemption at their addresses appearing on the registration books maintained by the Trustee and to one or more Securities Depositories and the Municipal Securities Rulemaking Board. Neither the failure to receive any notice nor any defect therein will affect the proceedings for such redemption.

Selection of 2012 Bonds for Redemption. Whenever provision is made in the Indenture for the redemption of less than all of the 2012 Bonds of a single maturity, the Trustee will select the 2012 Bonds to be redeemed from all Bonds of that maturity to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purposes of such selection, Bonds will be deemed to be comprised of \$5,000 portions and each portion will be subject to redemption as if such portion were a separate Bond.

Effect of Redemption. If notice of redemption has been duly given and money for the payment of the redemption price of the 2012 Bonds called for redemption has been duly provided, such 2012 Bonds so called will cease to be entitled to any benefit under the Indenture other than the right to receive payment of the redemption price, and no interest will accrue thereon from and after the redemption date specified in such notice.

Rescission of Redemption. The Authority has the right to rescind any notice of optional redemption of 2012 Bonds by written notice to the Trustee on or prior to the date fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the 2012 Bonds then called for redemption, and such cancellation shall not constitute an Event of Default. The Authority and the Trustee have no liability to the Bond Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under the Indenture.

Book-Entry Only System

The 2012 Bonds will be issued as fully registered bonds in book-entry only form, registered in the name of Cede & Co. as nominee of DTC, and will be available to ultimate purchasers in the integral multiples of \$5,000, under the book-entry system maintained by DTC. While the 2012 Bonds are subject to the book-entry system, the principal, interest and any prepayment premium with respect to a Bond will be paid by the Trustee to DTC, which in turn is obligated to remit such payment to its DTC Participants for subsequent disbursement to Beneficial Owners of the 2012 Bonds. Purchasers of the 2012 Bonds will not receive certificates representing their interests therein, which will be held at DTC.

See “APPENDIX F - DTC AND THE BOOK-ENTRY ONLY SYSTEM” for further information regarding DTC and the book-entry system.

DEBT SERVICE SCHEDULE

The table below shows annual debt service payments on the 2012 Bonds and Existing Parity Obligations, assuming no optional redemption.

Year Ending October 1	Existing Parity Obligations Principal*	Existing Parity Obligations Interest*	2012 Bonds Principal	2012 Bonds Interest	Total Debt Service
2012	\$1,500,000	\$2,654,273			
2013	1,575,000	2,582,823			
2014	1,650,000	2,508,348			
2015	1,730,000	2,433,100			
2016	1,810,000	2,346,088			
2017	1,900,000	2,266,478			
2018	2,005,000	2,168,113			
2019	2,105,000	2,062,038			
2020	2,210,000	1,962,688			
2021	2,325,000	1,853,150			
2022	2,450,000	1,731,013			
2023	2,575,000	1,609,088			
2024	2,700,000	1,480,925			
2025	2,835,000	1,354,250			
2026	2,980,000	1,212,500			
2027	1,485,000	1,063,500			
2028	1,565,000	989,250			
2029	1,645,000	911,000			
2030	1,730,000	828,750			
2031	1,815,000	742,250			
2032	1,910,000	651,500			
2033	2,010,000	556,000			
2034	2,110,000	455,500			
2035	2,220,000	350,000			
2036	2,330,000	239,000			
2037	<u>2,450,000</u>	<u>122,500</u>			
Total	\$53,620,000	\$37,134,120			

* Does not reflect the refunding of the Refunded Certificates.

SECURITY AND SOURCES OF PAYMENT FOR THE 2012 BONDS

The principal of and interest on the 2012 Bonds are not a debt of the Authority (except to the limited extent described in this Official Statement) or the City, nor a legal or equitable pledge, charge, lien or encumbrance, upon any of their respective property, or upon any of their income, receipts, or revenues except the Revenues and other amounts pledged under the Indenture.

This section provides summaries of the security for the 2012 Bonds and certain provisions of the Indenture and the 2012 Installment Purchase Agreement. See “APPENDIX C - Summary of Principal Legal Documents” for a more complete summary of the Indenture and the 2012 Installment Purchase Agreement. Capitalized terms used but not defined in this section have the meanings given in APPENDIX C.

Pledge of Authority Revenues

The 2012 Bonds are payable from and secured by a pledge of Authority Revenues and certain funds and accounts established and held by the Trustee under the Indenture. Authority Revenues, as defined in the Indenture, mean (a) all of the 2012 Installment Payments, and (b) all interest, profits or other income derived from the investment of amounts in any fund or account established under the Indenture.

THE 2012 BONDS ARE SPECIAL OBLIGATIONS OF THE AUTHORITY PAYABLE SOLELY FROM AND SECURED BY A PLEDGE OF REVENUES AND CERTAIN FUNDS AND ACCOUNTS HELD UNDER THE INDENTURE. THE AUTHORITY HAS NO TAXING POWER. THE OBLIGATION OF THE CITY TO MAKE 2012 INSTALLMENT PAYMENTS IS PAYABLE SOLELY FROM SYSTEM NET REVENUES. NEITHER THE 2012 BONDS NOR THE OBLIGATION OF THE CITY TO MAKE 2012 INSTALLMENT PAYMENTS CONSTITUTES AN INDEBTEDNESS OF THE CITY, THE COUNTY, THE STATE OF CALIFORNIA (THE "STATE") OR ANY OF ITS POLITICAL SUBDIVISIONS (INCLUDING ANY MEMBER OF THE AUTHORITY) IN CONTRAVENTION OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATIONS.

2012 Installment Payments

The 2012 Installment Purchase Agreement provides that the City's obligation to make the 2012 Installment Payments from System Net Revenues and to perform and observe the other agreements contained therein are absolute and unconditional and are not subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the Authority or the Trustee of any obligation to the City or otherwise with respect to the System, or out of indebtedness or liability at any time owing to the City by the Authority or the Trustee. Until all of the 2012 Installment Payments, all of the Additional Payments and all other amounts coming due and payable under the 2012 Installment Purchase Agreement are fully paid or prepaid, the City (a) will not suspend or discontinue payment of any 2012 Installment Payments, Additional Payments or such other amounts, (b) will perform and observe all other agreements contained in the 2012 Installment Purchase Agreement, and (c) will not terminate the 2012 Installment Purchase Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the System, sale of the System, the taking by eminent domain of title to or temporary use of any component of the System, commercial frustration of purpose, any change in the tax or law other laws of the United States of America or the State of California or any political subdivision of either thereof or any failure of the Authority or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture or the 2012 Installment Purchase Agreement.

Pursuant to the Indenture, the Authority transfers, assigns and sets over to the Trustee all of the 2012 Installment Payments and any and all rights, title, interest and privileges it has in, to and under the 2012 Installment Purchase Agreement (other than its rights to expenses and indemnification), including without limitation, the right to collect and receive directly all of the 2012 Installment Payments and the right to enforce the provisions of the 2012 Installment Purchase Agreement. The City consents to such assignment in the 2012 Installment Purchase Agreement and agrees to make payments of the 2012 Installment Payments directly to the Trustee. Under the Indenture, The Trustee is also entitled to and shall, subject to the provisions of the Indenture, take all

steps, actions and proceedings which the Trustee determines to be reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the City under the 2012 Installment Purchase Agreement. The Trustee is entitled to indemnification and expenses before taking such action as provided in the Indenture.

The Indenture provides that all of the 2012 Installment Payments received by the Trustee shall be deposited immediately in the Bond Fund. All of the 2012 Installment Payments are to be held in trust by the Trustee for the benefit of the Owners of the 2012 Bonds and shall be disbursed and applied only as provided in the Indenture.

Defined Terms

For the purposes of the Indenture and the 2012 Installment Purchase Agreement, the following terms are given the following meanings:

“System Net Revenues” means, for any period, System Revenues less Operation and Maintenance Costs for such period; provided that certain adjustments in the amount of System Net Revenues for a Fiscal Year may be made in connection with amounts deposited in and transferred from the Rate Stabilization Fund.

“System Revenues “ is defined under the 2012 Installment Purchase Agreement as all gross income and revenue received or receivable by the City from the ownership or operation of the System, determined in accordance with Generally Accepted Accounting Principles, including all fees (including connection fees), rates, charges and all amounts paid under any contracts received by or owed to the City in connection with the operation of the System and all proceeds of insurance relating to the System and investment income allocable to the System and all other income and revenue howsoever derived by the City from the ownership or operation of the System or arising from the System. System Revenues for any Fiscal Year shall include, for the purposes permitted by the 2012 Installment Purchase Agreement, amounts transferred to the System Revenue Fund from the Rate Stabilization Fund during such Fiscal Year.

“Operation and Maintenance Costs” means the reasonable and necessary costs paid or incurred by the City for maintaining and operating the System, determined in accordance with Generally Accepted Accounting Principles, including all reasonable expenses of management and repair and all other expenses necessary to maintain and preserve the System in good repair and working order, including all other reasonable and necessary costs of the City or charges required to be paid by it to comply with the terms of the Indenture or of any Supplemental Agreement or resolution authorizing the execution of any Parity Obligations, such as compensation, reimbursement and indemnification of the Trustee and the Corporation, fees and expenses of Independent Certified Public Accountants and deposits to the Rebate Fund; but excluding in all cases (i) payment of Parity Debt and Subordinate Obligations, (ii) costs of capital additions, replacements, betterments, extensions or improvements which under Generally Accepted Accounting Principles are chargeable to a capital account, (iii) depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles, (iv) City Administrative Costs (as defined in the Indenture (the “City Administrative Expenses”)), and (v) transfers from the System Revenue Fund to other funds or accounts of the City.

For definitions of additional terms used in the 2012 Installment Purchase Agreement and the Indenture, see “APPENDIX C – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—CERTAIN DEFINITIONS”.

Pledge of System Net Revenues

Pursuant to the 2012 Installment Purchase Agreement, all System Net Revenues and all amounts on deposit in the System Revenue Fund are irrevocably pledged to the payment of the 2012 Installment Payments, as provided in the 2012 Installment Purchase Agreement. The 2012 Installment Purchase Agreement provides that such pledge, together with the pledge of System Net Revenues and amounts in the System Revenue Fund securing all other Parity Debt shall, subject to application as permitted in the 2012 Installment Purchase Agreement, constitute a first lien on System Net Revenues and amounts on deposit in the System Revenue Fund.

The obligation of the City to make the 2012 Installment Payments is a special obligation of the City payable solely from the System Net Revenues, and does not constitute a debt of the City or of the State of California or of any political subdivision thereof in contravention of any constitutional or statutory debt limitation or restriction.

See “Outstanding Parity Obligations” and “Additional Parity Debt” below.

Rate Covenant

The 2012 Installment Purchase Agreement provides that the City will, at all times until all 2012 Installment Payments have been fully paid or provision has been made therefor in accordance with the 2012 Installment Purchase Agreement, fix, prescribe and collect rates, fees and charges and manage the operation of the System for each Fiscal Year so as to yield System Revenues at least sufficient, after making reasonable allowances for contingencies and errors in the estimates, to pay the following amounts during such Fiscal Year:

- (i) All current Operation and Maintenance Costs.
- (ii) The 2012 Installment Payments and all other Parity Obligation Payments and all payments on Subordinate Obligations as they become due and payable.
- (iii) All payments required for compliance with the terms of the Indenture and the 2012 Installment Purchase Agreement.
- (iv) All payments to meet any other obligations of the City which are charges, liens or encumbrances upon, or payable from, the System Revenues.

In addition, the City covenants that it will, to the maximum extent permitted by law, fix, prescribe and collect rates, fees and charges and manage the operation of the System for each Fiscal Year so as to yield System Net Revenues during such Fiscal Year equal to at least 110% of the Annual Debt Service in such Fiscal Year; provided an adjustment may be made to the amount of System Net Revenues for amounts deposited into or withdrawn from the Rate Stabilization Fund; provided that, for purposes of such calculation, the amount of System Net Revenues before any credits for transfers from the Rate Stabilization Fund to the System Revenue Fund may not be less than 100% of Annual Debt Service for such Fiscal Year.

Application of System Revenues

The City agrees and covenants in the 2012 Installment Purchase Agreement that all System Revenues it receives (except for net proceeds of any casualty insurance or condemnation award) will be deposited when and as received in the System Revenue Fund, which the City has established and which the City agrees to maintain separate and apart from other moneys of the City until all Installment Payments have been fully paid or provision has been made therefor in accordance with the 2012 Installment Purchase Agreement. Moneys in the System Revenue Fund shall be used and applied only as provided in the 2012 Installment Purchase Agreement. The 2012 Installment Purchase Agreement provides that the City is to pay all Operation and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs the payment of which is not then immediately required) from the System Revenue Fund as they become due and payable and all remaining money in the System Revenue Fund shall be set aside and deposited by the City at the following times in the following order of priority:

Installment Payments. Not later than each Installment Payment Date, the City is required to, from the moneys in the System Revenue Fund, transfer to the Trustee the 2012 Installment Payment due and payable on that Installment Payment Date. The City will also, from the moneys in the System Revenue Fund, transfer when due to the applicable trustee for deposit in the respective payment fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any Parity Obligation Payments in accordance with the provisions of the applicable Parity Obligation.

Reserve Account. On or before the first Business Day of each month, the City shall, from the remaining moneys in the System Revenue Fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, transfer to the applicable trustee for such debt service reserve funds, if any, as may have been established in connection with Parity Obligations that sum, if any, necessary to restore such debt service reserve funds for Parity Obligations to an amount equal to the amount required to be maintained therein (including to reimburse the provider for a draw on a reserve account credit instrument).

Surplus. Moneys on deposit in the System Revenue Fund not necessary to make any of the payments required above in a Fiscal Year, may be expended by the City at any time for any purpose permitted by law, including but not limited to payments with respect to Subordinate Obligations and deposits to the Rate Stabilization Fund.

Outstanding Parity Obligations

The City has the following outstanding obligations that are payable from System Net Revenues on a parity with the 2012 Installment Payments (referred to as the “Existing Parity Obligations” in this Official Statement):

2003 Installment Payments. The City entered into an Installment Purchase Agreement, dated as of October 1, 2003 (the “2003 Installment Purchase Agreement”), by and between the City and the California Statewide Communities Development Authority (“CSCDA”), pursuant to which the City is obligated to make certain installment payments (the “2003 Installment Payments”) to CSCDA which 2003 Installment Payments secure a portion of the debt service on the CSCDA \$9,855,000 initial principal amount Water and Wastewater Revenue Bonds (Pooled Financing Program) Series 2003B (the “2003 CSCDA Bonds”). The City’s share of the initial principal amount

of the 2003 CSCDA Bonds was \$5,000,000. As of August 1, 2012, the outstanding principal obligation under the 2003 Installment Purchase Agreement was \$3,415,000.

2004 Certificates. On May 12, 2004, the City caused execution and delivery of the \$27,360,000 initial principal amount Wastewater System Revenue Certificates of Participation, 2004 Series A (the “2004 Certificates”). The 2004 Certificates are secured by and payable from installment payments (the “2004 Installment Payments”) payable by the City under an Installment Purchase Agreement, dated as of May 1, 2004 (the “2004 Installment Purchase Agreement”) between the City and the Lodi Public Improvement Corporation (the “Corporation”). Upon issuance of the 2012 Bonds and the Refunding of the Refunded Certificates, \$_____ of the 2004 Certificates will remain outstanding.

2007 Certificates. On November 16, 2007, the City caused execution and delivery of the \$30,320,000 initial principal amount Wastewater System Revenue Certificates of Participation, 2007 Series A (the “2007 Certificates”). The 2007 Certificates are secured by and payable from installment payments (the “2007 Installment Payments”) payable by the City under an Installment Purchase Agreement, dated as of December 1, 2007 (the “2007 Installment Purchase Agreement”) between the City and the Corporation. As of August 1, 2012, \$29,875,000 of the 2007 Certificates were outstanding.

Additional Parity Debt

In addition to the Existing Parity Obligations, the City is permitted under the 2012 Installment Purchase Agreement to incur obligations secured by a pledge of System Net Revenues on a parity with the 2012 Installment Payments and the Existing Parity Obligations, subject to satisfaction of the following conditions. The 2012 Installment Purchase Agreement refers to the 2012 Installment Payments and any Parity Obligations as “Parity Debt”.

(a) The City must be in compliance with its obligations under the 2012 Installment Purchase Agreement.

(b) Any debt service reserve fund established for such Parity Debt shall satisfy the following criteria: (i) such debt service reserve fund shall be held by an independent trustee (who may be other than the Trustee); (ii) the required amount of such debt service reserve fund shall not exceed the lesser of the maximum annual debt service of such Parity Debt (calculated on the basis of a year ending on the principal payment date of such Parity Debt) or the maximum amount permitted under the Code, provided that, if such Parity Debt is a loan from a governmental agency, then a debt service reserve fund shall be established in the amount, if any, required or permitted by such governmental agency; and (iii) the City shall not be required to replenish withdrawals from such debt service reserve fund in greater than monthly installments equal to 1/12 of the aggregate amount needed to restore the debt service reserve fund to the required level. The 2012 Installment Purchase Agreement allows the debt service reserve fund for a loan from a governmental agency to be the amount required by such governmental agency.

(c) The System Net Revenues for the last completed Fiscal Year or any 12 consecutive months within the last 18 months preceding the date of entry into or incurrence of the Parity Debt, as shown by a Certificate of the City on file with the Trustee, plus an allowance for increased System Net Revenues arising from any increase in the rates, fees and charges of the System which was duly adopted by the City Council of the City prior to the date of the entry into

or incurrence of the Parity Debt but which, during all or any part of such 12 month period, was not in effect, in an amount equal to the amount by which the System Net Revenues would have been increased if the increase in rates, fees and charges had been in effect during the whole of such 12 month period, as shown by a Certificate of the City on file with the Trustee, must have produced a sum equal to at least 110% of the Maximum Annual Debt Service as calculated after the entry into or incurrence of the Parity Debt; provided, that in the event that all or a portion of such Parity Debt is to be issued for the purpose of refunding and retiring any Parity Debt then outstanding, interest and principal payments on the Parity Debt to be so refunded and retired from the proceeds of such Parity Debt being issued shall be excluded from the foregoing computation of Maximum Annual Debt Service; provided further, that the City may at any time enter into or incur Parity Debt without compliance with the foregoing conditions if the Annual Debt Service for each Fiscal Year during which such Parity Debt is outstanding will not be increased by reason of the entry into or incurrence of such Parity Debt; and provided further, an adjustment shall be made in the amount of System Net Revenues as described in "Rate Stabilization Fund" below.

Subordinate Obligations

The 2012 Installment Purchase Agreement permits the City to incur obligations payable from System Net Revenues on a subordinate basis to the 2012 Installment Payments, the Existing Parity Obligations and any future Parity Debt.

Rate Stabilization Fund

Pursuant to the 2012 Installment Purchase Agreement, a Rate Stabilization Fund is to be held and maintained by the City until all Installment Payments have been fully paid or provision has been made therefor in accordance with the 2012 Installment Purchase Agreement. The City may, during or within 210 days after a Fiscal Year, transfer surplus System Net Revenues attributable to such Fiscal Year on the basis of Generally Accepted Accounting Principles (the "GAAP Receipt Fiscal Year") from the System Revenue Fund to the Rate Stabilization Fund. The City may at any time transfer moneys from the Rate Stabilization Fund to the System Revenue Fund. System Net Revenues deposited into the Rate Stabilization Fund will not be taken into account as System Net Revenues for the GAAP Receipt Fiscal Year for purposes of the calculations required by the covenants in the 2012 Installment Purchase Agreement relating to rate coverage and additional Parity Obligations. Amounts withdrawn from the Rate Stabilization Fund and deposited into the System Revenue Fund, may be taken into account as System Revenues for purposes of the calculations required by such covenants for the Fiscal Year in which such deposit is made; provided that, for purposes of the calculation described in the last paragraph under "Rate Covenant" above, the amount of System Net Revenues before any credits for transfers from the Rate Stabilization Fund to the System Revenue Fund may not be less than 100% of Annual Debt Service for such Fiscal Year.

As of June 30, 2011, the Rate Stabilization Fund contained \$500,000. The Projected Operating Results contained in Table 8 hereof do not contemplate the use of moneys in the Rate Stabilization Fund.

THE SYSTEM

General

The City of Lodi is located in the County of San Joaquin (the “County”) between Stockton and Sacramento, and adjacent to U.S. Highway 99, approximately 90 miles east of San Francisco. The City was incorporated as a General Law City on December 6, 1906.

The City operates under a City Council-Manager form of government and provides the following services: public safety (police, fire and graffiti abatement), public utilities services (electric, water and sewer), transportation services (streets, flood control and transit), leisure, cultural and social services (parks and recreation, library, and community center), and general government services (management, human resources administration, financial administration, building maintenance and equipment maintenance).

As of January 1, 2011, the City had an estimated population of 62,473 within an area of approximately 13.9 square miles.

See “APPENDIX A – THE CITY OF LODI”. Since 1923, the City has been providing wastewater collection and treatment services to the community.

Governance and Management

The City is governed by a five-member City Council comprised of members elected at large. Each council member is elected for four years with staggered terms.

The current City Council members and the expiration dates of their terms are set forth below.

Council Member	Title	Expiration of Term
JoAnne Mounce	Mayor	December 5, 2012
Alan Nakanishi	Mayor Pro Tempore	December 3, 2014
Larry D. Hansen	Council Member	December 3, 2014
Phil Katzakian	Council Member	December 3, 2014
Bob Johnson	Council Member	December 5, 2012

Following are biographies of certain City staff.

KONRADT BARTLAM, City Manager of the City of Lodi, was appointed to the position by the City Council on November 17, 2010 after serving six-months as the interim manager. He had been Lodi’s community development director for 11 of the previous 14 years. Bartlam served as Lodi’s community development director from 1996 to 2005, left for other professional opportunities, and returned on a part-time basis in 2008. He has 25 years of municipal planning experience, and most recently managed the comprehensive update to Lodi’s General Plan, adopted on April 7, 2010.

JORDAN AYERS, Deputy City Manager/Internal Services Director, as been the City of Lodi’s Deputy City Manager/Internal Services Director since December 15, 2008. As Lodi’s administrative second-in-command, Ayers oversees the City’s Finance, Budget and Treasury, Information Systems and Human Resources functions. Ayers came to Lodi after a 26-year career

with Sacramento County. He was deputy director for administrative and business services within Sacramento County's General Services department before being hired by Lodi. Ayers began his professional career with Sacramento County following his graduation from California State University, Sacramento, in 1982 with a bachelor of science degree in business administration.

WALLY SANDELIN, Public Works Director, Sandelin, who began his tenure with the City of Lodi in 2000 as city engineer, was named deputy public works director in 2008. Sandelin has a master's degree in environmental engineering from the University of California, Davis; and has a bachelor's degree in civil engineering from UC Davis. He is active in the Lodi community through his work with a Lodi service club.

LARRY PARLIN, Deputy Director Utilities, oversees wastewater collection and treatment and water production and distribution for the City. He received his Bachelor of Science degree in aeronautical engineering from California State University, San Jose. He was employed in the private sector for seventeen years as a water and wastewater operator, manager, and consultant. Most recently he was employed by a municipal agency as Deputy Director of Wastewater Operations. He joined the City of Lodi 2012.

Employees

For Fiscal Year 2012-13, the City has 51 full-time equivalent employee positions budgeted for the System and the City's water system. Employees of the System and the City's water system are represented by the Maintenance and Operators Bargaining Unit, whose Memorandum of Understanding is set to expire on December 31, 2013. The City has never experienced a labor strike.

Retirement Programs

Certain Retirement Benefits. Salaries and benefits costs of the System include funding of retirement benefits for employees assigned to the System who, as City employees, participate in the California Public Employees Retirement System ("PERS"). (City employees assigned to the System constitute approximately 6.5% of all City employees.) Retirement payments paid from System Revenues, with respect to employees assigned to the System, were approximately \$242,000 in Fiscal Year 2009-10, approximately \$283,000 in Fiscal Year 2010-11, and approximately \$283,000 in Fiscal Year 2011-12. The City estimates that the required contribution for Fiscal Year 2012-13 will be approximately \$281,000, and projects that the required contribution for Fiscal Year 2013-14 will be approximately \$290,000. In addition, the PERS contribution payable from the Wastewater Fund for Fiscal Year 2013-14 is projected to increase by approximately \$43,000 due to a recent change in actuarial assumptions utilized by PERS. Also, PERS recently announced that investment earnings for PERS fiscal year ended June 30, 2012, were approximately 1%, significantly lower than the actuarially assumed investment earnings rate of 7.5%. Although not quantified at this time, this is also expected to result in increased City contributions.

For a variety of reasons, including investment losses, the City has experienced significant unfunded liabilities, and retirement costs payable with respect to all City employees, including those assigned to the System, has increased in recent years. As a result, required contributions from the City are expected to continue to increase. See APPENDIX B — "AUDITED FINANCIAL STATEMENTS OF THE CITY FOR FISCAL YEAR ENDED JUNE 30, 2011" — Note 10 to the Basic Financial Statements" for a discussion of retirement liabilities payable by the City.

In addition to required contributions for retirement benefits for employees, the City pays certain post-employment health care and other non-pension (“OPEB”) benefits for such employees. The City’s OPEB related payments were approximately \$700,000 in Fiscal Year 2011-12 and are projected to be approximately \$830,000 in Fiscal Year 2012-13. Approximately 6.5 percent of City employees are assigned to the System and the City estimates that a similar ratio of OPEB costs is attributable to System employees. The City generally contributes the minimum amount required under State law to most retired employees. However, a limited number of employees hired prior to 1995 may be eligible for additional OPEB benefits. See APPENDIX B — “AUDITED FINANCIAL STATEMENTS OF THE CITY FOR FISCAL YEAR ENDED JUNE 30, 2011” — Note 10 to the Basic Financial Statements” for a discussion of OPEB liabilities payable by the City, as well as the City’s current unfunded OPEB liability.

Payments to PERS and payments with respect to OPEB benefits constitute Operation and Maintenance Costs of the System.

The City has recently completed negotiations with the labor groups which represent City employees assigned to the System. Key elements in the new contracts, which generally end on December 31, 2013, include employees paying the full share of the employee share of retirement by the end of the contract, capping City medical cost exposure at the January 2012 levels and establishing a second tier retirement system for all new hires.

Insurance

The City’s boiler and machinery operations (including those parts of the System) are insured by Hartford Steam Boiler for up to \$21,250,000 in coverage. The City, including the System, is self-insured for general liability losses for up to \$500,000 and has pooled excess coverage through the California Joint Powers Risk Management Authority for up to \$40 million per occurrence. The City is self-insured for workers’ compensation losses for up to \$250,000 and has excess coverage through the Local Agency Workers’ Compensation Excess Authority for statutory coverage.

System Facilities

The System consists of 186.5 miles of wastewater mains, seven pump stations and one wastewater treatment plant, the White Slough Water Pollution Control Facility (the “White Slough Facility”).

White Slough Facility. The White Slough Facility operates pursuant to a National Pollutant Discharge Elimination System (“NPDES”) permit administered by the State of California Regional Water Quality Control Board, Central Valley Region (the “RWQCB”), which was adopted by the RWQCB on September 14, 2007. The current NPDES permit will expire on September 1, 2012. See “Environmental Compliance” below.

The White Slough Facility is located in a primarily agricultural area adjacent to Interstate 5, approximately 6.5 miles southwest of the City. The White Slough Facility was originally constructed in 1966 to replace an older wastewater treatment plant located in the City. The White Slough Facility assists the City in maintaining water quality standards required for the protection of the environmentally sensitive Sacramento-San Joaquin Delta. Through the years, the White Slough Facility has been expanded and improved to meet increasingly stringent environmental protection standards. In 1992, the City expanded the White Slough Facility to a capacity of 8.5 million gallons

per day (“MGD”). However, the Waste Discharge Requirements (“WDRs”) issued by the Regional Water Quality Control Board (the “RWQCB”) established an interim limit the average dry weather flow from the White Slough Facility of 7.0 MGD to limit potential water quality impacts in Dredger Cut, a waterway connecting to White Slough. The average current daily demand on the White Slough Facility is approximately 6.5 MGD. Improvements financed with proceeds of the 2007 Certificates restored the treatment capacity to the full 8.5 MGD. The 8.5 MGD flow capacity is expected to be sufficient to accommodate the City’s growth projections past 2030.

The White Slough Facility consists of an activated sludge treatment system and a lagoon and storage pond system, having an approximate 100 million gallons of capacity. Preliminary treatment of the domestic wastewater is accomplished by comminutors, detritors and five rectangular clarifiers. Secondary treatment facilities consist of four activated sludge aeration basins with a fine bubble aeration system, and two circular secondary clarifiers. The aeration system is driven by four centrifugal blowers. The municipal wastewater is treated to tertiary standards then disinfected using ultraviolet light pathogen deactivation (uv disinfection) prior to surface water discharge.

In addition to domestic wastewater treatment, the White Slough Facility also disposes of industrial wastewater produced primarily by Pacific Coast Producers, a local cannery. See “Service Area and Customers” below. In past years, the annual industrial flow to the White Slough Facility has exceeded 400 million gallons per year (“MGY”); however, since 2002, industrial flows have decreased to between 100 to 200 MGY due to changes in processing. Most of this flow is received during the period from June through September.

During summer months (i.e., generally during the period from May 1 through September 1), treated domestic wastewater, industrial wastewater, and digested sludge are blended together and used for irrigation of an adjacent 790 acres of City-owned agricultural land. During the remainder of the year, treated domestic wastewater is discharged to Dredger Cut in the Sacramento-San Joaquin Delta, and industrial wastewater is stored in four ponds located directly north of the main treatment plant site. These ponds have a total surface area of about 40 acres. Tertiary treated domestic wastewater is also used by the adjacent Northern California Power Agency power generation facilities for various purposes, including, but not limited to, cooling, and to supply nearby ponds that are used by the Mosquito Abatement District to raise mosquito fish. Sludge is thickened and then digested in three anaerobic digestors and then stored in a concrete lined facility and periodically removed for use on City-owned agricultural land. Methane gas from the anaerobic digestion process is used for building and digester heating. Excess methane is flared off at the plant site.

Collection System. The existing collection system, not including the outfall to the treatment plant, consists of approximately 187.1 miles of “4” to 42” sewers constructed of clay, concrete, and PVC plastic materials. Included in this system are six lift stations which serve outlying portions of the City and one industrial waste pumping station. The collection system currently serves over 23,000 customers (most of which is residential), 1,400 acres of commercial/industrial development, and 250 acres of schools. Over 50% of the sewers are 6” in diameter. The following contains certain information relating to the City’s sewer lines.

Table 1
City of Lodi
Wastewater System
Tabulation of Existing Sewers
As of July 1, 2012

Sewer Size (inches)	Total Feet	Sewer Size (inches)	Total Feet
42	30,663	14	6,956
30	9,715	12	44,644
24	18,788	10	74,662
21	14,749	8	197,316
18	31,984	6	524,915
16	7,642	4	4,003
15	21,772		

Source: City of Lodi

The domestic wastewater collection system conveys all domestic and commercial flows and limited industrial flows. The industrial wastewater system conveys fruit processing water and minor amounts of cooling and process water contributed by certain industries. The wastewater collection system serves all of the developed property within the City limits.

The age of the collection system ranges from new to around 100 years old. Over the past twenty-five years the City has implemented a regular cleaning schedule and localized repairs and replacements. Approximately eight years ago, the City implemented an annual capital rehabilitation program that expends a minimum of \$1 million per year on sewer lining, spot repairs, and pipe replacements. Since the inception of this program, \$15.5 million has been invested in the collection system. The pipelines to be replaced are identified through the regular maintenance program for these facilities performed by City crews. This program includes the systematic hydrocleaning, rodding, smoke testing and video inspection of mains throughout the City.

Environmental Compliance

The present discharge requirements for the City's White Slough Facility are established by the RWQCB which administers and enforces all federal and State of California discharge requirements. The RWQCB administers regulations promulgated by the United States Environmental Protection Agency through the NPDES permits. The City's NPDES discharge permit No. CA0079243 is subject to renewal every five years. The City's current NPDES permit (the "2007 Permit") was adopted on September 14, 2007 by the RWQCB. The 2007 Permit initially included an interim effluent limit of 7.0 MGD. Following completion of the improvements to the White Slough Facility financed with the proceeds of the 2007 Certificates, and approval by the RWQCB of several monitoring and compliance reports, approval was granted to increase the average daily flow to 8.5 MGD.

The 2007 Permit established new discharge limits for aluminum, ammonia, chlorodibromomethane, dichlorobromomethane, manganese, nitrate and nitrite, and reduced the applicable discharge limits for mercury. The 2007 Permit also contained more stringent discharge requirements for the treated wastewater used to irrigate the surrounding land application area.

Constituents included are chloride, iron, lead, nitrite, nitrate, and mercury. Operations currently comply with these requirements.

The City's pretreatment program complies with the pretreatment requirements contained in the Federal Water Pollution Control Act. In general, although the City has experienced a handful of non-material instances of noncompliance, the White Slough Facility has complied with all discharge requirements contained in the 2007 Permit.

The 2007 Permit expires on September 1, 2012. Discussions with RWQCB staff indicate that draft permit conditions for the next permit will be issued in November or December 2012. While approval of a new NPDES permit is pending, the White Slough Facility may continue to operate under the requirements of the 2007 Permit until a new permit is adopted by the RWQCB. The City expects the new permit conditions will required continued monitoring activities as in the 2007 Permit.

Under the supervision of the RWQCB, the City is currently studying the background levels of nitrate in the vicinity of the treatment plant to determine if the City's operations may have elevated nitrate concentrations above background levels. Studies to date indicate the City is a source, however, recent plant upgrades and repairs to the City's domestic outfall sewer pipeline have reduced the concentrations of nitrogen in the City's effluent and monitoring wells. Nonetheless, the City anticipates there may be a requirement in the new permit to install liners in the storage ponds at the White Slough Facility. Recognizing this potential requirement in the new permit, a \$3.0 million capital expenditure has been included in the System capital improvement plan for Fiscal Years 2013-14 and 2014-15, and has been taken into account in connection with the preparation of the Projected Operating Results for that period.

While the City does not believe that the discharge limits and other requirements for the White Slough Facility as set forth in the 2007 Permit will be significantly different in the new NPDES permit when it is issued, other than as described above, the City has not yet received draft permit conditions. There can be no assurances that the new permit, when issued, will not impose significant new and potentially more stringent conditions and requirements on the operations of the White Slough Facility, which could result in significant increases in capital and/or operating costs. See "RISK FACTORS – Permit Renewal" herein.

Service Area and Customers

The City provides wastewater collection and treatment to substantially all of the population of the City, representing an area of approximately 13.9 square miles in the City. The City ordinance does not allow wastewater service outside the City limits, except for wineries and other public wastewater service districts pursuant to contracts with the City.

The System began providing wastewater treatment service by contract to San Joaquin County Service Area 31 (Flag City) beginning in Spring 2008. Pursuant to the contract, the City received a \$250,000 one-time administrative fee, an estimated \$6.5 million capacity fee and ongoing service charges. Service charges paid by County Service Area 31 accounted for approximately \$140,000, or 1%, of fiscal year 2011-12 System Revenues. The System also provides service to the Van Ruiten Family Winery, which accounts for a minimum amount of System Revenues.

The table below shows the number of connections of the System by user type and service charge revenues by class of user.

Table 2
City of Lodi
Wastewater System
Number of Connections by User Type
as of June 30
and Percentage of Fiscal Year 2011-12 Service Charge Revenue by User Type

User Type	2008	2009	2010	2011	2012 ⁽¹⁾	% of FY11-12 Service Charge Revenue
Residential	22,277	22,277	21,974	21,956	21,895	72.3%
Commercial/Industrial	1,847	1,815	1,768	1,785	1,805	27.7%
Total All Users	24,124	24,042	23,742	23,741	23,700	100.0%

Source: City of Lodi

The table below shows the 10 largest users of the System based on service charge revenues for the Fiscal Year 2011-12.

Table 3
City of Lodi
Wastewater System
Largest Users by Service Charge Revenues
Fiscal Year 2011-12 (unaudited)

User	Type of Business	Service Charge Revenue	Percentage of Total Annual Service Charge Revenue
Cottage Bakery	Specialty bakery, frozen dough	\$ 374,881	2.82 %
General Mills	Cereals,bread mixes, snack foods	293,758	2.21
Lodi Unified School District	K-12, adult education	236,173	1.78
City of Lodi	Government	63,158	.48
Pacific Coast Producers	Private label fruit canning	48,869	.37
Archer Daniels Midland.	Agricultural Processor	41,688	.31
Miller Packing	Hot dog producer	39,486	.30
Lodi Memorial Hospital	Health Care	38,908	.29
Blue Shield of California	Health Insurance	36,155	.27
Armourstruux	Armor Producer	25,315	.19
Total Top 10 Users		\$ 1,198,391	9.02 %
Total System		\$13,282,124	100.00%

Source: Lodi Public Works Department.

Wastewater Rates and Charges

The City has the power to establish rates and charges as needed to operate the System. The rates and charges are established by the City Council and are not subject to review or approval by any other agency. The City principally relies on service charges and capacity/connection fees.

Service Charges. The City Council established charges for domestic system residential, commercial and industrial wastewater service in July, 2009, as follows:

- Imposed a 25% system average rate increase over prior rates, effective July 16, 2009
- Authorized a second system average rate increase of 20% effective July 1, 2010 but imposed a 12% increase.
- Authorized a third system average rate increase of 10% effective July 1, 2011 but imposed a 5% increase.
- Authorized a fourth system average rate increase of 5% effective July 1, 2012 but imposed a 3% rate increase.
- Authorized an Engineering News Record 20-Cities Average Construct Cost Index adjustment to the fees effective July 13, 2013.

Set forth below is a table showing the rates effective July 16, 2009, July 1, 2010, July 1, 2011 and July 1, 2012. The Projected Operating Results contained herein contemplate that rates will increase approximately 3% each year for Fiscal Years 2014-15 and 2015-16. Such rate increases would be subject to approval by the City Council and compliance with Proposition 218 requirements.

Table 4
City of Lodi
Wastewater System
Schedule of Wastewater Service Charges

For Residential Users (per month):	Service Charge (effective July 16, 2009)	Service Charge (effective July 1, 2010)	Service Charge (effective July 1, 2011)	Service Charge (effective July 1, 2012)
1 Bedroom	\$20.81	\$23.30	\$24.47	\$25.20
2 Bedrooms	27.74	31.07	32.62	33.60
3 Bedrooms	34.68	38.84	40.78	42.00
4 Bedrooms	41.61	46.61	48.93	50.40
5 Bedrooms	48.55	54.37	57.09	58.80
6 Bedrooms	55.48	62.14	65.24	67.20
7 Bedrooms	62.42	69.91	73.40	75.60
Usage-Based Rates:				
Service Charge (\$/month)	n/a	n/a	n/a	22.95
Usage Charge (\$/CCF) ⁽¹⁾	n/a	n/a	n/a	2.61

For Commercial/Industrial Users:	Service Charge (effective July 16, 2009)	Service Charge (effective July 1, 2010)	Service Charge (effective July 1, 2011)	Service Charge (effective July 1, 2012)
Moderate Strength (annual per Sewage Service Unit (SSU))	\$332.88	\$372.84	\$391.44	\$403.20
High Strength:				
Flow (annual per MG)	2,808.88	3,145.95	3,303.25	3,402.35
BOD (annual per 1,000 lbs.)	463.54	519.16	545.12	561.47
SS (annual per 1,000 lbs.)	289.83	324.61	340.84	351.07
Grease Interceptor/Septic Holding Tank Waste within City Limits (per 1,000 gal.)	245.44	274.89	288.63	297.29
Septic Holding Tank Waste outside City Limits (per 1,000 gal.)	521.03	583.55	612.73	631.11
Disposal to Storm Drain System (per MG)	257.80	288.74	303.18	312.28
Disposal to Industrial System				
Flow (per MG, annual basis)	2,218.78	2,485.03	2,609.28	2,687.56
BOD (per 1,000 lbs., annual basis)	20.34	22.78	23.92	24.64
Winery Waste (per 1,000 gallons)	248.53	278.35	292.27	301.04

⁽¹⁾ Winter water usage determined as average monthly usage from December through February.

There are separate charges applicable to the industrial system, which primarily apply to Pacific Coast Producers, the largest individually-monitored system user. No new users have been connected to the industrial system, except the Van Ruiten Family Winery, in several years and no new users are anticipated.

The tables above include usage-based rates which are applicable to those customers which have water meters and which are used to determine the monthly wastewater service and usage charge. The City Council adopted usage based wastewater rates in 2010 that are annually calculated based upon the water usage during the prior winter months of December, January and February. In

July of each year, a new standard monthly charge is calculated based upon the winter usage and billed for the next 12 months. The Water Meter Program policy approved in 2009 established a process to transition single family residential customers from flat water and wastewater rates to usage-based water and wastewater rates. As of July 1, 2012, approximately 3,000 customers of the System were being charged usage-based rates. By July 1, 2013, an additional 3,950 customers will be charged usage-based rates. The City expects that all single family residential customers will be transitioned to usage-based water and wastewater rates by January 2019. Prior to converting any customer to usage-based rates, the City provides the customer with actual water and wastewater usage data and information regarding how the customer's bills may be affected with the change in billing.

The new usage-based wastewater rate structure for single family customers includes a fixed service charge based on the size of the water meter, and a single-tier usage rate structure. Usage-based rates are expected to be revenue neutral, in the aggregate, with the prior rate structure.

Capacity/Connection Fees. Capacity/connection fees are one-time only connection charges based on estimated annual usage (the City reviews large industrial users after connection to determine actual usage and, in some cases, adjusts the connection fee to reflect actual usage). Capacity/connection fees are collected at the time a building permit is granted.

The capacity/connection fees were established for residential, commercial and industrial wastewater service in 2006 and are adjusted annually on July 1 based on the past annual change in the Engineering News Record 20 Cities Construction Cost Index.

The current capacity/connection fees are identified in the following table:

Table 5
Capacity/Connection Fees
(as of July 1, 2012)

Description	Fees ⁽¹⁾
Moderate Strength Users	
Per Sewage Service Unit (SSU)	\$ 6,140
High Strength Users	
Flow (per million gallons (MG), annual basis)	\$46,799
BOD (per 1,000 lbs., annual basis)	12,120
SS (per 1,000 lbs., annual basis)	6,482

⁽¹⁾ Includes 2% public art fee. Subject to annual adjustment on July 1 based on the past annual change in the Engineering News Record 20 Cities Construction Index.
Source: City of Lodi.

New residential development in the City is subject to a growth control ordinance that limits new residential development based on an increase in population of 2% per year. As a result, capacity connections fees have not historically constituted a significant portion of System Revenues. In Fiscal Year 2011-12, the City estimates that capacity/connection fees will constitute approximately 1% of System Revenues.

Collections. The City bills for water, wastewater, solid waste and electricity on the same bill. If a bill is unpaid, the City will terminate electric service to a customer within 46 days of initial billing after 48 hours notice. The annual delinquency rate has been less than 1% for the bulk of the preceding 10 fiscal years. The estimated delinquency rate for Fiscal Year 2011-12 is 0.7%.

Comparison of Monthly Wastewater Service Charges of Selected Agencies. A comparison of wastewater service charges of selected agencies located in San Joaquin County for an average single-family home is set forth below.

Table 6
Comparison of Monthly Wastewater Service Charges
(as of July 1, 2012)⁽¹⁾

<u>Agency</u>	<u>Service Charge ⁽²⁾</u>
City of Galt	\$ 44.90
City of Manteca	43.30
City of Lodi	41.22
City of Tracy	34.23
City of Stockton	31.00
<i>Average</i>	<i>38.93</i>

(1) Rates shown are as of July 1, 2012.

(2) For all agencies other than the City, based upon flat monthly rate charged to all single family residential customers. Rate for City reflects a fixed monthly service charge plus usage charge for median volume user.

Source: City of Lodi.

Planned Capital Improvements

In April 2012, the City completed the final portion of significant capital improvements at the White Slough Treatment Facility that were financed with the proceeds of the 2007 Certificates. There are no planned capital improvement projects at the White Slough Facility due to long term service capabilities of the current facilities.

As described herein in “Environment Compliance,” the City anticipates that the new NPDES permit for the White Slough Facility may require the lining of the existing storage ponds, with an estimated cost of \$3.0 million. The lining projects are scheduled for Fiscal Years 2013-14 and 2014-15 in the Projected Operating Results.

Funding for rehabilitative capital maintenance of the collection system was established via a City Council approved rate increase in October 2001. That action set aside \$1 million per year for pipe lining and replacement See “Collection System” herein.

Other capital maintenance improvements at White Slough and the 7 lift stations are included in the financial plan for the replacement and maintenance of equipment as it ages. Much of this capital maintenance activity is planned and scheduled through a computer-based asset management and maintenance program. In addition to the \$1 million annual allocation for pipe lining and replacement, the annual planned expenditures range from \$.7 million to \$4.3 million over the next four years.

Financial Statements

The audited Comprehensive Annual Financial Report for the City as of June 30, 2011 is included in Appendix B to this Official Statement. The Comprehensive Annual Financial Report includes all funds and accounts of the City, including the City's General Fund. The 2012 Installment Payments are special obligations of the City payable solely from the System Net Revenues, and are not payable from the City's General Fund. The Comprehensive Annual Financial Report has been audited by Macias, Gini & Company LLP, Sacramento, California, independent accountants (the "Independent Accountants") as stated in their report appearing in Appendix B.

No review or investigation with respect to subsequent events has been undertaken in connection with such General Purpose Financial Statements by the Independent Accountants and the Independent Accountants have not been asked to consent to the City including the General Purpose Financial Statements in this Official Statement.

Sale of Recycled Water

The City is a party to (i) an Agreement to Supply Recycled Water dated March 22, 2010 (the "NCPA Recycled Water Agreement") with the Northern California Power Agency ("NCPA") and (ii) an Amended and Restated Ground Lease dated March 22, 2010 (the "NCPA Ground Lease").

The City owns certain real property adjacent to the White Slough Facility that it purchased prior to 1990. Under the NCPA Ground Lease, the City leases that real property (the "NCPA-Leased Property") to NCPA, and NCPA uses the NCPA-Leased Property for operation of a gas turbine power generation plant and ancillary uses. The term of the NCPA Ground Lease commenced on January 1, 1993 and continues for 50 years; NCPA has a right to extend the lease for another 50 years. In fiscal year 2010-11, the City received approximately \$61,000 of rent from NCPA under the NCPA Ground Lease.

Pursuant to the NCPA Recycled Water Agreement, the City supplies NCPA with recycled water and NCPA agrees to use recycled water to generate electricity or to irrigate landscaping associated with its generating facilities. NCPA pays (i) a base price per acre foot per year ("afy") for 1600 afy of recycled water, which NCPA pays for whether or not it uses it, (ii) 125% of the base price for any incremental quantity of recycled water greater than 1600 afy up to 1800 afy, and (iii) 150% of the base price for any incremental quantity of recycled water above 1800 afy; the base price increases 2.5% annually (subject to a 10-year price review procedure). In fiscal year 2012-13, the City expects to receive \$960,000 from NCPA under the NCPA Recycled Water Agreement. The term of the NCPA Recycled Water Agreement is tied to the term of the NCPA Ground Lease.

The aggregate payments received by the City from NCPA under the two agreements do not exceed the fair rental value for the NCPA-Leased Property (which is not an asset of the System), and the recycled water provided to NCPA does not have any value (the transfer of recycled water to NCPA avoids the cost of alternative disposal methods). Consequently, the City deposits the payments it receives from NCPA under the NCPA Recycled Water Agreement and the NCPA Ground Lease in its general fund rather than the System Revenue Fund, as it would be required to do if the payments received from NCPA were System Revenues.

No claim has been filed or threatened alleging that all or a portion of the payments received by the City from NCPA and deposited into the City's general fund are System Revenues. Although

the City believes that the payments received from NCPA may legally be deposited into its general fund, it cannot predict the outcome of any litigation of the issue. If a court were to conclude that all or a portion of the payments received by the City from NCPA were System Revenues, then the City would be obligated to deposit future such payments into the System Revenue Fund rather than the City's general fund, and, because the statute of limitations applicable to any such claim would be three years, the City could be obligated to reimburse the System Revenue Fund for any such payments for the preceding three years. The obligation to deposit all or a portion of the NCPA payments into the System Revenue Fund would obviously benefit the System. However, if the City were unable to reimburse the System Revenue Fund, the City could be obligated to rebate to System customers an amount equal to three years' of rates and charges attributable to the payments from NCPA that were held to be System Revenues. The City believes that any such obligation to reimburse System customers would not adversely impact its ability to make the Installment Payments when due.

Historical Operating Results

The following table sets forth historical revenues, expenses and debt service coverage of the System, based on the City's audited financial statements for fiscal years 2006-07 through 2010-11. The coverage ratios have been computed in accordance with the requirements of the Existing Parity Obligations, including the definitions of System Net Revenues and Operation and Maintenance Costs.

Table 7
City of Lodi
Wastewater System
Historical Operating Results and Debt Service Coverage
Fiscal Years 2006-07 through 2010-11

	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>
Operating Revenues					
Charges for Services	\$ 8,523,530	\$ 9,091,220	\$ 9,276,217	\$ 11,513,389	\$ 13,089,679
Non-Operating Revenues					
Interest Income	922,153	836,862	428,586	298,337	220,600
Rent	176,202	165,931	221,422		
Other ⁽¹⁾	<u>259,618</u>	<u>435,935</u>	<u>838,007</u>	<u>472,578</u>	<u>3,198,194</u>
Total System Revenues	\$9,881,503	\$10,529,948	\$10,764,232	\$12,284,304	\$16,508,473
Operating Expenses					
Personnel services	\$2,289,035	\$2,996,028	\$2,984,049	\$2,800,891	\$3,257,618
Supplies, Materials and services	2,314,233	2,394,804	2,067,646	2,532,246	1,955,464
Utilities	<u>683,669</u>	<u>798,652</u>	<u>869,129</u>	<u>847,167</u>	<u>758,934</u>
Total Operating Expenses	<u>\$5,286,937</u>	<u>\$6,189,484</u>	<u>\$5,920,824</u>	<u>\$6,180,304</u>	<u>\$5,972,016</u>
System Net Revenues	\$4,594,566	\$4,340,464	\$4,843,408	\$6,104,000	\$10,536,457
Parity Debt Service					
1991 Installment Payments	\$800,755	\$311,127			
2003 Installment Payments	380,698	381,848	382,648	\$382,733	\$381,393
2004 Installment Payments	2,151,194	2,144,438	2,134,856	2,138,700	2,147,600
2007 Installment Payments		<u>852,239</u>	<u>1,591,200</u>	<u>1,631,500</u>	<u>1,588,750</u>
Total Parity Debt Service	\$3,332,647	\$3,689,652	\$4,108,704	\$4,152,933	\$4,117,743
Debt Service Coverage	1.38	1.18	1.17	1.47	2.56
Non-Operating Expenses					
Transfers (In)/Out ⁽²⁾	<u>\$1,315,191</u>	<u>\$575,326</u>	<u>\$1,451,478</u>	<u>\$1,451,478</u>	<u>\$1,451,480</u>

Total Non-Operating Expenses	1,315,191	575,326	1,451,478	1,451,478	1,451,480
Net Cashflow Before Capital Expenditures	\$ (53,372)	\$ 75,487	\$ (716,744)	\$ 499,590	\$ 4,967,234

(1) What does this consist of? In particular, explain \$3.1 million in 2010-11.

(2) Explain this line item.

[ADD FOOTNOTES NOTED]_____

Source: City of Lodi Financial Report

Management’s Discussion of Operating Results. The System is operated as a separate enterprise activity within the City government. This structure is essentially the same as for its water and electric utility enterprises. Functionally, the System is operated jointly with the water utility by the Water/Wastewater Division within the Department of Public Works. This arrangement is designed by the City to provide for improved efficiency in cross training and utilization of staff and in the purchase and use of equipment and facilities.

In order to reflect increased debt service resulting from the issuance of the 2007 Certificates (which, as described herein, provided funding for significant treatment capacity upgrades at the White Slough Facility), from Fiscal Years 2008-09 through 2012-13, the City approved aggregate rate increase in excess of 45%. The Projected Operating Results assume modest rate increases of approximately 3% per year through the remainder of the projection period.

The Wastewater Fund cash balance at June 30, 2012 is approximately \$12.3 million. The Operating fund cash balance is approximately \$6.3 million and significantly exceeds the reserve policy goal of 25% of operating expenses, which was established by the City Council as pa water rate model. The \$12.3 million noted above also includes the Rate Stabilization Fund reserve of \$500,000, \$2.9 million set aside for capital improvements through the City Impact Mitigation Fee program and an additional \$2.6 million designated for infrastructure replacement, but which could also be used for operations or debt service.

Projected Operating Results and Debt Service Coverage

The City’s estimated projected operating results for the System for the Fiscal Years ending June 30, 2012 through 2016 are set forth below, reflecting certain significant assumptions concerning future events and circumstances. The financial forecast represents the City’s estimate of projected financial results based upon its judgment of the probable occurrence of future events. The assumptions set forth in part in the footnotes to the chart set forth below are material in the development of the City’s financial projections, and variations in the assumptions may produce substantially different financial results. Actual operating results achieved during the projection period may vary from those presented in the forecast and such variations may be material.

The following table also sets forth debt service coverage ratios with respect to the 2012 Bonds and the Existing Parity Obligations. Such coverage ratios have been computed in accordance with the requirements of the 2012 Installment Purchase Agreement.

Table 8
City of Lodi
Wastewater System
Projected Operating Results and Debt Service Coverage
Fiscal Years 2011-12 through 2015-16

	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>2015-16</u>
Operating Revenues					
Charges for Services ⁽¹⁾	\$ 13,468,081	\$ 13,873,500	\$ 14,175,000	\$ 14,629,000	\$ 15,097,000
Non-Operating Revenues					
Interest Income ⁽²⁾	47,540	177,040	97,000	105,000	103,000
Other ⁽³⁾	<u>186,671</u>	<u>160,000</u>	<u>176,000</u>	<u>181,500</u>	<u>187,000</u>
Total System Revenues	\$13,702,292	\$14,210,540	\$14,448,000	\$14,915,500	\$15,387,000
Operating Expenses ⁽⁴⁾					
Personnel services	\$3,525,721	\$3,239,330	\$3,346,000	\$3,459,000	\$3,577,000
Supplies, Materials and services	2,275,320	2,049,890	2,497,000	2,609,000	2,726,000
Utilities	857,350	707,400	671,000	701,000	732,000
Other ⁽⁵⁾	<u>643,500</u>	<u>398,500</u>	<u>128,800</u>	<u>132,300</u>	<u>135,800</u>
Total Operating Expenses	<u>\$7,301,891</u>	<u>\$6,395,120</u>	<u>\$6,642,800</u>	<u>\$6,901,300</u>	<u>\$7,170,800</u>
System Net Revenues	\$6,400,401	\$7,815,420	\$7,805,200	\$8,014,200	\$8,216,200
Parity Debt Service					
2003 Installment Payments	381,420	383,370	377,310	378,318	378,013
2004 Installment Payments	2,144,350	2,143,480	2,139,725	2,139,556	2,134,731
2007 Installment Payments	<u>1,601,900</u>	<u>1,601,800</u>	<u>1,603,550</u>	<u>1,602,850</u>	<u>1,606,850</u>
Total Parity Debt Service ⁽⁶⁾	\$4,127,670	\$4,128,650	\$4,120,585	\$4,120,724	\$4,119,594
Debt Service Coverage	1.55	1.89	1.89	1.94	1.99
Non-Operating Expenses					
Transfers (In)/Out	<u>\$1,451,480</u>	<u>\$1,451,480</u>	<u>\$1,451,480</u>	<u>\$1,451,480</u>	<u>\$1,451,480</u>
Total Non-Operating Expenses	\$1,451,480	\$1,451,480	\$1,451,480	\$1,451,480	\$1,451,480
Net Cashflow Before Capital Expenditures	\$ 821,251	\$ 2,235,290	\$ 2,233,135	\$ 2,441,996	\$ 2,645,126

(1) Charges for services projected for fiscal year 2012-13 and thereafter to increase at annually by 3%.

(2) Annual interest earnings projected at 1.5% in fiscal year 2011-12 and 1% thereafter times the projected average annual fund balance.

(3) Includes Operating Grants, Sewer Tap Fees and Septic Dumping Charges. Sewer Tap Fees and Septic Dumping Charges projected at 3% annual growth rate estimate.

(4) Excludes depreciation. Projected to increase annually at varying rates: personnel costs at 3.4%, utility costs at 4.5%, supplies and other at 4.5%, with variations for regulatory studies, etc.

(5) Includes equipment, rebates, special payments/fees. In 2011-12, includes a one-time refund of \$313,934 to Lodi Unified School District.

(6) Does not reflecting refunding of the Refunded Certificates.

Source: Revised City Budget estimates for Fiscal Year 2011-12 and adopted City Budget estimates for fiscal year 2012-13. City of Lodi provided revenue and expense projections for fiscal year 2013-14 through fiscal year 2015-16.

THE AUTHORITY

The Authority was created in July 2010 by a joint exercise of powers agreement, which was entered into between the City and Industrial Development Authority of the City of Lodi (“IDA”), pursuant to the provisions of the Act. Under the Joint Exercise of Powers Agreement, the Authority is a public entity, separate from the City and the IDA. The debts, liabilities and obligations of the Authority are not debts, liabilities and obligations of either the City or the IDA. The Authority is administered by a governing board consisting of the members of the Lodi City Council.

RISK FACTORS

The following factors, which represent certain risk factors, should be considered along with all other information in this Official Statement by potential investors in evaluating the Series 2012 Bonds. The following is not intended to be an exhaustive list and there can be no assurance made that other risk factors do not currently exist or will not become evident at any future time.

Rate Covenant Not a Guarantee

The ability of the City to make the 2012 Installment Payments and thereby pay the principal of and interest on the Series 2012 Bonds depends on the ability of the City to generate System Net Revenues in the levels required by the 2012 Installment Purchase Agreement . Although, as more particularly described herein, the City expects that sufficient revenues will be generated through the imposition and collection of impact fees, service fees and other System Revenues described herein, there is no assurance that such imposition of impact fees, service fees, or other System Revenues will result in the generation of System Net Revenues in the amounts required by the 2012 Installment Purchase Agreement . As a result, the City's covenant does not constitute a guarantee that sufficient System Net Revenues will be available to make debt service payments on the 2012 Bonds.

Statutory and Regulatory Impact

Laws and regulations governing treatment and disposal of wastewater are enacted and promulgated by government agencies on the federal, state and local levels. Compliance with these laws and regulations may be extremely costly, and, as more stringent standards are developed to protect the environment, these costs will likely increase. See "THE SYSTEM - Environmental Compliance."

Claims against the City for violations of regulations with respect to its facilities and services could be significant. Such claims are payable from assets of the System or from other legally available sources.

Although the City has covenanted in the 2012 Installment Purchase Agreement to fix, prescribe and collect rates, fees and charges during each Fiscal Year at specified levels, no assurance can be given that the cost of compliance with such laws and regulations will not materially adversely affect the ability of the City to generate System Net Revenues in the amounts required by the 2012 Installment Purchase Agreement and to pay the 2012 Installment Payments. Certain potential increasing regulatory standards could materially increase the cost to the City of providing sewer services.

Permit Renewal

The 2007 Permit expires on September 1, 2012. Discussions with RWQCB staff indicate that draft permit conditions for the next permit will be issued in November or December 2012. While approval of a new NPDES permit is pending, the White Slough Facility may continue to operate under the requirements of the 2007 Permit until a new permit is adopted by the RWQCB. While the City does not believe that the discharge limits and other requirements for the White Slough Facility as set forth in the 2007 Permit will be significantly different in the new NPDES permit when it is issued, as described above, the City has not yet received draft permit conditions. There can be no assurances that the new permit, when issued, will not impose significant new and potentially more

stringent conditions and requirements on the operations of the White Slough Facility, which could result in significant increases in capital and/or operating costs.

Earthquake, Flood or Other Natural Disasters

The occurrence of an earthquake, flood or other natural disaster which resulted in the temporary or permanent closure of major components of the System or resulted in significantly increased costs could materially adversely affect the ability of the City to operate the System or to generate System Net Revenues at the levels required by the 2012 Installment Purchase Agreement .

Flood. Based on revised flood risk evaluations prepared by the Federal Emergency Management Agency (FEMA) for the City of Lodi and San Joaquin County in 1987, flood hazards are a constraint to development only in the area immediately adjacent to the Mokelumne River in the 100-year floodplain. The levee system along the Mokelumne River is of sufficient height to protect nearly all of the City from 100-year floodflow, but the majority of the area is subject to overland flooding (sheet flow, generally less than two feet in depth) during the 500-year flood event. Significant portions of the area are high enough to be free of the 500-year hazard.

The property on which the White Slough Facility sits within a 100-year flood zone associated with the San Joaquin Delta. However, the White Slough Facility itself is constructed at or above the flood elevation.

Projected Operating Results

The Projected Operating Results included herein are based on certain assumptions and forecasts. Any forecast is subject to uncertainties. There will usually be differences between actual and forecast results because not all events and circumstances occur as expected, and those differences may be material.

Accordingly, the Projected Operating Results are not necessarily indicative of future performance, and the City does not assume any responsibility for the failure to meet such projections. In addition, certain assumptions with respect to future business and financing decisions of the City are subject to change. No representation is made or intended, nor should any representation be inferred, with respect to the likely existence of any particular future set of facts or circumstances, and prospective purchasers of the 2012 Bonds are cautioned not to place undue reliance upon the Projected Operating Results. If actual results are less favorable than the results projected or if the assumptions used in preparing such projections prove to be incorrect, the amount of System Net Revenues may be materially less than expected and consequently, the ability of the City to make timely payment of the principal of and interest on the 2012 Bonds may be materially adversely affected.

Neither the City's independent auditors, nor any other independent accountants have compiled, examined or performed any procedures with respect to the Projected Operating Results, nor have they expressed any opinion or any form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, Projected Operating Results, nor have they expressed any opinion or any form of assurance on such information or its achievability, and assume no responsibility for, and disclaim any association with, Projected Operating Results.

Limited Recourse on Default

Failure by the City to make the 2012 Installment Payments, when due, constitutes an event of default under the 2012 Installment Purchase Agreement and the Authority is permitted to pursue remedies at law or in equity to enforce the City's obligation to make the 2012 Installment Payments. Although the Trustee, as assignee of the Authority, has the right to accelerate the total unpaid principal component of the 2012 Installment Payments, there is no assurance that the City will have sufficient System Net Revenues to pay the principal component of the 2012 Installment Payments upon acceleration. See also "Certain Limitations on the Ability of the City to Impose Taxes, Fees and Charges" below.

Certain Limitations on the Ability of the City to Impose Taxes, Fees and Charges

On November 5, 1996, the voters of the State approved Proposition 218, a constitutional initiative, entitled the "Right to Vote on Taxes Act" ("Proposition 218"). Proposition 218 added Articles XIIC and XIID to the California Constitution and contains a number of interrelated provisions affecting the ability of local governments, including the City, to levy and collect both existing and future taxes, assessments, fees and charges.

Section 3 of Article XIIC expressly extends the initiative power to give voters the power to reduce or repeal local taxes, assessments, fees and charges, regardless of the date such taxes, assessments, fees or charges were imposed. Section 3 expands the initiative power to include reducing or repealing assessments, fees and charges, which had previously been considered administrative rather than legislative matters and therefore beyond the initiative power. This extension of the initiative power is not limited by the terms of Article XIIC to fees imposed after November 6, 1996, the effective date of Proposition 218, and absent other legal authority could result in the reduction in any existing taxes, assessments or fees and charges imposed prior to November 6, 1996.

"Fees" and "charges" are not expressly defined in Article XIIC or in SB 919, the Proposition 218 Omnibus Implementation Act enacted in 1997 to prescribe specific procedures and parameters for local jurisdictions in complying with Article XIIC and Article XIID ("SB 919"). However, on July 24, 2006, the California Supreme Court ruled in *Bighorn-Desert View Water Agency v. Virjil (Kelley)* (the "Bighorn Decision") that charges for ongoing water delivery are property related fees and charges within the meaning of Article XIID and are also fees or charges within the meaning of Section 3 of Article XIIC. The California Supreme Court held that such water service charges may, therefore, be reduced or repealed through a local voter initiative pursuant to Section 3 of Article XIIC.

In the Bighorn Decision, the Supreme Court did state that nothing in Section 3 of Article XIIC authorizes initiative measures that impose voter-approval requirements for future increases in fees or charges for water delivery. The Supreme Court stated that water providers may determine rates and charges upon proper action of the governing body and that the governing body may increase a charge which was not affected by a prior initiative or impose an entirely new charge.

The Supreme Court further stated in the Bighorn Decision that it was not holding that the initiative power is free of all limitations and was not determining whether the initiative power is subject to the statutory provision requiring that water service charges be set at a level that will pay debt service on bonded debt and operating expenses. Such initiative power could be subject to the

limitations imposed on the impairment of contracts under the contract clause of the United States Constitution. Additionally, SB 919 provides that the initiative power provided for in Proposition 218 “shall not be construed to mean that any owner or beneficial owner of a municipal security, purchased before or after (the effective date of Proposition 218) assumes the risk of, or in any way consents to, any action by initiative measure that constitutes an impairment of contractual rights” protected by the United States Constitution. However, no assurance can be given that the voters within the service area of the City will not, in the future, approve an initiative which reduces or repeals local taxes, assessments, fees or charges.

Article XIID defines a “fee” or “charge” as any levy other than an ad valorem tax, special tax, or assessment imposed upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service. A “property-related service” is defined as “a public service having a direct relationship to a property ownership.” In the Bighorn Decision, the California Supreme Court held that a public water agency’s charges for ongoing water delivery are fees and charges within the meaning of Article XIID. Article XIID requires that any agency imposing or increasing any property-related fee or charge must provide written notice thereof to the record owner of each identified parcel upon which such fee or charge is to be imposed and must conduct a public hearing with respect thereto. The proposed fee or charge may not be imposed or increased if a majority of owners of the identified parcels file written protests against it. As a result, the local government’s ability to increase such fee or charge may be limited by a majority protest.

The City believes that it has complied with the applicable notice and protest procedures of Article XIID for all increases in its rates and charges approved since the effective date of Article XIID, and that the Bighorn decision will not require any changes in the procedures it has utilized. There has not been nor is there any pending challenge to any of the City’s fees and charges approved since the effective date of Proposition 218.

In addition, Article XIID also includes a number of limitations applicable to existing fees and charges including provisions to the effect that (i) revenues derived from the fee or charge shall not exceed the funds required to provide the property-related service; (ii) such revenues shall not be used for any purpose other than that for which the fee or charge was imposed; (iii) the amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel; and (iv) no such fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Property-related fees or charges based on potential or future use of a service are not permitted.

On November 2, 2010, voters in the State approved Proposition 26. Proposition 26 amends Article XIIC of the State Constitution by expanding the definition of “tax” to include “any levy, charge, or exaction of any kind imposed by a local government” except the following: (1) a charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege; (2) a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and does not exceed the reasonable costs to the local government of providing the service or product; (3) a charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, for performing investigations, inspections, and audits, for enforcing agricultural marketing orders, and for the administrative enforcement and adjudication thereof; (4) a charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property;

(5) a fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law; (6) a charge imposed as a condition of property development; and (7) assessments and property-related fees imposed in accordance with the provisions of Article XIID. Proposition 26 provides that the local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bears a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity. As of the date of this Official Statement, the City is unaware of any fees relating to the Sewer System that would have to be reduced or eliminated because of Proposition 26.

Articles XIII A, XIII B, XIII C and XIII D were adopted as measures that qualified for the ballot pursuant to California's initiative process. From time to time other initiatives could be proposed and adopted affecting the City's revenues or ability to increase revenues.

The City covenants in the 2012 Installment Purchase Agreement that it will, to the maximum extent permitted by law, fix, prescribe and collect rates, fees and charges and manage the operation of the System for each Fiscal Year so as to yield System Net Revenues during such Fiscal Year equal to at least 110% of the Annual Debt Service on all Parity Debt in such Fiscal Year; provided, an adjustment will be made to the amount of System Net Revenues for amounts deposited into or withdrawn from the Rate Stabilization Fund; provided that, for purposes of such calculation, the amount of System Net Revenues before any credits for transfers from the Rate Stabilization Fund to the System Revenue Fund may not be less than 100% of Annual Debt Service for such Fiscal Year. In the event that proposed increased service charges cannot be imposed as a result of a majority protest, such circumstances may adversely effect the ability of the System to generate revenues in the amounts required by the Installment Purchase Agreement , and to make 2012 Payments representing principal and interest with respect to the 2012 Bonds.

Effect of Bankruptcy

In addition to the limitations on remedies contained in the 2012 Installment Purchase Agreement and the Indenture, the rights and obligations under the Bonds, the Lease and the Indenture may be subject to the following: the United States Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect; usual equity principles which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State of California and its governmental bodies in the interest of serving a significant and legitimate public purpose.

Bankruptcy proceedings, or the exercise of powers by the federal or state government, if initiated, could subject the Owners of the 2012 Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation or modification of their rights.

Loss of Tax Exemption

The City has covenanted in the 2012 Installment Purchase Agreement, and the Authority has covenanted in the Indenture, that each will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of interest on the 2012 Bonds under Section 103 of the Internal Revenue Code of 1986. In the event either the City or the Authority fails to comply with the foregoing tax covenant, interest on the 2012 Bonds may be includable in the gross income of the Owners thereof for federal tax purposes. See "TAX MATTERS".

Secondary Market

There can be no guarantee that there will be a secondary market for the 2012 Bonds or, if a secondary market exists, that any 2012 Bonds can be sold for any particular price. Prices of bond issues for which a market is being made will depend upon then-prevailing circumstances. Such prices could be substantially different from the original purchase price. No assurance can be given that the market price for the 2012 Bonds will not be affected by the introduction or enactment of any future legislation (including without limitation amendments to the Internal Revenue Code), or changes in interpretation of the Internal Revenue Code, or any action of the Internal Revenue Service, including but not limited to the publication of proposed or final regulations, the issuance of rulings, the selection of the 2012 Bonds for audit examination, or the course or result of any Internal Revenue Service audit or examination of the 2012 Bonds or obligations that present similar tax issues as the 2012 Bonds.

TAX MATTERS

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to the qualifications set forth below, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, provided, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings.

The opinions set forth in the preceding paragraph are subject to the condition that the Authority and the City comply with all requirements of the Internal Revenue Code of 1986, as amended (the "Tax Code") that must be satisfied subsequent to the issuance of the Bonds. The Authority and the City have covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of such interest in gross income for federal income tax purposes to be retroactive to the date of issuance of the Bonds.

If the initial offering price to the public (excluding bond houses and brokers) at which a Bond is sold is less than the amount payable at maturity thereof, then such difference constitutes "original issue discount" for purposes of federal income taxes and State of California personal income taxes. If the initial offering price to the public (excluding bond houses and brokers) at which a Bond is sold is greater than the amount payable at maturity thereof, then such difference constitutes "original issue premium" for purposes of federal income taxes and State of California personal income taxes. De minimis original issue discount and original issue premium is disregarded.

Under the Tax Code, original issue discount is treated as interest excluded from federal gross income and exempt from State of California personal income taxes to the extent properly allocable to each owner thereof subject to the limitations described in the first paragraph of this section. The original issue discount accrues over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). The amount of original issue discount accruing during each period is added to the adjusted basis of such Bonds to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such Bond. The Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the Bonds who purchase the Bonds after the initial offering of a substantial amount of such maturity. Owners of such Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering, the allowance of a deduction for any loss on a sale or other disposition, and the treatment of accrued original issue discount on such Bonds under federal individual and corporate alternative minimum taxes.

Under the Tax Code, original issue premium is amortized on an annual basis over the term of the Bond (said term being the shorter of the Bond's maturity date or its call date). The amount of original issue premium amortized each year reduces the adjusted basis of the owner of the Bond for purposes of determining taxable gain or loss upon disposition. The amount of original issue premium on a Bond is amortized each year over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). Amortized Bond premium is not deductible for federal income tax purposes. Owners of premium Bonds, including purchasers who do not purchase in the original offering, should consult their own tax advisors with respect to State of California personal income tax and federal income tax consequences of owning such Bonds.

In the further opinion of Bond Counsel, interest on the Bonds is exempt from California personal income taxes.

Owners of the Bonds should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the Bonds may have federal or state tax consequences other than as described above. Bond Counsel expresses no opinion regarding any federal or state tax consequences arising with respect to the Bonds other than as expressly described above.

LITIGATION

Litigation Concerning the 2012 Bonds. To the knowledge of the City, there is no controversy or litigation of any nature now pending or threatened restraining or enjoining the execution and delivery of the 2012 Bonds, the Indenture, the 2012 Installment Purchase Agreement or in any way contesting or affecting the validity of the 2012 Bonds or any proceedings of the City or the Authority taken with respect to the execution and delivery thereof.

Prior Environmental Litigation Involving the City. The City of Lodi initiated litigation in 2000 to address PCE and TCE contamination that threatened the City's water supply. The litigation exposed the City to several economic risks associated with: 1) the costs of the litigation; 2) the financing of the litigation; and 3) the City's wastewater system because the PCE had been discharged by private parties to, and may have leaked from the City's wastewater collection system. The City has now fully resolved the environmental clean up litigation, and all of the associated litigation that

arose out of the economic risks referenced above. In exchange for money to fund the clean-up, the settlements require the City to perform the clean-up. The City estimates that its global unfunded liability for the contamination litigation is approximately \$34.4 million, including a \$15 million contingency. The City is paying the costs of the clean-up from revenues of the City's water system. The City raised its water rates an average of \$10.50 per month in September of 2005 to meet this liability and the City believes that the revenues generated from this rate increase will fully fund the City's clean-up costs. The City does not expect that any funds from the System will be used for the costs relating to the clean-up.

APPROVAL OF LEGALITY

The 2012 Bonds are offered when, as and if issued and received by the Underwriter and subject to the approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will be passed upon for the City and the Authority by the City Attorney, and for the Underwriters by Stradling Yocca Carlson & Rauth, a Professional Corporation, Sacramento, California.

Payment of the fees and expenses of Bond Counsel and Underwriters' Counsel is contingent upon execution and delivery of the 2012 Bonds.

FINANCIAL STATEMENTS

Macias, Gini & O'Connell, Certified Public Accountants (the "Auditor"), audited the financial statements of the City for the Fiscal Year ended June 30, 2011. The Auditor's examination was made in accordance with generally accepted auditing standards and Governmental Auditing Standards, issued by the Comptroller General of the United States. See "APPENDIX B – Audited Financial Statements of the City for Fiscal Year Ended June 30, 2011."

The City has not requested nor did the City obtain permission from the Auditor to include the audited financial statements as an appendix to this Official Statement. Accordingly, the Auditor has not performed any post-audit review of the financial condition or operations of the City.

RATINGS

Standard & Poor's and Fitch are expected to assign the 2012 Bonds the long-term ratings of "___" and "___", respectively, by Standard & Poor's and Fitch.

The ratings reflect only the respective views of the rating agencies, and any explanation of the significance of such ratings may be obtained only from such rating agencies as follows: Standard & Poor's, 55 Water Street, 38th Floor, New York, New York 10041; and Fitch Ratings, One State Street Plaza, New York, New York 10004. There is no assurance that the ratings will remain in effect for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agencies, or either of them, if, in their respective judgments, circumstances so warrant. The City undertakes no responsibility to oppose any such revisions or withdrawal. Any downward revision or withdrawal of any rating may have an adverse effect on the market price of the 2012 Bonds.

CONTINUING DISCLOSURE

The City will covenant for the benefit of owners of the 2012 Bonds to provide certain financial information and operating data relating to the City by not later than 210 days after the end of each fiscal year of the City (currently June 30th), commencing with the report for the 2011-12 fiscal year (the "Annual Report"), and to provide notices of the occurrence of certain enumerated events. Such reports are required to be filed with the Municipal Securities Rulemaking Board through its Electronic Municipal Market Access system ("EMMA"). The specific nature of the information to be contained in the Annual Report or the notices of material events is described in "APPENDIX D- Form of Continuing Disclosure Agreement," attached to this Official Statement. These covenants have been made in order to assist the underwriters of the 2012 Bonds in complying with Securities Exchange Commission Rule 15c2 12(b)(5).

The City has entered into a number of continuing disclosure undertakings in connection with City obligations, including obligations payable from the City's General Fund, as well as obligations payable from the revenues relating to the City's electric, wastewater and water utilities. During the past five years, the City has prepared continuing disclosure reports pursuant to these undertakings and transmitted such reports to its dissemination agent in December following City Council receipt of the Comprehensive Annual Financial Report. However, the reports generally were filed on EMMA after the date required, and frequently certain of the reports were not filed so as to be linked on EMMA with all of the CUSIP numbers for the respective City obligations to which such reports related. Upon discovery of these issues in connection with the preparation of documentation with respect to the Bonds, the City corrected the filings on EMMA (so that the appropriate reports are "linked" on EMMA to the City obligations to which they relate). The City also will confirm that the dissemination agent files timely reports in the future.

FINANCIAL ADVISOR

Lamont Financial Services Corp. (the "Financial Advisor") has assisted the City with various matters relating to the planning, structuring and delivery of the 2012 Bonds. The Financial Advisor is a financial advisory firm and is not engaged in the business of underwriting or distributing municipal securities or other public securities. The Financial Advisor assumes no responsibility for the accuracy, completeness or fairness of this Official Statement. The Financial Advisor will receive compensation from the City contingent upon the sale and delivery of the 2012 Bonds.

UNDERWRITING

The Underwriters have agreed, subject to certain conditions, to purchase the 2012 Bonds at a price of \$_____, representing the aggregate principal amount of the 2012 Bonds plus \$_____ net original issue premium and less \$_____ Underwriters' discount).

The Purchase Contract for the 2012 Bonds provides that the Underwriters will purchase all the 2012 Bonds, if any are purchased. The 2012 Bonds may be offered and sold by the Underwriters to certain dealers and others at prices lower than the public offering price stated on the inside cover page of this Official Statement, and such public offering price may be changed, from time to time, by the Underwriters.

J.P. Morgan Securities LLC ("JPMS") provided the information contained in this paragraph for inclusion in this Official Statement and the City does not take any responsibility for or make any

representation as to its accuracy or completeness. JPMS, one of the underwriters of the 2012 Bonds, has entered into negotiated dealer agreements (each, a “Dealer Agreement”) with each of UBS Financial Services Inc. (“UBSFS”) and Charles Schwab & Co., Inc. (“CS&Co.”) for the retail distribution of certain securities offerings, including the 2012 Bonds, at the original issue prices. Pursuant to each Dealer Agreement, each of UBSFS and CS&Co. will purchase the 2012 Bonds from JPMS at the original issue prices less a negotiated portion of the selling concession applicable to any 2012 Bonds that such firm sells.

VERIFICATION OF MATHEMATICAL COMPUTATIONS

Upon delivery of the 2012 Bonds, [[Causey Demgen & Moore Inc.]], independent certified public accountants, will deliver a report stating that the firm has verified the mathematical accuracy of certain computations relating to the adequacy of the amounts deposited pursuant to the Escrow Agreement to pay the applicable redemption price of and accrued interest on, the Refunded Certificates on their respective payment and redemption dates.

EXECUTION AND DELIVERY

The execution and delivery of this Official Statement have been authorized by the Board of Directors of the Authority and the City Council of the City.

LODI PUBLIC FINANCING AUTHORITY

By : _____
Executive Director

CITY OF LODI

By : _____
City Manager

APPENDIX A
THE CITY OF LODI

APPENDIX B

**AUDITED FINANCIAL STATEMENTS OF THE CITY
FOR THE FISCAL YEAR ENDED JUNE 30, 2011**

APPENDIX C
SUMMARY OF PRINCIPAL LEGAL DOCUMENTS

APPENDIX D
FORM OF OPINION OF BOND COUNSEL

APPENDIX E
FORM OF CONTINUING DISCLOSURE AGREEMENT

APPENDIX F
DTC AND THE BOOK-ENTRY ONLY SYSTEM



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Ordinance No. 1860 Entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Chapter 12.12 – Parks – by Repealing and Reenacting Article V, 'Skate Parks,' in Its Entirety"

MEETING DATE: August 1, 2012

PREPARED BY: City Clerk

RECOMMENDED ACTION: Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1860.

BACKGROUND INFORMATION: Ordinance No. 1860 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Chapter 12.12 – Parks – by Repealing and Reenacting Article V, 'Skate Parks,' in Its Entirety," was introduced at the regular City Council meeting of June 20, 2012.

ADOPTION: With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. **Cal. Gov't Code § 36934.**

Ordinances take effect 30 days after their final passage. **Cal. Gov't Code § 36937.**
This ordinance has been approved as to form by the City Attorney.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/jmr

Attachment

APPROVED: _____
Konradt Bartlam, City Manager

ORDINANCE NO. 1860

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LODI AMENDING LODI MUNICIPAL CODE CHAPTER 12.12 –
PARKS – BY REPEALING AND REENACTING ARTICLE V,
“SKATE PARKS,” IN ITS ENTIRETY

=====

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Lodi Municipal Code Chapter 12.12 – Parks – is hereby amended by repealing and reenacting Article V, “Skate Parks,” in its entirety and shall read as follows:

12.12.410 Skateboarding, Roller-skating, and Bicycling prohibited in Certain Areas; Skate Park Regulations.

- A. Skateboarding, roller-skating, in-line skating, bicycling, and similar activities are prohibited in City Parks and recreational facilities unless specifically authorized in areas designed by this article and as further designated by resolution of the City Council. The City of Lodi designates and maintains as a skate park facility that area located within Kofu Park at 1145 South Ham Lane at Cardinal Street. The boundaries of the skate facility shall be defined by a fence and the signs required by this Article.

12.12.420 Skate Park Regulations.

The following regulations shall apply to the riding of skateboards, in-line skates, roller skates, or bicycles at, or any other use of, any facility or park owned or operated by the City of Lodi, which has been designated a skate park:

- A. Within the skate park, it shall be unlawful for any person to:
 - (1) Ride, operate, or use a skateboard, roller skates, in-line skates or bicycle unless that person is wearing a helmet designed for skateboarding, roller-skating, in-line skating, and/or bicycle use with a chin strap, elbow pads designed for skateboarding, roller-skating, in-line skating and/or bicycle use with plastic elbow caps, and knee pads designed for bicycle, skateboard and/or in-line skating use with plastic knee caps, which equipment shall be in good repair at all times during use;
 - (2) Ride, operate, utilize a bicycle, skateboard, roller skates, or in-line skates unless such equipment is in good repair at all times during use;
 - (3) Be on or use an individual apparatus within the skate park while another person is using it;
 - (4) Place or utilize additional obstacles or other materials (including but not limited to ramps or jumps) within the skate park;
 - (5) Use the skate park amenities when the surfaces of the amenities are wet or other conditions exist which would adversely affect the safety of bikers, skateboarders, or skaters;

- (6) Use, operate, or possess any source of amplified music including but not limited to stereo's, boom boxes, and amplifiers;
- (7) Enter the concreted portion of skate park unless actively bicycling, skateboarding, or in-line skating in accordance with these regulations;
- (8) Use, consume, or have within his or her custody or control food, beverages, or tobacco within the concreted portion of the skate park;
- (9) Use, consume, or have within his or her custody or control alcohol or illegal drugs within the skate park;
- (10) Enter the skate park while under the influence of alcoholic beverages or illegal drugs;
- (11) Use or possess glass containers, bottles, or other breakable glass products within the skate park;
- (12) Use or engage in profanity, reckless and boisterous behavior (including, but not limited to, tandem riding, pushing, horseplay, and bullying), or any activity which could endanger the safety of persons using the skate park or spectators;
- (13) Engage in graffiti, tagging, or other defacing of City property or the properties of others;
- (14) Ride, operate, or utilize any device other than a bicycle, skateboard, roller skates, or in-line skates (prohibited devices include, but are not limited to, motor vehicles, motorized skateboards, and motorized skates) within the skate park;
- (15) No person shall enter or remain in or upon the skate park premises: 1) while closed, as determined by the Parks and Recreation Department, or 2) between the hours of 9:00 P.M. and 10:00 A.M.;
- (16) Use or have within his or her custody or control, board wax, within the skate park; and
- (17) No person shall enter the skate park with any animal.

B. The skate park shall be posted with signs at the following locations:

- (1) At the entrance to the skate Park; and
- (2) On the fences of the skate park, facing the interior of the skate park, and in such places inside the park as determined by the City. The signs shall not be less than 2 feet by 3 feet in size and shall use black letters on a white background. The signs may, but shall not be required to, summarize the regulations governing the use of the skate facility. Each sign shall contain, in letters not less than ½ inch in height, the following language:

WARNING

BICYCLING, SKATEBOARDING, AND IN-LINE SKATING ARE HAZARDOUS RECREATION ACTVIITIES. USE OF THIS FACILITY MAY RESULT IN SERIOUS INJURIES OR DEATH. THE CITY OF LODI DOES NOT ASSUME ANY RESPONSIBILITY FOR INJURIES OR DEATH. EACH PERSON ENTERING THE FACILITY ASSUMES ALL RISK OF INJURY OR DEATH. CALIFORNIA HEALTH AND SAFETY CODE §115800.

IT IS UNLAWFUL FOR ANY PERSON TO RIDE, OPERATE, OR UTILIZE A BICYCLE, SKATEBOARD, OR IN-LINE SKATES UNLESS THE PERSON IS WEARING A HELMET DESIGNED FOR BICYCLE, SKATEBOARD, AND/OR IN-LINE SKATING WITH A CHIN STRAP, ELBOW PADS DESIGNED FOR BICYCLE, SKATEBOARD, AND/OR IN-LINES SKATING USE WITH PLASTIC ELBOW CAPS AND KNEE PADS DESIGNED FOR BICYCLE, SKATEBOARD, AND/OR IN-LINE SKATING USE WITH PLASTIC KNEE CAPS, WHICH EQUIPMENT SHALL BE IN GOOD REPAIR AT ALL TIMES DURING USE. IT IS UNLAWFUL FOR ANY PERSON TO RIDE, OPERATE, OR UTILIZE ANY DEVICE OTHER THAN NON-MOTORIZED BICYCLES, NON-MOTORIZED SKATE BOARDS, AND NON-MOTORIZED SKATES. IT IS UNLAWFUL FOR ANY PERSON TO SMOKE, CONSUME ALCOHOLIC BEVERAGES, OR PLAY AMPLIFIED MUSIC WITHIN THE SKATE PARK. ANY PERSON FAILING TO COMPLY WITH THIS SECTION SHALL BE SUBJECT TO CITATIONS AND PENALTIES PURSUANT TO LODI MUNICIPAL CODE SECTION 1.08.010.

12.12.430 Violations.

Every act prohibited or declared unlawful and every failure to perform an act made mandatory by this chapter shall be prosecuted as a misdemeanor for violations of subsections (A) (9) through (10), (A) (13), and A (14) of Section 12.12.420. All other violations shall be prosecuted as an infraction as provided in Section 1.08.010 of this Code.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. 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 toward 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 4. 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 5. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect 30 days from and after its passage and approval.

Approved this 1st day of August, 2012

JOANNE MOUNCE
Mayor

Attest:

RANDI JOHL
City Clerk

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State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1860 was introduced at a regular meeting of the City Council of the City of Lodi held June 20, 2012, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held August 1, 2012, by the following vote:

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

I further certify that Ordinance No. 1860 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney