



LODI CITY COUNCIL

Carnegie Forum

305 West Pine Street, Lodi

AGENDA – REGULAR MEETING

Date: October 21, 2009

Time: Closed Session 6:30 p.m.
Regular Meeting 7:00 p.m.

For information regarding this Agenda please contact:

Randi Johl

City Clerk

Telephone: (209) 333-6702

***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) Threatened Litigation: Government Code §54956.9(b); One Case; Potential Suit by Julie McDonnell against City of Lodi Based on Personal Injury

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. Invocation – Pastor Arlene Proctor, First Church of Christ Scientist

C. Pledge of Allegiance

D. Presentations

D-1 Awards – None

D-2 Proclamations – None

D-3 Presentations

- a) Presentation by Tree Lodi Regarding its Activities and Accomplishments

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

E-1 Receive Register of Claims in the Amount of \$6,950,375.56 (FIN)

E-2 Approve Minutes (CLK)

a) September 30, 2009 (Special Meeting)

b) October 6, 2009 (Shirtsleeve Session)

c) October 13, 2009 (Shirtsleeve Session)

E-3 Authorize City "Garage Sale" of Surplus Furniture Items to be Held on Saturday, November 7, 2009, at the Municipal Service Center (PW)

E-4 Approve Request for Proposals to Provide Professional Services for Preliminary Engineering Work on the Westside Substation (EUD)

Res. E-5 Adopt Resolution Approving Purchase Order with Synagro, of Burlingame, to Remove Approximately 500 Tons of Biosolids from White Slough Water Pollution Control Facility Storage Lagoon and Appropriating Funds (\$215,000) (PW)

- Res. E-6 Adopt Resolution Authorizing the Non-Competitive Purchase of Musco Sports Lighting Components (\$184,696), which Includes Installation to Musco Lighting, Oskaloosa, Iowa, for the Grape Bowl Sports Lighting Upgrade and Appropriate Project Funding (\$200,000) (PR)
- Res. E-7 Adopt Resolution Ratifying Purchase of Motorola Portable Radios Using Recovery Act Justice Assistance Grant Funding (\$62,196.30) (PD)
- Res. E-8 Adopt Resolution Authorizing the Non-Competitive Purchase of Server Equipment and Related Software from Infinite Technology (Oakland), Dell, and CDW-G and Appropriate Energy Efficiency and Conservation Block Grant Funds (\$205,000) (CM)
- Res. E-9 Adopt Resolution Accepting Improvements under Contract with Rosendin Electric, Inc. for Killelea Substation Rehabilitation (EUD)
- Res. E-10 Adopt Resolution Approving the Form of and Authorizing the Execution and Delivery of a Purchase and Sale Agreement and Related Documents with Respect to the Sale of Lodi's Proposition 1A Receivable from the State; and Directing and Authorizing Certain Other Actions in Connection Therewith (CM)
- Res. E-11 Adopt Resolution Authorizing Expenditure of Grant Funding and Authorizing the City Manager to Enter into a Contract with Cool the Earth, Inc., to Conduct a New Energy Education Pilot Program for the Electric Deputy Department (EUD)
- E-12 Authorize Legal Transfer of Title of Ownership for Various City of Lodi Historical Documents to the San Joaquin County Historical Museum (CLK)
- Res. E-13 Adopt Resolutions Amending the Order of Business for City Council Meetings and the City Council Protocol Manual and Adopt Council Policy Regarding Invocations (CA)
- Res. E-14 Set Public Hearing for November 4, 2009, to Consider the Updated Planning Division's Hourly Rate and Setting Various Fire Inspection Fees (CD)
- E-15 Set Public Hearing for November 18, 2009, to Introduce Ordinance Amending Chapter 13.20, "Electrical Service," Section 225 and 227 Titled, "Schedule NEM – Net Energy Metering" and "Schedule CEM – Co-Energy Metering Rider" (EUD)
- E-16 Set Public Hearing for November 18, 2009, to Consider Unmet Transit Needs in Lodi (PW)

F. 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.

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

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

I. Public Hearings

- Res. I-1 Public Hearing to Consider Resolution Modifying Transit Budget and Authorizing the City Manager to Implement Changes (PW)
- Ord. I-2 Public Hearing to Consider Introducing an Ordinance Amending the San Joaquin County (Introduce) Multi-Species Habitat Conservation and Open Space Plan and Adopt Resolution Setting the Development Fees for 2010 (CD)
- Res.

J. Communications

- J-1 Claims Filed Against the City of Lodi – None
- J-2 Appointments
 - a) Post for Expiring Terms on the Lodi Animal Advisory Commission, Lodi Senior Citizens Commission, San Joaquin County Mosquito & Vector Control District, San Joaquin Valley Unified Air Pollution Control District Citizens Advisory Committee, and Site Plan and Architectural Review Committee and Post for Vacancies on the Lodi Arts Commission and the Lodi Library Board of Trustees (CLK)
- J-3 Miscellaneous
 - a) Monthly Protocol Account Report (CLK)

K. Regular Calendar

- K-1 Review of Potential Video Franchise Ordinance Establishing the Obligations of Cable Operators Providing Service in the City of Lodi Under a State Franchise Agreement (CM)
- Res. K-2 Adopt Resolution Awarding Contract for Lodi Avenue Reconstruction Project, Union Pacific Railroad to Cherokee Lane (ESPL 5154 (036)), to Granite Construction Company, of Watsonville (\$2,098,885), and Appropriating Funds (\$2,518,662) (PW)
- Res. K-3 Adopt Resolution Authorizing the City Manager to Execute an Option Agreement to Purchase Real Property Pursuant to the Terms of the Purchase and Development Agreement with Eden Development, Inc. Regarding Senior Housing Project at 2245 Tienda Drive (CD)
- K-4 Receive Report on Draft Environmental Impact Report Environmental Assessment for I-5 Widening from Stockton to Southerly Limits of the White Slough Water Pollution Control Facility (CD)
- K-5 Approve Legal Expenses Incurred by Outside Counsel/Consultants Relative to the Environmental Abatement Program Litigation (\$1,653.43) (CA)

L. Ordinances

- Ord. L-1 Adopt Ordinance No. 1824 Entitled, “An Ordinance of the Lodi City Council Amending Lodi (Adopt) Municipal Code Title 16 – Subdivisions – By Adding New Sections 16.12.040 and 16.16.030, “Monuments”

M. 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



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CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Presentation by Tree Lodi Regarding its Activities and Accomplishments
MEETING DATE: October 21, 2009
PREPARED BY: City Clerk

RECOMMENDED ACTION: None.

BACKGROUND INFORMATION: Representatives from Tree Lodi will give an update to Council regarding its recent activities and accomplishments, including a status report on the Centennial plantings.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None.

Randi Johl
City Clerk

RJ/JMR

APPROVED: _____
Blair King, City Manager



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Receive Register of Claims Dated September 17 and September 24, 2009 in the Total Amount of \$6,950,375.56

MEETING DATE: October 21, 2009

PREPARED BY: Financial Services Manager

RECOMMENDED ACTION: Receive the attached Register of Claims for \$6,950,375.56.

BACKGROUND INFORMATION: Attached is the Register of Claims in the amount of \$6,950,375.56 dated 09/17/09 and 09/24/09. Also attached is Payroll in the amount of \$1,336,137.99.

FISCAL IMPACT: n/a

FUNDING AVAILABLE: As per attached report.

Ruby R. Paiste, Financial Services Manager

RRP/rp

Attachments

APPROVED: _____
Blair King, City Manager

Accounts Payable
Council Report

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Amount

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- 10/06/09

As of Thursday	Fund	Name	Amount
09/17/09	00100	General Fund	582,260.90
	00160	Electric Utility Fund	18,476.75
	00164	Public Benefits Fund	14,919.17
	00170	Waste Water Utility Fund	320,145.42
	00180	Water Utility Fund	16,892.05
	00181	Water Utility-Capital Outlay	2,449.38
	00210	Library Fund	12,287.46
	00211	Library Capital Account	1,974.19
	00260	Internal Service/Equip Maint	28,591.32
	00270	Employee Benefits	7,256.99
	00310	Worker's Comp Insurance	40,503.95
	00321	Gas Tax	5,738.56
	00332	IMF(Regional) Streets	1,330.28
	00345	Community Center	7,064.11
	00346	Recreation Fund	23,764.39
	00459	H U D	2,816.99
	00502	L&L Dist Z1-Almond Estates	346.19
	00503	L&L Dist Z2-Century Meadows I	220.17
	00506	L&L Dist Z5-Legacy I,II,Kirst	569.78
	00507	L&L Dist Z6-The Villas	478.86
	00509	L&L Dist Z8-Vintage Oaks	185.24
	01211	Capital Outlay/General Fund	484.56
	01212	Parks & Rec Capital	42.32
	01250	Dial-a-Ride/Transportation	576.55
	01252	Transit-Prop. 1B	186.15
	01410	Expendable Trust	5,594.47
Sum			1,095,156.20
	00184	Water PCE-TCE-Settlements	126.00
	00190	Central Plume	3,991.25
Sum			4,117.25
Total for Week			1,099,273.45

Accounts Payable
Council Report

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- 10/06/09

As of Thursday	Fund	Name	Amount
09/24/09	00100	General Fund	647,296.67
	00160	Electric Utility Fund	3,230,569.97
	00161	Utility Outlay Reserve Fund	4,392.66
	00164	Public Benefits Fund	31,697.32
	00166	Solar Surcharge Fund	7,987.20
	00170	Waste Water Utility Fund	1,551,127.90
	00180	Water Utility Fund	306,070.59
	00181	Water Utility-Capital Outlay	904.36
	00182	IMF Water Facilities	2,458.85
	00210	Library Fund	1,398.75
	00211	Library Capital Account	1,930.00
	00260	Internal Service/Equip Maint	642.34
	00270	Employee Benefits	20,925.88
	00310	Worker's Comp Insurance	8,875.00
	00321	Gas Tax	13,409.13
	00325	Measure K Funds	1,238.76
	00340	Comm Dev Special Rev Fund	1,600.49
	00345	Community Center	7,805.11
	00346	Recreation Fund	82.00
	01212	Parks & Rec Capital	109.87
	01250	Dial-a-Ride/Transportation	4,077.81
	01410	Expendable Trust	1,902.45
Sum			5,846,503.11
	00190	Central Plume	4,599.00
Sum			4,599.00
Total for Week			5,851,102.11
Sum			5,851,102.11

Council Report for Payroll

Payroll	Pay Per Date	Co	Name	Gross Pay
Regular	09/06/09	00100	General Fund	779,431.61
		00160	Electric Utility Fund	172,469.98
		00164	Public Benefits Fund	4,976.05
		00170	Waste Water Utility Fund	88,686.93
		00180	Water Utility Fund	1,617.92
		00210	Library Fund	28,728.91
		00235	LPD-Public Safety Prog AB 1913	2,796.25
		00260	Internal Service/Equip Maint	21,963.14
		00321	Gas Tax	50,712.24
		00340	Comm Dev Special Rev Fund	41,222.21
		00345	Community Center	26,298.31
		00346	Recreation Fund	60,964.92
		01250	Dial-a-Ride/Transportation	6,265.69
Pay Period Total:				
			Sum	1,286,134.16
Retiree	10/31/09	00100	General Fund	50,003.83
Pay Period Total:				
			Sum	50,003.83



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CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Minutes
a) September 30, 2009 (Special Meeting)
b) October 6, 2009 (Shirtsleeve Session)
c) October 13, 2009 (Shirtsleeve Session)

MEETING DATE: October 21, 2009

PREPARED BY: City Clerk

RECOMMENDED ACTION: Approve the following minutes as prepared:
a) September 30, 2009 (Special Meeting)
b) October 6, 2009 (Shirtsleeve Session)
c) October 13, 2009 (Shirtsleeve Session)

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

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/JMR

Attachments

APPROVED: _____
Blair King, City Manager

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, SEPTEMBER 30, 2009**

A. Roll call

The Special City Council meeting of September 30, 2009, held at the Hutchins Street Square, 125 South Hutchins Street, Lodi, was called to order by Mayor Hansen at 6:34 p.m.

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

Absent: None

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

B. Regular Calendar

B-1 Review Policy Regarding Invocations at Council Meetings (CA)

Mayor Hansen provided a brief overview of the current status of the meeting. He specifically discussed the adoption of the existing policy in 2006, case law on the subject matter of invocations at legislative meetings, receipt of e-mails from those in and outside of the community, chronology of events, contents of the existing policy, letters from Freedom From Religion Foundation, closed session decision to discuss the matter in open session, public comments received at the August 5 meeting, setting the special meeting for September 30, the location of the current meeting to accommodate the larger crowd, options set forth in the staff report, and the proposed format of the current meeting.

City Attorney Schwabauer provided a brief overview of the status of the subject matter of invocations, advice based on closed session discussions versus open session, legislative prayer not used to proselytize under U.S. Constitution and California Constitution, Marsh case conclusion that legislative prayer cannot be used to proselytize, purpose of legislative prayer as the main question of consideration, prayer for civic responsibility purposes, courts not clear on what is proselytizing, differing court opinions, Rubin versus City of Burbank case conclusion that reference to Christ in 20% of invocations was proselytizing, other court opinions conclusion that mere reference to specific faith is not proselytizing, possible examples of proselytizing, options associated with policies for invocations, and option with open call for civic duty without City involvement.

In response to Council Member Mounce, Mr. Schwabauer stated the policy attached to the staff report came from the Alliance Defense Fund (ADF) and an option for community leaders to participate could be included.

Mayor Hansen opened the public comment period.

Dale Edwards spoke in favor of uncensored prayer.

Ken Owen, representing Citizens for Uncensored Prayer, spoke in favor of uncensored prayer.

Duane Linstrom spoke in favor of uncensored prayer.

Richard Enderlein spoke in favor of eliminating public prayer.

Norman Walker spoke in favor of eliminating public prayer.

Robin Rushing spoke in favor of eliminating public prayer. In response to Council Member Johnson, Mr. Rushing stated he would not mind if all faiths were invited and participated. In response to Mr. Rushing, Mr. Schwabauer confirmed that an invitation to participate was provided to the Sikh Temple.

Mark Bowman, representing ADF, spoke in favor of uncensored prayer. Mr. Bowman also provided an overview of the ADF policy as provided with the staff report.

Terry Thompson spoke in favor of uncensored prayer.

Perry Kallis spoke in favor of uncensored prayer.

Kevin Suess spoke in favor of uncensored prayer.

Steve Newman spoke in favor of uncensored prayer.

Mark Wilcox spoke in favor of uncensored prayer.

Frank Nolton spoke in favor of uncensored prayer.

Rick Cropper spoke in favor of uncensored prayer.

Dennis Norton spoke in favor of the Council making the right decision.

Greg Goehring spoke in favor of uncensored prayer and the ADF policy.

John Sanders spoke in favor of uncensored prayer.

Rafael Pazo spoke in favor of eliminating public prayer.

Tom Ikelman spoke in favor of eliminating public prayer.

Karen Buchanan spoke in favor of eliminating public prayer.

Carole Lew spoke in favor of uncensored prayer.

Susan Robinson spoke in favor of eliminating public prayer.

Jane Rossell spoke in favor of eliminating public prayer and having a moment of silence.

Carol Velarde spoke in favor of eliminating public prayer.

Nikos Leverenz spoke in favor of eliminating public prayer.

Walter Strong spoke in favor of uncensored prayer.

Brett Westover spoke in favor of eliminating public prayer.

Alyssa Palomares spoke in favor of eliminating public prayer and having a moment of silence.

Vincent Sayles spoke in favor of uncensored prayer.

Paul Storey spoke in favor of eliminating public prayer.

Maria Hernandez spoke in favor of uncensored prayer.

Frank Alvarez spoke in favor of uncensored prayer.

David Diskin spoke in favor of eliminating public prayer and having a moment of silence.

Steve Thoreson spoke in favor of eliminating public prayer.

Freedom Baerheim spoke in favor of eliminating public prayer and having a moment of silence.

David Gibbons spoke in favor of uncensored prayer and the ADF policy.

David Huey spoke in favor of uncensored prayer.

Shaun Fowler spoke in favor of uncensored prayer.

Ora Emmer spoke in favor of uncensored prayer.

Marilyn Burns spoke in favor of uncensored prayer.

Melissa Ward spoke in favor of uncensored prayer.

Ivy Ng spoke in favor of uncensored prayer.

Maggie Ho spoke in favor of uncensored prayer.

Janiece Wan spoke in favor of uncensored prayer.

Dave Strunk spoke in favor of following the laws set forth by the courts.

Emily Howard spoke in favor of uncensored prayer.

Claire Lima spoke in favor of uncensored prayer.

Ina Rodman spoke in favor of eliminating public prayer.

Sara Wood spoke in favor of eliminating public prayer and having a moment of silence.

Steven Donally spoke in favor of eliminating public prayer and having a moment of silence.

Stephen Somali spoke in favor of uncensored prayer.

Mayor Hansen closed the public comment period. Mayor Hansen brought the matter back to Council for consideration and direction.

Council Member Mounce provided general direction, stating she would like to see prayer continue, uncensored, prior to the Council meeting being called to order, on the agenda, and delivered by all religions and non-religions alike.

Mayor Hansen provided general direction, stating he would like to see prayer continue, uncensored, prior to the Council meeting being called to order, not on the agenda, voluntarily delivered by anybody who is a recognized part of the clergy of all faiths, with a process similar to that set forth in the ADF policy for establishing a list, etc., and a disclaimer be provided on the

agenda.

Council Member Johnson provided general direction, stating he would like to see prayer continue, uncensored, prior to the Council meeting being called to order, delivered by members of all faiths, and open to a call for civic responsibility for non-believers.

In response to Council Member Mounce, Mr. Schwabauer and Mr. Bowman opined that the courts look at a multi-factor analysis for what is government speech, which is not clear based on the differing court opinions, and therefore there is an attempt in the ADF policy to remove as many danger factors as possible based on previous case law.

In response to Mayor Hansen, Mr. Bowman confirmed that the ADF policy recommends not agendizing the invocation. A brief discussion ensued between Council Members Mounce and Hitchcock, Mr. Schwabauer, and Mr. Bowman regarding the possible effects of listing the invocations on the agenda or not.

Council Member Hitchcock provided general direction, stating she would like to see prayer continue, uncensored, prior to the Council meeting being called to order, and on the agenda.

Council Member Katzakian provided general direction, stating he would like to see prayer continue, uncensored, given by all faiths, not on the agenda, and a policy that protects against litigation as much as possible.

In response to Council Member Mounce and Mayor Pro Tempore Katzakian, Mr. Bowman stated what is government speech is a multi-factor consideration and it is best to avoid as many inferences as possible that you intend it to be government speech.

Mayor Hansen made a motion, second by Council Member Johnson, give direction to the City Attorney to develop a policy for uncensored invocations to be given prior to the beginning of a Council meeting, listed on the agenda, that actively encourages all religions to participate, with a call to civic responsibility for non-religious groups, a disclaimer with acknowledgement of diversity and non-endorsement, and prohibiting the elevation or demeaning of one religion over others.

VOTE:

The above motion carried by the following vote:

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

Noes: None

Absent: None

C. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 11:06 p.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, OCTOBER 6, 2009**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, October 6, 2009, commencing at 7:01 a.m.

Present: Council Member Hitchcock, Council Member Johnson, Mayor Pro Tempore Katakian, and Mayor Hansen

Absent: Council Member Mounce

Also Present: City Manager King, Deputy City Attorney Magdich, and City Clerk Johl

B. Topic(s)

B-1 Service and Route Modifications Due to State Budget Cuts for Local Transit Services (PW)

City Manager King briefly introduced the subject matter of the transit service modifications.

Public Works Director Wally Sandelin provided a PowerPoint presentation regarding the transit service modifications. Specific topics of discussion included the main issue, ridership statistics, current service, financial condition, farebox recovery, service modifications, and implementation.

In response to Mayor Hansen, Mr. Sandelin stated the \$210,000 operations savings for the entire fiscal year would be realized if service continued as is, but the proposal is to provide a new service scenario to adjust the operating number accordingly. He stated the savings could be due to lesser demand on Dial-A-Ride and ridership being down generally.

In response to Council Member Hitchcock, Mr. Sandelin stated the total cost service numbers shown for fixed route, express, Dial-A-Ride, and VineLine are based on averages of the total package of services delivered under the umbrella of transit, which includes dispatchers, managers, vehicles, etc.

In response to Council Member Hitchcock, Jay Jeeter, representing MV Transportation, stated it is difficult to say what the savings would be from reduced hours from any specific area because the fixed costs must be factored in.

In response to Mayor Hansen, Mr. Sandelin stated staff could go back and factor in the hours and overhead costs and bring those numbers back to Council if so desired.

In response to Mayor Hansen, Mr. Sandelin stated the express route system was put into place several years ago as a way to capture Measure K grants for approximately \$120,000. Mr. Sandelin stated the route was set up around the school hours; although, based on representations from the school district, the school bus service has not been reduced over the last five years. Mr. Sandelin stated the express service is no longer tied to the grant as the grant is now for general transit.

In response to Council Member Hitchcock, Mr. Sandelin stated the fixed-route service on Saturday and Sunday and after 6 p.m. on weekdays has the least ridership. Mr. Sandelin stated staff will bring back additional information at the public hearing regarding the ability to reduce hours and services and the value associated with the same.

In response to Mayor Hansen, Mr. Sandelin and Mr. King confirmed that there is no mandate to provide transit service, although if a fixed-route service is provided, a paratransit service must also be provided, which for the City of Lodi is VineLine. They confirmed there is no obligation to provide demand service or Dial-A-Ride.

In response to Mayor Hansen, Mr. Sandelin stated the farebox recovery is fairly low and generally everybody ends up paying for the service.

In response to Council Member Johnson, Mr. Sandelin stated he does not believe the 20% farebox recovery is being met for San Joaquin Council of Governments (SJCOG).

In response to Mayor Hansen, Mr. Sandelin stated the farebox recovery per passenger amounts to \$0.67 and \$1.22.

In response to Council Members Johnson and Hitchcock, Mr. Sandelin and Mr. Jeeter stated the City has about 4,000 flexible hours annually, which is based on the current run rate of 44,000. Mr. Jeeter stated the 4,000 hours does have some correlation in that a reduction of service may trigger contract negotiation provisions.

In response to Council Member Johnson, Mr. Sandelin stated there may be some changes coming from SJCOG in the future, although it is unlikely that this particular funding would be taken away.

In response to Council Member Johnson, Mr. Sandelin stated the reservation system allows better control of personnel costs as it will reduce the empty buses on the road waiting for calls.

In response to Mayor Hansen, Mr. Sandelin stated the current fixed route is 6:15 a.m. until 7:00 p.m., the proposal is for 8:00 a.m. to 5:00 p.m. with passengers utilizing the express service in the morning, 8% of passengers ride after 5:00 p.m., and the express service does not cover ridership after 5:00 p.m.

In response to Council Member Johnson, Mr. Sandelin stated the express routes cover the morning and the recommendation is to stop fixed routes by 6 p.m.

In response to Mayor Pro Tempore Katzakian, Mr. Sandelin stated the fixed routes are 45 minutes apart, the three express routes run between 6:10 a.m. to 7:10 a.m., in the afternoon there is some overlap with the fixed-route service, and the express route is primarily used by students.

In response to Mayor Hansen and Council Member Hitchcock, Mr. Sandelin confirmed that it did not appear that many people rode the bus for work, an 8 a.m. to 6 p.m. fixed route may accommodate, and staff will conduct a customer survey to obtain additional information once the service is set.

In response to Mayor Pro Tempore Katzakian, Mr. Sandelin stated the farebox recovery and revenue is dropping in general.

In response to Mayor Hansen, Mr. Sandelin stated the City would have to renegotiate the contract with MV Transportation if all recommendations are followed, the language would generally stay the same but there would be a new range of operating hours, and the recommendations do translate into less buses on the road.

In response to Mayor Hansen, Mr. Sandelin stated the City does have some of the smaller buses now, there will be more coming in 2012, and staff will forward Council information regarding the

difference in operational costs for smaller buses versus larger buses.

In response to Council Member Johnson, Mr. Sandelin stated staff will need to survey for the least utilized routes.

In response to Council Member Hitchcock, Mr. Sandelin and Mr. Jeeter stated the City is the only service provider in the region that offers same-day service, the VineLine needs to match the fixed-route service, ridership is low for Dial-A-Ride in the early morning and evening, and doctors appointments are the primary reason for Dial-A-Ride.

In response to Mayor Hansen, Mr. Sandelin stated the recommendation is to have no transit service on Saturday and Sunday and the primary use for the weekend is shopping and church.

In response to Mayor Hansen, Mr. Jeeter stated a few cities in the region provide only Saturday service, while a few provide service both Saturday and Sunday. Mr. King stated it is a zero sum game and if service is retained on the weekend, then it will have to be eliminated elsewhere during the week at an equal cost savings.

In response to Mayor Hansen, Mr. Sandelin stated the annual Saturday ridership is 11,000 per year, Sunday is 8,700 per year, with an average of 211 on the weekends.

In response to Council Member Johnson, Mr. Sandelin stated staff will look at adjusting the MV Transportation contract for bracket hours to consider service adjustments with varying hours of service.

Virginia Snyder asked the City Council to consider factors such as employment needs, ridership from the east side of town, and overall affect on residents when considering reductions in transit services. She stated the Roseville system appears to be the most preferential.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 8:21 a.m.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, OCTOBER 13, 2009**

The October 13, 2009, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled.

ATTEST:

Randi Johl
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Authorize City "Garage Sale" of Surplus Furniture Items to be Held on Saturday, November 7, 2009, at the Municipal Service Center

MEETING DATE: October 21, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Authorize a City "Garage Sale" of surplus furniture items to be held on Saturday, November 7, 2009, at the Municipal Service Center.

BACKGROUND INFORMATION: Over the past several months, Facilities staff has collected an inventory of surplus items (see attached photos) from various City departments, including Finance, Library, Police and Transit. All items are old and no longer needed or used. A Citywide bulletin was issued to alert every City department that items were available for their use. All departments have removed the items they could use. The remaining items need to be disposed of so that the Public Works Department may proceed with decommissioning the former fleet shop and prepare it for future use.

Items to be sold include approximately 25 metal desks, approximately 10 wooden desks and credenzas, approximately 25 miscellaneous tables, approximately 10 file cabinets, approximately 50 metal lockers, approximately 15 wooden or metal shelving units, and approximately 25 chairs or couches. Items will be sold at the following prices: metal desks (\$10), wooden desks (\$25), file cabinets (\$10), miscellaneous tables (\$10 to \$20), metal lockers (\$5), shelving units (\$10), and miscellaneous chairs and couches (\$5 to \$20).

The City Garage Sale will be a one-time special event open to the public to be held on Saturday, November 7, 2009, from 9:00 a.m. until 12:00 p.m. Any items remaining after the sale will be scrapped for recycling or disposed of as trash, whichever is more beneficial to the City. The sale will be staffed by Public Works management staff at no cost to the City. Funds raised by the sale will go to the General fund.

FISCAL IMPACT: Funds raised by this sale will benefit the General fund.

FUNDING AVAILABLE: None needed.

F. Wally Sandelin
Public Works Director

Prepared by Gary Wiman, Construction Project Manager
FWS/GW/pmf
Attachments
cc: Purchasing Officer
Internal Services Director

APPROVED: _____
Blair King, City Manager

Lockers from old
Police Department



Lockers



Metal Desks



Miscellaneous Furniture
and Shelving



Miscellaneous Furniture
and Shelving





CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Request for Proposal to Provide Professional Services for Preliminary Engineering Work on the Westside Substation (EUD)

MEETING DATE: October 21, 2009

PREPARED BY: Interim Electric Utility Director

RECOMMENDED ACTION: Approve request for proposal to provide professional services for preliminary engineering work on the Westside Substation.

BACKGROUND INFORMATION: The Electric Utility Department (EUD) has planned to build a fifth substation at the western area of the City limits. The substation site has been in Lodi's electric facilities plan for some time and was purchased in 2003 as land was available. The working name for the planned facility is the Westside Substation. This substation will be required for continued reliable service to new and existing customers.

The request for proposal will cover the preliminary engineering and design activities on the new Westside Substation. The initial task list includes the following:

1. Soil resistivity test and geotechnical study
2. Preliminary ground grid design as per IEEE Standard 80
3. Ground potential rise (GPR) study
4. Preparation of preliminary substation layout, design criteria, and cost/benefit analysis
5. Engineering and design of perimeter block wall fence and landscape

Items 1 and 2 are needed to complete the GPR study, which will be provided to the telephone and communication companies for ground fault protection. Item 4 will be the basis for developing the final substation facility design. Final design, permitting, and construction activities would follow the completion of item 5.

The location of the new Westside Substation provides a strategic site for power system interconnection within the City of Lodi boundaries. The existing 60kV loop will terminate in the substation. The other planned 60kV line from the Industrial Substation traversing via Harney Lane through Lower Sacramento Road will also terminate in the substation. On June 3, 2009 as per Resolution No. 2009-74, the City Council awarded the preparation of Lodi West 60kV Power Line Project environmental impact report to InSite Environmental, Inc. A double-circuit, 60kV transmission line, once completed, will connect to the Westside Substation. The substation facility will provide load serving capacity to planned development projects like Westside Project, Southwest Gateway Project and other identified annexation areas with a total estimated load of approximately 16MW. The Westside substation will be used to reduce existing loads from the Henning Substation.

APPROVED: _____
Blair King, City Manager

The construction of new substation facility entails tasks requiring lengthy execution, adjustment, and design and engineering activities as described in the attached Exhibit A. Therefore, staff is requesting City Council approval of the request for proposal for the preliminary engineering work on the Westside Substation.

FISCAL IMPACT: The estimated cost is \$150,000.

FUNDING AVAILABLE: From Account No. 161677 with additional fund transfer of \$30,000 to this account from Account No. 161651.

Jordan Ayers
Deputy City Manager/Internal Services Director

Kenneth A. Weisel
Interim Electric Utility Director

PREPARED BY: Demy Bucaneg, Jr., P.E., Assistant Electric Utility Director, Engineering & Operations

KW/DB/lst

Attachments (1)

Westside Substation Timetable

I. Preliminary Engineering Phase

- Soil resistivity test = 1 week
- Preliminary ground grid design = 2 weeks
- GPR study = 2 weeks
- Preparation of preliminary substation layout, design criteria, and cost/benefit analysis = 5-6 months
- Engineering and design of perimeter block wall = 4-6 months

II. Block Wall Construction

- Environmental study - to be determined. If an exemption = 1 week
- Approval and advertisement = 1-2 months
- Bid process = 1 month
- Award and contract approval = 2-3 months
- Permitting = 2 weeks
- Construction and turnover = 4-5 months

III. Substation Final Design Phase

- Approval of engineering services and advertisement = 1-2 months
- Bid process = 2-3 months
- Award and contract approval = 2-3 months
- Engineering and design = 10-12 months
- Approve plans and specifications = 1-2 months
- Prepare specifications for long lead-time equipment = 2-3 months
- Approval and advertise equipment specifications = 1-2 months
- Bid process = 1-2 months
- Award and PO approval = 1 month
- Order and delivery = 14-18 months

IV. Environmental Study

- Initial study = 3-4 months
- Public hearings = 2-3 months
- Negative declaration approval = 2-3 months

V. Substation Construction

- Advertise and bid process = 2-3 months
- Award and contract approval = 2-3 months
- Construction = 10-12 months
- Test and commissioning and turnover = 1 month

Note: Estimated three to three and a half year Westside Substation development.



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Adopt Resolution Approving Purchase Order with Synagro, of Burlingame, to Remove Approximately 500 Tons of Biosolids from White Slough Water Pollution Control Facility Storage Lagoon and Appropriating Funds (\$215,000)

MEETING DATE: October 21, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution approving a purchase order with Synagro, of Burlingame, to remove approximately 500 tons of biosolids from the White Slough Water Pollution Control Facility (WSWPCF) storage lagoon and appropriating funds as shown below.

BACKGROUND INFORMATION: The biosolids storage lagoon is utilized for storage and concentration of solids from the three anaerobic digesters at WSWPCF. During the summer months this material is land applied, but in the winter, the solids are stored in the storage lagoons. Due to more restrictive land application requirements, the solids are accumulating at a greater rate than in the past. As a result, it is necessary to remove, dry and dispose of the excess solids at an offsite landfill until the new solids handling facilities are constructed and operational.

Three contractors were contacted, but only Synagro submitted a proposal.

FISCAL IMPACT: The cost of \$215,000 is not budgeted.

FUNDING AVAILABLE: Request Appropriation: \$215,000 - Wastewater Fund (170403).

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

Prepared by Del Kerlin, Wastewater Treatment Superintendent
FWS/CS/dk

cc: D. Stephen Schwabauer, City Attorney
Charles E. Swimley, Jr., Water Services Manager
Del Kerlin, Wastewater Treatment Superintendent

APPROVED: _____
Blair King, City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING PURCHASE ORDER TO REMOVE
APPROXIMATELY 500 TONS OF BIOSOLIDS FROM
WHITE SLOUGH WATER POLLUTION CONTROL
FACILITY STORAGE LAGOON AND FURTHER
APPROPRIATING FUNDS

=====

WHEREAS, more stringent groundwater requirements no longer allow storage of overflow biosolids in the pond system at the White Slough Water Pollution Control Facility, and overflow biosolids must now be conveyed back to the White Slough Water Pollution Control Facility; and

WHEREAS, it became apparent since implementing this new procedure that without removal of some of the material, the overflow would impair treatment plant operation; and

WHEREAS, three contractors were contacted to provide proposals to remove approximately 500 tons of biosolids from the White Slough Water Pollution Control Facility storage lagoon; and

WHEREAS, the only proposal received was from Synagro, of Burlingame, California, to perform the work at the cost of \$215,000.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve a purchase order with Synagro, of Burlingame, California, to dry and remove approximately 500 tons of biosolids from the White Slough Water Pollution Control Facility storage lagoon at the cost of \$215,000; and

BE IT FURTHER RESOLVED that funds in the amount of \$215,000 be appropriated from the Wastewater Fund for this project.

Dated: October 21, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held October 21, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-_____



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing the Non-Competitive Purchase of Musco Sports Lighting Components (\$198,694.09), which Includes Installation to Musco Lighting, Oskaloosa, Iowa, for the Grape Bowl Sports Lighting Upgrade and Appropriate Project Funding (\$200,000)

MEETING DATE: October 21, 2009

PREPARED BY: Parks and Recreation Interim Director

RECOMMENDED ACTION: Adopt resolution authorizing the non-competitive purchase of Musco Sports Lighting components in the amount of \$198,694.09, which includes installation to Musco Lighting of Oskaloosa, Iowa, for the Grape Bowl sports lighting upgrade and appropriate project funding in the amount of \$200,000.

BACKGROUND INFORMATION: New energy efficient lights for the Grape Bowl were included in the recently awarded Energy Efficiency Block Grant. The new Musco Sports Lighting components offered through Musco Lighting will replace the existing Musco components which are out dated and no longer consider energy efficient. The scope of work will include the removal of 92 fixtures and installing 58 new fixtures, wiring harnesses, hardware, Control Link Monitoring System and other miscellaneous items shown on the attached Budget Estimate provided by Musco Lighting.

Lodi Municipal Code 3.20.070 allows the dispensing of bids when City Council determines it is the best method of purchase. Staff recommends the non-competitive purchase of the Musco Sports Lighting components and installation. The new equipment is an upgrade of existing equipment of the same manufacturer.

The EUD has acquired funding for 50% of this project through a federal stimulus grant. The remaining 50% is being funded through Park Impact Fee funds already approved in the Grape Bowl renovation project. This project is estimated to reduce energy use by 50% over the life of the fixture.

FISCAL IMPACT: There is no direct impact to the Parks and Recreation Department budget for the Musco Sports Lighting components and installation

FUNDING AVAILABLE:	Electrical Stimulus Funds	\$100,000.00
	Park Impact Fee Funds	\$100,000.00

Jordan Ayers
Deputy City Manager/Internal Service Director

James M. Rodems
Interim Parks and Recreation Director

APPROVED: _____
Blair King, City Manager



Budget Estimate

**Grape Bowl Football
Lodi, CA
Date: July 1, 2009
To: Steve Virrey**

Equipment Description

Sportscluster Green™ System delivered to your site

- (58) Factory aimed and assembled poletop luminaire assemblies
- 1500-watt metal halide fixtures
- UL Listed remote electrical component enclosures
- Mounting hardware for the pole top units and electrical component enclosures
- Pole length wire harness
- Disconnects

Also includes:

- Energy savings of more than 50% over a standard lighting system
- 50% less spill and glare light than Musco's prior industry leading technology
- Musco Constant 10™ product assurance & warranty program that eliminates 100% of your maintenance costs for 10 years, including labor and materials on Musco manufactured product. Musco's Constant 10 Warranty is contingent upon Musco's inspection and approval of existing structure and electrical wiring.
- Guaranteed constant light level of 50 footcandles for 10 years, +/- 10% per IESNA RP-06-01
- One (1) group re-lamp at the end of the lamps' rated life, 5000 hours
- Reduced energy consumption with an average of 90.71 kW per hour
- Control Link® Control & Monitoring System for flexible control and solid management of your lighting system
- Lighting Contactors sized for the voltage and phasing at the site

Budget Estimate

Sportscluster Green™ as described below and delivered to the job site \$184,969.00.

Pricing includes demolition of the old lighting equipment, installation of the new lighting equipment and six (6) security fixtures one for each pole.

Poles and sales tax is not included as part of this budget estimate.

Payment Terms

Option A

Payment of 25% of the contract price is required with order. The contract balance is due no later than 30 days after invoice date.

Option B - Wholesalers Only

100% of the contract price is due and payable no later than 20 days after invoice date.

Musco will attempt to coordinate shipment so that delivery corresponds with the customer's payment schedule. It will be the responsibility of the wholesaler to ensure that Musco is aware of this delivery timeframe. We will expect payment within the terms described above unless there is a written statement from Musco's corporate headquarters stating the acceptance of different terms.

Delivery to the job site from the time of order, submittal approval, and confirmation of order details including voltage and phase, pole locations is approximately 30-45 days. Due to the built-in custom light control per luminaire, pole locations need to be confirmed prior to production. Changes to pole locations after the product is sent to production could result in additional charges.

Notes

Estimate is based on:

- Shipment of entire project together to one location
- Field size of 360' x 160' for football
- System will be manufactured to existing voltage and phasing at site
- **Musco's Constant 10 Warranty is contingent upon Musco's inspection and approval of existing structure and electrical wiring**

Thank you for considering Musco for your sports-lighting needs. Please contact me with any questions.

Bob Crookham
Sales Representative
Musco Sports Lighting, LLC
Phone: 530/672-9500
E-mail: bob.crookham@musco.com
Fax: 530/672-9471

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THE NON-COMPETITIVE PURCHASE OF MUSCO SPORTS LIGHTING COMPONENTS TO MUSCO LIGHTING, OSKALOOSA, IOWA FOR THE GRAPE BOWL SPORTS LIGHTING UPGRADE AND APPROPRIATE PROJECT FUNDING OF (\$200,000)

WHEREAS, new energy efficient lights for the Grape Bowl were included in the recently awarded Energy Efficiency Block Grant; and

WHEREAS, the new Musco sports lighting components offered through Musco Lighting will replace the existing Musco components which are out dated and no longer considered energy efficient; and

WHEREAS, the scope of work will include the removal of 92 fixtures and installing 58 new fixtures, wiring harnesses, hardware, Control Link Monitoring System and other miscellaneous items; and

WHEREAS, the Lodi Municipal Code 3.20.070 allows the dispensing of bids when City Council determines it is the best method of purchase; and

WHEREAS, staff recommends the non-competitive purchase of the Musco sports lighting components and installation; and

WHEREAS, Electric Utility has acquired funding for 50% of this project through a federal stimulus grant; and

WHEREAS, the remaining 50% is being funded through Park Impact Fee funds already approved in the Grape Bowl renovation project; and

WHEREAS, this project is estimated to reduce energy use by 50% over the life of the future; and

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the non-competitive purchase of Musco sports lighting components to Musco Lighting, Oskaloosa, Iowa for the Grape Bowl sports lighting upgrade, and further approves appropriating project funding in an amount not to exceed \$200,000.

Dated: October 21, 2009

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held October 21, 2009, by the following vote:

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

RANDI JOHL
City Clerk

2009-_____



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Ratifying Purchase of Motorola Portable Radios Using Recovery Act Justice Assistance Grant Funding (\$62,196.30)

MEETING DATE: October 21, 2009

PREPARED BY: Chief of Police

RECOMMENDED ACTION: Adopt resolution ratifying purchase of Motorola portable radios using Recovery Act Justice Assistance Grant Funding of \$62,196.30.

BACKGROUND INFORMATION: On May 6, 2009 the Lodi City Council accepted the Edward Byrne Memorial Justice Assistance Grant (JAG) in the amount of \$150,000 for the Police Department. Of that, \$70,000 was dedicated for the purchase of radio equipment that would comply with the new digital standard the federal government is requiring of public safety agencies by 2011.

Motorola has been our sole provider of radio equipment for the past 25 years with competitive pricing and dependable equipment. Motorola offered to Lodi for a limited time 60 portable radios, 60 remote speaker/microphones and 20 single-unit battery chargers for \$62,196.30. This is approximately twice the number of radios we had anticipated receiving due to this significant savings. These radios are compatible with existing equipment as well as the future digital standard and will allow the Police Department to replace more than half the radios currently in service. To take advantage of this limited time savings and because the Council had already designated funds, the City Manager used his discretion to approve the purchase. Because the purchase exceeds the City Manager's signature authority, the Council is asked to ratify the purchase.

The remaining \$80,000 was authorized by the City Council to purchase broadband access for patrol cars, additional hardware and software purchases for the new report-writing system, instant mug shot access for officers in the field, and upgrades to the Mobile Command Center vehicle.

The Police Department continues to seek grant funding to replace the remaining analog radios that will not comply with the federal digital standard.

FISCAL IMPACT: Grant funded, no impact on General Fund.

FUNDING AVAILABLE: Edward Byrne Memorial Justice Assistance Grant (JAG)

Jordan Ayers
Deputy City Manager/Internal Services Director

David J. Main
Chief of Police

APPROVED: _____
Blair King, City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL RATIFYING THE
PURCHASE OF MOTOROLA PORTABLE RADIOS USING
RECOVERY ACT JUSTICE ASSISTANCE GRANT FUNDING

=====

WHEREAS, on May 6, 2009, the Lodi City Council accepted the Edward Byrne Memorial Justice Assistance Grant in the amount of \$150,000 for the Police Department. Of that, \$70,000 was dedicated for the purchase of radio equipment that would comply with the new digital standard the federal government is requiring of public safety agencies by 2011; and

WHEREAS, Motorola has been the City's sole provider of radio equipment for the past 25 years with competitive pricing and dependable equipment. Motorola offered to Lodi for a limited time 60 portable radios, 60 remote speaker/microphones, and 20 single-unit battery chargers for \$62,196.30. This is approximately twice the number of radios we had anticipated receiving due to this significant savings. These radios are compatible with existing equipment as well as the future digital standard and will allow the Police Department to replace more than half the radios currently in service; and

WHEREAS, to take advantage of this limited time savings and because the Council had already designated funds, the City Manager used his discretion to approve the purchase. Because the purchase exceeds the City Manager's signature authority, the Council is asked to ratify the purchase; and

WHEREAS, the remaining \$80,000 was authorized by the City Council to purchase broadband access for patrol cars, additional hardware, and software purchases for the new report-writing system, instant mug shot access for officers in the field, and upgrades to the Mobile Command Center vehicle. The Police Department continues to seek grant funding to replace the remaining analog radios that will not comply with the federal digital standard.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby ratify the purchase of Motorola portable radios using Recovery Act Justice Assistance Grant funding in the amount of \$62,196.30.

Dated: October 21, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the Lodi City Council in a regular meeting held October 21, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-_____



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing the Non-Competitive Purchase of Server Equipment and Related Software from Infinite Technology (Oakland), Dell and CDW-G and Appropriate Energy Efficiency and Conservation Block Grant Funds (\$205,000) (CM)

MEETING DATE: October 21, 2009

PREPARED BY: Information Systems Manager

RECOMMENDED ACTION: Adopt resolution authorizing the non-competitive purchase of server equipment and related software from Infinite Technology (Oakland), Dell, and CDW-G and appropriate Energy Efficiency and Conservation Block Grant Funds in the amount of \$205,000.

BACKGROUND INFORMATION: The City of Lodi was recently awarded \$586,200 in federal economic stimulus funds through a Department of Energy grant; \$205,000 has been earmarked for the purchase of new high-efficiency servers, software and related hardware.

Staff has selected Dell blade servers for this project because they integrate well with equipment the City already owns, and they represent a good value. Products are to be purchased directly from Dell at prices below the Western States Contracting Alliance (WSCA) contract for a total cost of \$62,135.

This project also upgrades selected software and current licenses to latest versions at a cost of \$77,023. Microsoft sells their software through authorized resellers (CDW-G) at WSCA prices.

Hewlett-Packard (HP) Lefthand Storage Area Network (SAN) devices have been selected for this project because of their unique features, reputation for quality products, and attractive prices. Staff negotiated directly with HP representatives for the lowest possible prices to be extended through their regional authorized Value Added Reseller, Infinite Technology of Sacramento. HP has aggressively priced these units (\$56,580) because they are at the end of their fiscal year, and have assured staff that lower prices cannot be obtained through a different reseller, and that the special pricing will expire on October 23, 2009.

The remaining \$9,262 will be required for ancillary items required to complete the project.

Lodi Municipal Code 3.20.070 allows the dispensing of bids when the City Council determines it is the best method of purchase. Staff recommends the allocation of \$205,000 in federal grant funds for the purpose of replacing high energy-cost servers with new high efficiency blade servers and related software and hardware devices. Staff also recommends purchasing the project software and hardware components described herein directly from the manufacturers, through their designated resellers, at or below the competitively-bid WSCA pricing.

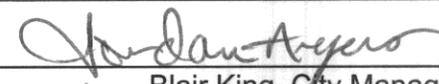
FISCAL IMPACT: Anticipated annual savings of 165,475 kWh in cooling and electrical costs.

FUNDING: Electric Stimulus Funds \$205,000



Jordan Ayers
Deputy City Manager/Internal Services Director

Prepared by: Steve Mann, Information Systems Manager

APPROVED: 

Blair King, City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING NON-COMPETITIVE PURCHASE OF SERVER EQUIPMENT AND RELATED SOFTWARE, AND FURTHER APPROPRIATING ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT FUNDS

=====

WHEREAS, the City of Lodi was recently awarded \$586,200 in federal economic stimulus funds through a Department of Energy grant, of which \$205,000 has been earmarked for the purchase of new high-efficiency servers, software and related hardware; and

WHEREAS, staff has selected Dell blade servers for this project because they integrate well with equipment the City already owns, and they represent a good value, and their products are purchased directly from Dell for prices at or below the Western States Contracting Alliance (WSCA) contract; and

WHEREAS, this project also upgrades selected software and current licenses to latest versions and Microsoft sells their software through authorized resellers (CDW-G) at or below WSCA prices; and

WHEREAS, Hewlett-Packard (HP) Lefthand Storage Area Network (SAN) devices have been selected for this project because of their unique features, reputation for quality products, and attractive prices; and staff has negotiated directly with HP representatives for the lowest possible prices to be extended through their regional authorized Value Added Reseller, Infinite Technology of Oakland, CA.; and

WHEREAS, Lodi Municipal Code 3.20.070 allows the dispensing of bids when the City Council determines it is the best method of purchase; and

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the non-competitive purchase of server equipment and related software from Infinite Technology (Oakland) (\$56,580), Dell (\$62,135), and CDW-G (\$77,023); and

BE IT FURTHER RESOLVED, that \$205,000 be appropriated from the Energy Efficiency and Conservation Block Grant Funds for this project.

Date: October 21, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the Lodi City Council in a regular meeting held October 21, 2009, by the following vote:

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

RANDI JOHL
City Clerk

2009-_____



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Accepting Improvements under Contract with Rosendin Electric, Inc. for Killelea Substation Rehabilitation (EUD)

MEETING DATE: October 21, 2009

PREPARED BY: Interim Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution accepting improvements under contract with Rosendin Electric, Inc. for Killelea Substation rehabilitation.

BACKGROUND INFORMATION: The Killelea Substation Rehabilitation Project was awarded to Rosendin Electric, Inc. of San Jose, CA on July 10, 2007 in the amount of \$2,921,801. The contract has been completed in substantial conformance with the plans and specifications approved by the City Council.

The project provided new, indoor 12kV switchgear with digital protection relays, measuring instruments, controlling, indicating and signaling devices, motion-sensor intruder protection alarm system, communication and auxiliary equipment. The 12kV switchgear has eight feeders, two main power circuit breakers that connect to the power transformers, and a dry-type transformer for station service use. A new 50' x 58' control building was constructed that included a communications room, battery room, the 12kV switchgear area, storage space, work area and air conditioning system. Battery systems were provided with two automatic charging systems. The existing 60kV system was modified to accommodate the disconnect switch and bus configuration. The substation was expanded to 150' x 150' surrounded by 10-foot cement block-wall fence with concertina wires at designated places. The Killelea Substation facility is accessible from Locust Street at the south side and from the alley at north side.

The final contract price was \$2,997,793. The difference between the contract amount and the final contract price is due to change orders in the total amount of \$75,992 to provide additional labor and materials for the 60kV bus modification, 12kV bus change between Switchgear 1 & 2, grounding rod replacements, floor painting, building panel repair, concertina wire installation, increased switchgear control wirings, added RTU cables and 21kV feeder runs from transformers to the building. Following acceptance by the City Council, a Notice of Completion will be filed with the County Recorder's Office.

FISCAL IMPACT: Slight increase in maintenance cost for the expanded facility.

FUNDING AVAILABLE: Account No. 161677 – Final Contract Amount for Rosendin: \$2,997,793.

Jordan Ayers
Deputy City Manager/Internal Services Director

Kenneth A. Weisel
Interim Electric Utility Director

PREPARED BY: Demy Bucaneg, Jr., P.E., Assistant Director, Engineering & Operations
Weldat Haile, P.E., Senior Power Engineer

APPROVED: _____
Blair King, City Manager

RESOLUTION NO. 2009-____

A RESOLUTION OF THE LODI CITY COUNCIL ACCEPTING IMPROVEMENTS UNDER CONTRACT FOR THE KILLELEA SUBSTATION REHABILITATION, AND AUTHORIZING THE INTERIM ELECTRIC UTILITY DIRECTOR TO FILE A NOTICE OF COMPLETION WITH THE COUNTY RECORDER

WHEREAS, the contract for the Killelea Substation Rehabilitation was awarded to Rosendin Electric, Inc. of San Jose, CA on July 10, 2007, in the amount of \$2,921,801;and

WHEREAS, a cost overrun of \$75,992 is attributed to change orders that provided additional labor and materials required for the 60kV bus modification, 12kV bus change between Switchgear 1 & 2, grounding rod replacements, floor painting, building panel repair, concertina wire installation, increased switchgear control wirings, added RTU cables and 21kV feeder runs from transformers to the building; and

WHEREAS, the contract has now been completed in substantial conformance with the plans and specifications approved by the City Council and as modified during construction.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby accepts the improvements under the Killelea Substation Rehabilitation Project; and

BE IT FURTHER RESOLVED that the Interim Electric Utility Director is hereby authorized and directed to file a Notice of Completion with the County Recorder's Office.

Dated: October 21, 2009

I hereby certify that Resolution No. 2009-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held October 21, 2009, by the following vote:

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

RANDI JOHL
City Clerk

2009-____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving the Form of and Authorizing the Execution and Delivery of a Purchase and Sale Agreement and Related Documents with Respect to the Sale of Lodi's Proposition 1A Receivable from the State; and Directing and Authorizing Certain Other Actions in Connection Therewith

MEETING DATE: October 21, 2009

PREPARED BY: Deputy City Manager

RECOMMENDED ACTION: Adopt a resolution approving the form of and authorizing the execution and delivery of a purchase and sale agreement and related documents with respect to the sale of Lodi's Proposition 1A receivable from the State; and directing and authorizing certain other actions in connection therewith.

BACKGROUND INFORMATION: On August 19, 2009, the Council was presented with a report and asked to provide direction with regard to the State of California's forced "loan" of property tax under the provisions of Proposition 1A. The Council was informed that the adopted State budget included a provision to take eight percent of the property tax from all local agencies. The Council directed staff to pursue the option of selling our promise to pay (receivable) from the state via the California Communities Development Authority, known as the California Communities Prop 1A Securitization Program. The action before the Council is the implementation of Council direction.

The State is required to repay its borrowing with interest by June 30, 2013. In September, the State Department of Finance set the interest rate related to the property tax borrowing at 2.0%. The San Joaquin County Auditor-Controller has certified the City of Lodi will loan \$1,247,562.14 for Fiscal Year 2009-2010.

The legislature is currently reviewing a clean-up bill, SB67 which would provide for a few critical changes to the enacted legislation, including, but not limited to, providing for: financing to occur in November; county auditor certification of amount of Prop 1A receivable; tax-exempt structure; California Communities as the only issuer; more flexibility on bond structure (interest payments, state payment date and redemption features); sales among local agencies; and revision to the hardship mechanism. *While SB 67 has not yet been passed and signed into law, California Communities expects that to occur prior to funding the Program. If for any reason SB 67 is not enacted and the bonds cannot be sold by December 31, 2009, all approved documents placed in escrow with Transaction counsel will be of no force and effect and will be destroyed.*

APPROVED: _____
Blair King, City Manager

Under the Securitization Program, California Communities will simultaneously purchase the Proposition 1A Receivables, issue bonds ("Prop 1A Bonds") and provide each local agency with the cash proceeds in two equal installments, on January 15, 2010 and May 3, 2010 (to coincide with the dates that the State will be shifting property tax from local agencies). The purchase price paid to the local agencies will equal 100% of the amount of the property tax reduction. All transaction costs of issuance and interest will be paid by the State of California. Participating local agencies will have no obligation to pay the bonds and no credit exposure to the State.

The City's sale of its Proposition 1A Receivable will be irrevocable. Bondholders will have no recourse to the City if the State does not make the Proposition 1A repayment.

California Statewide Communities Development Authority ("California Communities") is a joint powers authority sponsored by the California State Association of Counties and the League of California Cities. The member agencies of California Communities include approximately 230 cities and 54 counties throughout California. Lodi previously participated in 2005 with a California Communities Authority borrowing related to Revenue Anticipation Notes for Vehicle License Fee revenue.

The sale of the City's Proposition 1A Receivable will provide the City with 100% of its Proposition 1A Receivable in two equal installments, on January 15, 2010 and May 3, 2010. The City will not have to pay any interest cost or costs of issuance in connection with its participation. The City has no obligation with respect to the payment of the bonds, nor any reporting, disclosure or other compliance obligations associated with the bonds.

Proposed Proposition 1A Receivables Sale Resolution:

The proposed Proposition 1A Receivables Sale Resolution:

- (1) Authorizes the sale of the City's Proposition 1A Receivable to California Communities for 100% of its receivable;
- (2) Approves the form, and directs the execution and delivery, of the Purchase and Sale Agreement with California Communities and related documents;
- (3) Authorizes and directs any Authorized Officer to send, or to cause to be sent, an irrevocable written instruction required by statute to the State Controller notifying the State of the sale of the Proposition 1A Receivable and instructing the disbursement of the Proposition 1A Receivable to the Proposition 1A Bond Trustee;
- (4) Appoints certain City officers and officials as Authorized Officers for purposes of signing documents; and
- (5) Authorizes miscellaneous related actions and makes certain ratifications, findings and determinations required by law.

Proposed Purchase and Sale Agreement

The proposed Purchase and Sale Agreement:

- (1) Provides for the sale of the Proposition 1A Receivable to California Communities;
- (2) Contains representations and warranties of the City/ to assure California Communities that the Proposition 1A Receivable has not been previously sold, is not encumbered, that no litigation or other actions is pending or threatened to disrupt the transaction and that this is an arm's length "true sale" of the Proposition 1A Receivable.
- (3) Provides mechanics for payment of the Purchase Price

- (4) Contains other miscellaneous provisions.

Proposed Purchase and Sale Agreement Exhibits:

The proposed Proposition 1A Purchase and Sale Agreement Exhibits:

- (B1) Opinion of Counsel: This is an opinion of the counsel to the local agency covering basic approval of the documents, litigation, and enforceability of the document against the Seller. It will be dated as of the Pricing date of the bonds (currently expected to be November 10, 2009).
- (B2) Bringdown Opinion: This simply "brings down" the opinions to the closing date (currently expected to be November 19, 2009).
- (C1) Certificate of the Clerk of the Local Agency: A certificate of the Clerk confirming that the resolution was duly adopted and is in full force and effect.
- (C2) Seller Certificate: A certification of the Seller dated as of the Pricing Date confirming that the representations and warranties of the Seller are true as of the Pricing Date, confirming authority to sign, confirming due approval of the resolution and providing payment instructions.
- (C3) Bill of Sale and Bringdown Certificate: Certificate that brings the certifications of C2 down to the Closing Date and confirms the sale of the Proposition 1A Receivable as of the Closing Date.
- (D) Irrevocable Instructions to the Controller: Required in order to let the State Controller know that the Proposition 1A Receivable has been sold and directing the State to make payment of the receivable to the Trustee on behalf of the Purchaser.
- (E) Escrow Instruction Letter: Instructs Transaction Counsel (Orrick) to hold all documents in escrow until closing, and if closing does not occur by December 31, 2009 for any reason, to destroy all documents.

The above referenced Resolution and agreements must be executed and delivered to Bond Counsel's offices no later than November 6, 2009. Staff recommends approval of the attached Resolution and accompanying documents.

FISCAL IMPACT: The City will be 'loaning' \$1,247,562.14 to the State in fiscal Year 2009-10. The Proposition 1A Securitization allows this revenue to be backfilled.

FUNDING AVAILABLE: The City will have nominal out-of-pocket expenses associated with participation in the Proposition 1A securitization for preparing staff reports and monitoring funds.

Jordan Ayers
Deputy City Manager

JA/ja

Attachments

CITY OF LODI, CALIFORNIA,
as Seller

and

CALIFORNIA STATEWIDE COMMUNITIES
DEVELOPMENT AUTHORITY,
as Purchaser

PURCHASE AND SALE AGREEMENT

Dated as of November 1, 2009

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PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT, dated as of November 1, 2009 (this "Agreement"), is entered into by and between:

(1) **CITY OF LODI**, a local agency of the State of California within the meaning of Section 6585(f) of the California Government Code (the "Seller"); and

(2) CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the "Purchaser").

RECITALS

A. Pursuant to Section 25.5 of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code, local agencies within the meaning of Section 6585(f) of the California Government Code are entitled to receive certain payments to be made by the State of California (the "State") on or before June 30, 2013, as reimbursement for reductions in the percentage of the total amount of ad valorem property tax revenues allocated to such local agencies during the State's 2009-10 fiscal year, which reductions have been authorized pursuant to Sections 100.05 and 100.06 of the California Revenue and Taxation Code.

B. The Seller is the owner of the Proposition 1A Receivable (as defined below) and is entitled to and has determined to sell all right, title and interest in and to the Proposition 1A receivable, namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code, in order to obtain money to fund any lawful purpose as permitted under the applicable laws of the State.

C. The Seller is authorized to sell or otherwise dispose of its property as the interests of its residents require.

D. The Purchaser, a joint exercise of powers authority organized and existing under the laws of the State, has been authorized pursuant to Section 6588(x) of the California Government Code to purchase the Proposition 1A Receivable.

E. The Seller is willing to sell, and the Purchaser is willing to purchase, the Proposition 1A Receivable upon the terms specified in this Agreement.

F. Pursuant to its Proposition 1A Receivable Financing Program (the "Program"), the Purchaser will issue its bonds (the "Bonds") pursuant to an Indenture (the "Indenture"), between the Purchaser and Wells Fargo Bank, National Association, as trustee (the "Trustee"), and will use a portion of the proceeds thereof to purchase the Proposition 1A Receivable from the Seller.

G. The Purchaser will grant a security interest in such Proposition 1A Receivable to the Trustee and each Credit Enhancer to secure the Bonds.

AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. Definitions and Interpretation.

(a) For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in Exhibit A attached hereto and which is incorporated by reference herein.

(b) The words “hereof,” “herein,” “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; section and exhibits references contained in this Agreement are references to sections and exhibits in or to this Agreement unless otherwise specified; and the term “including” shall mean “including without limitation.”

(c) Any agreement, instrument or statute defined or referred to herein or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time may be amended, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments and exhibits thereto and instruments incorporated therein; and any references to a Person are also to its permitted successors and assigns.

2. Agreement to Sell and Purchase; Conditions Precedent.

(a) The Seller agrees to sell, and the Purchaser agrees to purchase, on the Closing Date, for an amount equal to the Purchase Price, all right, title and interest of the Seller in and to the “Proposition 1A receivable” as defined in Section 6585(g) of the California Government Code (the “Proposition 1A Receivable”), namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code. The Purchase Price shall be paid by the Purchaser to the Seller in two equal cash installment payments, without interest (each, an “Installment Payment” and, collectively, the “Installment Payments”), on January 15, 2010, and May 3, 2010 (each a “Payment Date” and, collectively, the “Payment Dates”). The Purchaser shall pay the Purchase Price by wire transfer pursuant to wire instructions provided by the Seller to the Trustee by e-mail to john.delaray@wellsfargo.com or by facsimile to 213-614-3355, Attention: John Delaray. If wire instructions are not provided to the Trustee (or if such wire instructions are invalid) payment will be made by check mailed to the Seller’s Principal Place of Business.

(b) The performance by the Purchaser of its obligations hereunder shall be conditioned upon:

- (i) Transaction Counsel receiving on or before the date the Bonds are sold (the “Pricing Date”), to be held in escrow until the Closing Date and then delivered to the Purchaser on the Closing Date, the following documents

duly executed by the Seller or its counsel, as applicable: (1) an opinion of counsel to the Seller dated the Pricing Date in substantially the form attached hereto as Exhibit B1, (2) certificates dated the Pricing Date in substantially the forms attached hereto as Exhibit C1 and Exhibit C2, (3) irrevocable instructions to the Controller dated as of the Closing Date in substantially the form attached hereto as Exhibit D, (4) this Agreement, (5) a certified copy of the resolution of the Seller's City Council approving this Agreement, the transactions contemplated hereby and the documents attached hereto as exhibits, and (6) an escrow instruction letter in substantially the form attached hereto as Exhibit E;

- (ii) Transaction Counsel receiving on or before the Pricing Date, (1) a bringdown opinion of counsel to the Seller dated as of the Closing Date in substantially the form attached hereto as Exhibit B2, and (2) a bill of sale and bringdown certificate of the Seller (the "Bill of Sale") in substantially the form attached hereto as Exhibit C3; provided that the Purchaser may waive, in its sole discretion, the requirements of Section 2(b)(ii)(1);
- (iii) the Purchaser issuing Bonds in an amount which will be sufficient to pay the Purchase Price; and
- (iv) the receipt by the Purchaser of a certification of the County Auditor confirming the Initial Amount of the Proposition 1A Receivable pursuant to the Act.

(c) The performance by the Seller of its obligations hereunder shall be conditioned solely upon the Purchaser's issuance of the Bonds its execution and delivery of this Agreement, pursuant to which it is legally obligated to pay the Installment Payments to the Seller on the Payment Dates as set forth in this Agreement, and no other act or omission on the part of the Purchaser or any other party shall excuse the Seller from performing its obligations hereunder. Seller specifically disclaims any right to rescind this Agreement, or to assert that title to the Proposition 1A Receivable has not passed to the Purchaser, should Purchaser fail to make Installment Payments in the requisite amounts on the Payment Dates.

3. Purchase Price, Conveyance of Proposition 1A Receivable and Payment of Purchase Price.

(a) Upon pricing of the Bonds by the Purchaser, the Purchaser will inform the Seller that it will pay the Purchase Price in Installment Payments on the Payment Dates.

(b) In consideration of the Purchaser's agreement to pay and deliver to the Seller the Installment Payments on the Payment Dates, the Seller agrees to (i) transfer, grant, bargain, sell, assign, convey, set over and deliver to the Purchaser, absolutely and not as collateral security, without recourse except as expressly provided herein, and the Purchaser agrees to purchase, accept and receive, the Proposition 1A Receivable, and (ii) assign to the Purchaser, to the extent permitted by law, all present or future rights, if any, of the Seller to enforce or cause the enforcement of payment of the Proposition 1A Receivable pursuant to the Act and other

applicable law. Such transfer, grant, bargain, sale, assignment, conveyance, set over and delivery is hereby expressly stated to be a sale and, pursuant to Section 6588.6(b) of the California Government Code, shall be treated as an absolute sale and transfer of the Proposition 1A Receivable, and not as a grant of a security interest by the Seller to secure a borrowing. This is the statement referred to in Sections 6588.6(b) and (c) of the California Government Code.

4. Representations and Warranties of the Purchaser. The Purchaser represents and warrants to the Seller, as of the date hereof, as follows:

(a) The Purchaser is duly organized, validly existing and in good standing under the laws of the State of California.

(b) The Purchaser has full power and authority to enter into this Agreement and to perform its obligations hereunder and has duly authorized such purchase and assignment of the Proposition 1A Receivable by the Purchaser by all necessary action.

(c) Neither the execution and delivery by the Purchaser of this Agreement, nor the performance by the Purchaser of its obligations hereunder, shall conflict with or result in a breach or default under any of its organizational documents, any law, rule, regulation, judgment, order or decree to which it is subject or any agreement or instrument to which it is a party.

(d) To the best of the knowledge of the Purchaser, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, is pending or threatened in any way against the Purchaser affecting the existence of the Purchaser or the titles of its commissioners or officers, or seeking to restrain or to enjoin the purchase of the Proposition 1A Receivable or to direct the application of the proceeds of the purchase thereof, or in any way contesting or affecting the validity or enforceability of any of the Transaction Documents or any other applicable agreements or any action of the Purchaser contemplated by any of said documents, or in any way contesting the powers of the Purchaser or its authority with respect to the Transaction Documents to which it is a party or any other applicable agreement, or any action on the part of the Purchaser contemplated by the Transaction Documents, or in any way seeking to enjoin or restrain the Purchaser from purchasing the Proposition 1A Receivable or which if determined adversely to the Purchaser would have an adverse effect upon the Purchaser's ability to purchase the Proposition 1A Receivable, nor to the knowledge of the Purchaser is there any basis therefor.

(e) This Agreement, and its execution, delivery and performance hereof have been duly authorized by it, and this Agreement has been duly executed and delivered by it and constitutes its valid and binding obligation enforceable against it in accordance with the terms hereof, subject to the effect of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws relating to or affecting creditors' rights generally or the application of equitable principles in any proceeding, whether at law or in equity.

(f) The Purchaser is a separate legal entity, acting solely through its authorized representatives, from the Seller, maintaining separate records, books of account, assets, bank accounts and funds, which are not and have not been commingled with those of the Seller.

(g) All approvals, consents, authorizations, elections and orders of or filings or registrations with any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would adversely affect, the purchase by the Purchaser of the Proposition 1A Receivable or the performance by the Purchaser of its obligations under the Transaction Documents to which it is a party and any other applicable agreements, have been obtained and are in full force and effect.

(h) Insofar as it would materially adversely affect the Purchaser's ability to enter into, carry out and perform its obligations under any or all of the Transaction Documents to which it is a party, or consummate the transactions contemplated by the same, the Purchaser is not in breach of or default under any applicable constitutional provision, law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which it is a party or to which it or any of its property or assets is otherwise subject, and, to the best of the knowledge of the Purchaser, no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument, and the execution and delivery by the Purchaser of the Transaction Documents to which it is a party, and compliance by the Purchaser with the provisions thereof, under the circumstances contemplated thereby, do not and will not conflict with or constitute on the part of the Purchaser a breach of or default under any agreement or other instrument to which the Purchaser is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the Purchaser is subject.

5. Representations and Warranties of the Seller. The Seller hereby represents and warrants to the Purchaser, as of the date hereof, as follows:

(a) The Seller is a local agency within the meaning of Section 6585(f) of the California Government Code, with full power and authority to execute and deliver this Agreement and to carry out its terms.

(b) The Seller has full power, authority and legal right to sell and assign the Proposition 1A Receivable to the Purchaser and has duly authorized such sale and assignment to the Purchaser by all necessary action; and the execution, delivery and performance by the Seller of this Agreement has been duly authorized by the Seller by all necessary action.

(c) This Agreement has been, and as of the Closing Date the Bill of Sale will have been, duly executed and delivered by the Seller and, assuming the due authorization, execution and delivery of this Agreement by the Purchaser, each of this Agreement and the Bill of Sale constitutes a legal, valid and binding obligation of the Seller enforceable in accordance with its terms, subject to the effect of bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws relating to or affecting creditors' rights generally or the application of equitable principles in any proceeding, whether at law or in equity.

(d) All approvals, consents, authorizations, elections and orders of or filings or registrations with any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would adversely affect, the sale by the Seller of the Proposition 1A Receivable or the performance by the Seller of its

obligations under the Resolution and the Transaction Documents to which it is a party and any other applicable agreements, have been obtained and are in full force and effect.

(e) Insofar as it would materially adversely affect the Seller's ability to enter into, carry out and perform its obligations under any or all of the Transaction Documents to which it is a party, or consummate the transactions contemplated by the same, the Seller is not in breach of or default under any applicable constitutional provision, law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which it is a party or to which it or any of its property or assets is otherwise subject, and, to the best of the knowledge of the Seller, no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument, and the adoption of the Resolution and the execution and delivery by the Seller of the Transaction Documents to which it is a party, and compliance by the Seller with the provisions thereof, under the circumstances contemplated thereby, do not and will not conflict with or constitute on the part of the Seller a breach of or default under any agreement or other instrument to which the Seller is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the Seller is subject.

(f) To the best of the knowledge of the Seller, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, is pending or threatened in any way against the Seller affecting the existence of the Seller or the titles of its **City Council** members or officers to their respective offices, or seeking to restrain or to enjoin the sale of the Proposition 1A Receivable or to direct the application of the proceeds of the sale thereof, or in any way contesting or affecting the validity or enforceability of any of the Transaction Documents or any other applicable agreements or any action of the Seller contemplated by any of said documents, or in any way contesting the powers of the Seller or its authority with respect to the Resolution or the Transaction Documents to which it is a party or any other applicable agreement, or any action on the part of the Seller contemplated by the Transaction Documents, or in any way seeking to enjoin or restrain the Seller from selling the Proposition 1A Receivable or which if determined adversely to the Seller would have an adverse effect upon the Seller's ability to sell the Proposition 1A Receivable, nor to the knowledge of the Seller is there any basis therefor.

(g) Prior to the sale of the Proposition 1A Receivable to the Purchaser, the Seller was the sole owner of the Proposition 1A Receivable, and has such right, title and interest to the Proposition 1A Receivable as provided in the Act. From and after the conveyance of the Proposition 1A Receivable by the Seller to Purchaser on the Closing Date, the Seller shall have no right, title or interest in or to the Proposition 1A Receivable. Except as provided in this Agreement, the Seller has not sold, transferred, assigned, set over or otherwise conveyed any right, title or interest of any kind whatsoever in all or any portion of the Proposition 1A Receivable, nor has the Seller created, or to the best knowledge of the Seller permitted the creation of, any lien, pledge, security interest or any other encumbrance (a "Lien") thereon. Prior to the sale of the Proposition 1A Receivable to the Purchaser, the Seller held title to the Proposition 1A Receivable free and clear of any Liens. As of the Closing Date, this Agreement, together with the Bill of Sale, constitutes a valid and absolute sale to the Buyer of all of the Seller's right, title and interest in and to the Proposition 1A Receivable.

(h) The Seller acts solely through its authorized officers or agents.

(i) The Seller maintains records and books of account separate from those of the Purchaser.

(j) The Seller maintains its respective assets separately from the assets of the Purchaser (including through the maintenance of separate bank accounts); the Seller's funds and assets, and records relating thereto, have not been and are not commingled with those of the Purchaser.

(k) The Seller's principal place of business and chief executive office is located at 221 West Pine Street, Lodi, CA 95241.

(l) The aggregate amount of the Installment Payments is reasonably equivalent value for the Proposition 1A Receivable. The Seller acknowledges that the amount payable to or on behalf of the Purchaser by the State with respect to the Proposition 1A Receivable will be in excess of the Purchase Price and the Initial Amount of the Proposition 1A Receivable and confirms that it has no claim to any such excess amount whatsoever.

(m) The Seller does not act as an agent of the Purchaser in any capacity, but instead presents itself to the public as an entity separate from the Purchaser.

(n) The Seller has not guaranteed and shall not guarantee the obligations of the Purchaser, nor shall it hold itself out or permit itself to be held out as having agreed to pay or as being liable for the debts of the Purchaser; and the Seller has not received nor shall the Seller accept any credit or financing from any Person who is relying upon the availability of the assets of the Purchaser in extending such credit or financing. The Seller has not purchased and shall not purchase any of the Bonds or any interest therein.

(o) All transactions between or among the Seller, on the one hand, and the Purchaser on the other hand (including, without limitation, transactions governed by contracts for services and facilities, such as payroll, purchasing, accounting, legal and personnel services and office space), whether existing on the date hereof or entered into after the date hereof, shall be on terms and conditions (including, without limitation, terms relating to amounts to be paid thereunder) which are believed by each such party thereto to be both fair and reasonable and comparable to those available on an arms-length basis from Persons who are not affiliates.

(p) The Seller has not, under the provisions of Section 100.06(b) of the California Revenue and Taxation Code, received a reduction for hardship or otherwise, nor has it requested, made arrangements for, or completed a reallocation or exchange with any other local agency, of the total amount of the ad valorem property tax revenue reduction allocated to the Seller pursuant to Section 100.06(a) of the California Revenue and Taxation Code.

6. Covenants of the Seller.

(a) The Seller shall not take any action or omit to take any action which adversely affects the interests of the Purchaser in the Proposition 1A Receivable and in the proceeds thereof. The Seller shall not take any action or omit to take any action that shall adversely affect

the ability of the Purchaser, and any assignee of the Purchaser, to receive payments of the Proposition 1A Receivable.

(b) The Seller shall not take any action or omit to take any action that would impair the validity or effectiveness of the Act, nor, without the prior written consent of the Purchaser or its assignees, agree to any amendment, modification, termination, waiver or surrender of, the terms of the Act, or waive timely performance or observance under the Act. Nothing in this agreement shall impose a duty on the Seller to seek to enforce the Act or to seek enforcement thereof by others, or to prevent others from modifying, terminating, discharging or impairing the validity or effectiveness of the Act.

(c) Upon request of the Purchaser or its assignee, (i) the Seller shall execute and deliver such further instruments and do such further acts (including being named as a plaintiff in an appropriate proceeding) as may be reasonably necessary or proper to carry out more effectively the purposes and intent of this Agreement and the Act, and (ii) the Seller shall take all actions necessary to preserve, maintain and protect the title of the Purchaser to the Proposition 1A Receivable.

(d) On or before the Closing Date, the Seller shall send (or cause to be sent) an irrevocable instruction to the Controller pursuant to Section 6588.6(c) of California Government Code to cause the Controller to disburse all payments of the Proposition 1A Receivable to the Trustee, together with notice of the sale of the Proposition 1A Receivable to the Purchaser and the assignment of all or a portion of such assets by the Purchaser to the Trustee. Such notice and instructions shall be in the form of Exhibit D hereto. The Seller shall not take any action to revoke or which would have the effect of revoking, in whole or in part, such instructions to the Controller. Upon sending such irrevocable instruction, the Seller shall have relinquished and waived any control over the Proposition 1A Receivable, any authority to collect the Proposition 1A Receivable, and any power to revoke or amend the instructions to the Controller contemplated by this paragraph. Except as provided in Section 2(c) of this Agreement, the Seller shall not rescind, amend or modify the instruction described in the first sentence of this paragraph. The Seller shall cooperate with the Purchaser or its assignee in giving instructions to the Controller if the Purchaser or its assignee transfers the Proposition 1A Receivable. In the event that the Seller receives any proceeds of the Proposition 1A Receivable, the Seller shall hold the same in trust for the benefit of the Purchaser and the Trustee and each Credit Enhancer, as assignees of the Purchaser, and shall promptly remit the same to the Trustee.

(e) The Seller hereby covenants and agrees that it will not at any time institute against the Purchaser, or join in instituting against the Purchaser, any bankruptcy, reorganization, arrangement, insolvency, liquidation, or similar proceeding under any United States or state bankruptcy or similar law.

(f) The financial statements and books and records of the Seller prepared after the Closing Date shall reflect the separate existence of the Purchaser and the sale to the Purchaser of the Proposition 1A Receivable.

(g) The Seller shall treat the sale of the Proposition 1A Receivable as a sale for regulatory and accounting purposes.

(h) From and after the date of this Agreement, the Seller shall not sell, transfer, assign, set over or otherwise convey any right, title or interest of any kind whatsoever in all or any portion of the Proposition 1A Receivable, nor shall the Seller create, or to the knowledge of the Seller permit the creation of, any Lien thereon.

7. The Purchaser's Acknowledgment. The Purchaser acknowledges that the Proposition 1A Receivable is not a debt or liability of the Seller, and that the Proposition 1A Receivable is payable solely by the State from the funds of the State provided therefor. Consequently, neither the taxing power of the Seller, nor the full faith and credit thereof is pledged to the payment of the Proposition 1A Receivable. No representation is made by the Seller concerning the obligation or ability of the State to make any payment of the Proposition 1A Receivable pursuant to Section 100.06 of the Revenue and Taxation Code and Section 25.5 of Article XIII of the California Constitution, nor is any representation made with respect to the ability of the State to enact any change in the law applicable to the Transaction Documents (including without limitation Section 100.06 of the Revenue and Taxation Code or Section 6588.6 of the Government Code). The Purchaser acknowledges that the Seller has no obligation with respect to any offering document or disclosure related to the Bonds.

8. Notices of Breach.

(a) Upon discovery by the Seller or the Purchaser that the Seller or Purchaser has breached any of its covenants or that any of the representations or warranties of the Seller or the Purchaser are materially false or misleading, in a manner that materially and adversely affects the value of the Proposition 1A Receivable or the Purchase Price thereof, the discovering party shall give prompt written notice thereof to the other party and to the Trustee, as assignee of the Purchaser, who shall, pursuant to the Indenture, promptly thereafter notify each Credit Enhancer and the Rating Agencies.

(b) The Seller shall not be liable to the Purchaser, the Trustee, the holders of the Bonds, or any Credit Enhancer for any loss, cost or expense resulting from the failure of the Trustee, any Credit Enhancer or the Purchaser to promptly notify the Seller upon the discovery by an authorized officer of the Trustee, any Credit Enhancer or the Purchaser of a breach of any covenant or any materially false or misleading representation or warranty contained herein.

9. Liability of Seller; Indemnification. The Seller shall be liable in accordance herewith only to the extent of the obligations specifically undertaken by the Seller under this Agreement. The Seller shall indemnify, defend and hold harmless the Purchaser, the Trustee and each Credit Enhancer, as assignees of the Purchaser, and their respective officers, directors, employees and agents from and against any and all costs, expenses, losses, claims, damages and liabilities to the extent that such cost, expense, loss, claim, damage or liability arose out of, or was imposed upon any such Person by the Seller's breach of any of its covenants contained herein or any materially false or misleading representation or warranty of the Seller contained herein. Notwithstanding anything to the contrary herein, the Seller shall have no liability for the payment of the principal of or interest on the Bonds issued by the Purchaser.

10. Limitation on Liability.

(a) The Seller and any officer or employee or agent of the Seller may rely in good faith on the advice of counsel or on any document of any kind, prima facie properly executed and submitted by any Person respecting any matters arising hereunder. The Seller shall not be under any obligation to appear in, prosecute or defend any legal action regarding the Act that is unrelated to its specific obligations under this Agreement.

(b) No officer or employee of the Seller shall have any liability for the representations, warranties, covenants, agreements or other obligations of the Seller hereunder or in any of the certificates, notices or agreements delivered pursuant hereto, as to all of which recourse shall be had solely to the assets of the Seller.

11. The Seller's Acknowledgment. The Seller hereby agrees and acknowledges that the Purchaser intends to assign and grant a security interest in all or a portion of (a) its rights hereunder and (b) the Proposition 1A Receivable, to the Trustee and each Credit Enhancer pursuant to the Indenture. The Seller further agrees and acknowledges that the Trustee, the holders of the Bonds, and each Credit Enhancer have relied and shall continue to rely upon each of the foregoing representations, warranties and covenants, and further agrees that such Persons are entitled so to rely thereon. Each of the above representations, warranties and covenants shall survive any assignment and grant of a security interest in all or a portion of this Agreement or the Proposition 1A Receivable to the Trustee and each Credit Enhancer and shall continue in full force and effect, notwithstanding any subsequent termination of this Agreement and the other Transaction Documents. The above representations, warranties and covenants shall inure to the benefit of the Trustee and each Credit Enhancer.

12. Notices. All demands upon or, notices and communications to, the Seller, the Purchaser, the Trustee or the Rating Agencies under this Agreement shall be in writing, personally delivered or mailed by certified mail, return receipt requested, to such party at the appropriate notice address, and shall be deemed to have been duly given upon receipt.

13. Amendments. This Agreement may be amended by the Seller and the Purchaser, with (a) the consent of the Trustee, (b) the consent of each Credit Enhancer, and (c) a Rating Agency Confirmation, but without the consent of any of the holders of the Bonds, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement.

Promptly after the execution of any such amendment, the Purchaser shall furnish written notification of the substance of such amendment to the Trustee and to the Rating Agencies.

14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Seller, the Purchaser and their respective successors and permitted assigns. The Seller may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Purchaser. Except as specified herein, the Purchaser may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Seller.

15. Third Party Rights. The Trustee and each Credit Enhancer are express and intended third party beneficiaries under this Agreement. Nothing expressed in or to be implied from this Agreement is intended to give, or shall be construed to give, any Person, other than the parties hereto, the Trustee, and each Credit Enhancer, and their permitted successors and assigns hereunder, any benefit or legal or equitable right, remedy or claim under or by virtue of this Agreement or under or by virtue of any provision herein.

16. Partial Invalidity. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

17. Counterparts. This Agreement may be executed in any number of identical counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes.

18. Entire Agreement. This Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter hereof.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Seller and the Purchaser have caused this Agreement to be duly executed as of the date first written above.

CITY OF LODI, as Seller

By: _____
Authorized Officer

**CALIFORNIA STATEWIDE COMMUNITIES
DEVELOPMENT AUTHORITY**, as Purchaser

By: _____
Authorized Signatory

EXHIBIT A DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms not otherwise defined herein shall have the meanings set forth below.

“Act” means Chapter 14XXXX of the California Statutes of 2009 (Assembly Bill No. 15), as amended.

“Bill of Sale” has the meaning given to that term in Section 2(b)(ii) hereof.

“Closing Date” means the date on which the Bonds are issued. The Closing Date is expected to be November 19, 2009, but the Purchaser may change the Closing Date by providing e-mail notification to jayers@lodi.gov not later than one day prior to the Closing Date.

“Controller” means the Controller of the State.

“County Auditor” means the auditor or auditor-controller of the county within which the Seller is located.

“Credit Enhancer” means any municipal bond insurance company, bank or other financial institution or organization which is performing in all material respects its obligations under any Credit Support Instrument for some or all of the Bonds.

“Credit Support Instrument” means a policy of insurance, a letter of credit, a stand-by purchase agreement, a revolving credit agreement or other credit arrangement pursuant to which a Credit Enhancer provides credit or liquidity support with respect to the payment of interest, principal or purchase price of the Bonds.

“Initial Amount” means, with respect to the Proposition 1A Receivable, the amount of property tax revenue reallocated away from the Seller pursuant to the provisions of Section 100.06 of the Revenue and Taxation Code, as certified by the County Auditor pursuant to the Act.

“Installment Payments” have the meaning set forth in Section 2(a).

“Payment Dates” have the meaning set forth in Section 2(a).

“Pricing Date” means the date on which the Bonds are sold. The Pricing Date is expected to be November 10, 2009, but the Purchaser may change the Pricing Date by providing e-mail notification to jayers@lodi.gov not later than one day prior to the Pricing Date.

“Principal Place of Business” means, with respect to the Seller, the location of the Seller’s principal place of business and chief executive office located at [221 West Pine Street, Lodi, CA 95241](#).

“Proposition 1A Receivable” has the meaning set forth in Section 2(a).

“Purchase Price” means an amount equal to the Initial Amount.

“Rating Agency” means any nationally recognized rating agency then providing or maintaining a rating on the Bonds at the request of the Purchaser.

“Rating Agency Confirmation” means written confirmation from each Rating Agency that any proposed action will not, in and of itself, cause the Rating Agency to lower, suspend or withdraw the rating then assigned by such Rating Agency to any Bonds.

“Resolution” means the resolution adopted by the **City Council** approving the sale of the Proposition 1A Receivable.

“State” means the State of California.

“Transaction Counsel” means Orrick, Herrington & Sutcliffe LLP.

“Transaction Documents” mean this Agreement, the Bill of Sale, the Indenture, the Bonds and the Irrevocable Instructions For Disbursement of Proposition 1A Receivable of **City of Lodi**, dated as of the Closing Date.

OPINION OF COUNSEL
to
CITY OF LODI

Dated: Pricing Date

California Statewide Communities Development Authority
Sacramento, California

Wells Fargo Bank, National Association
Los Angeles, California

Re: Sale of Proposition 1A Receivable

Ladies & Gentlemen:

[I have/This Office has] acted as counsel for the City of Lodi (the “Seller”) in connection with the adoption of that certain resolution (the “Resolution”) of the City Council of the Seller (the “Governing Body”) pursuant to which the Seller authorized the sale to the California Statewide Communities Development Authority (the “Purchaser”) of the Seller’s “Proposition 1A Receivable”, as defined in and pursuant to the Purchase and Sale Agreement dated as of November 1, 2009 (the “Sale Agreement”) between the Seller and the Purchaser. In connection with these transactions, the Seller has issued certain Irrevocable Instructions For Disbursement of the Seller’s Proposition 1A Receivable to the Controller of the State of California (the “Disbursement Instructions”) and a Bill of Sale and Bringdown Certificate of the Seller (the “Bill of Sale” and, collectively with the Sale Agreement and the Disbursement Instructions, the “Seller Documents”).

Unless the context otherwise requires, capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Sale Agreement. [I/We] have examined and are familiar with the Seller Documents and with those documents relating to the existence, organization, and operation of the Seller, the adoption of the Resolution, and the execution of the Seller Documents, and have satisfied ourselves as to such other matters as [I/we] deem necessary in order to render the following opinions. As to paragraphs numbered 3 and 4 below, [I/we] have relied as to factual matters on the representations and warranties of the Seller contained in the Sale Agreement.

Based upon the foregoing, and subject to the limitations and qualifications set forth herein, [I/we] are of the opinion that:

1. The Seller is a local agency, within the meaning of Section 6585(f) of the California Government Code. The Governing Body is the governing body of the Seller.

2. The Resolution was duly adopted at a meeting of the Governing Body, which was called and held pursuant to law and with all public notice required by law, and at which a quorum was present and acting throughout, and the Resolution is in full force and effect and has not been modified, amended or rescinded since the date of its adoption.

3. To the best of [my/our] knowledge, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, is pending or threatened in any way against the Seller (i) affecting the existence of the Seller or the titles of its Governing Body members or officers to their respective offices; (ii) seeking to restrain or to enjoin the sale of the Proposition 1A Receivable or to direct the application of the proceeds of the sale thereof, or materially adversely affecting the sale of the Proposition 1A Receivable; (iii) in any way contesting or affecting the validity or enforceability of the Resolution, Seller Documents or any other applicable agreements or any action of the Seller contemplated by any of said documents; or (iv) in any way contesting the powers of the Seller or its authority with respect to the Resolution or the Seller Documents or any other applicable agreement, or any action on the part of the Seller contemplated by any of said documents.

4. To the best of [my/our] knowledge, prior to the sale of the Proposition 1A Receivable to the Purchaser, the Seller had not sold, transferred, assigned, set over or otherwise conveyed any right, title or interest of any kind whatsoever in all or any portion of the Seller's Proposition 1A Receivable, nor had the Seller created, or permitted the creation of, any Lien thereon.

5. The Seller has duly authorized and executed the Seller Documents and, assuming the due authorization execution and delivery of the Sale Agreement by the Purchaser, each Seller Document will be legal, valid and binding against the Seller and enforceable against the Seller in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or laws relating to or affecting creditors' rights, and the application of equitable principles and the exercise of judicial discretion in appropriate areas.

No opinion is expressed concerning the obligation or ability of the State of California to make any payment of the Proposition 1A Receivable pursuant to Section 100.06 of the Revenue and Taxation Code and Section 25.5 of Article XIII of the California Constitution, nor is any opinion expressed with respect to the ability of the State to enact any change in the law applicable to the Seller Documents (including, without limitation, Section 100.06 of the Revenue and Taxation Code or Section 6588.6 of the Government Code). Furthermore, [I/we] express no opinion as to the value of the Proposition 1A Receivable or as to any legal or equitable remedies that may be available to any person should the Proposition 1A Receivable have little or no value. No opinion is expressed with respect to the sale of Bonds by the Purchaser.

The legal opinion set forth herein is intended for the information solely of the addressees hereof and for the purposes contemplated by the Sale Agreement. The addressees may not rely on it in connection with any transactions other than those described herein, and it is not to be relied upon by any other person or entity, or for any other purpose, or quoted as a whole or in part, or otherwise referred to, in any document, or to be filed with any governmental or administrative agency other than the Purchaser or with any other person or entity for any purpose without [my/our] prior written consent. In addition to the addressees hereof, each Credit Enhancer and the underwriters of the Bonds may rely upon this legal opinion as if it were addressed to them. [I/We] do not undertake to advise you of matters that may come to [my/our] attention subsequent to the date hereof that may affect the opinions expressed herein.

Very truly yours,

By: _____
Seller's Counsel

OPINION OF COUNSEL
to
CITY OF LODI

Dated: Closing Date

California Statewide Communities Development Authority
Sacramento, California

Wells Fargo Bank, National Association
Los Angeles, California

Re: Sale of Proposition 1A Receivable (Bringdown Opinion)

Ladies & Gentlemen:

Pursuant to that certain Purchase and Sale Agreement dated as of November 1, 2009 (the "Sale Agreement") between the City of Lodi (the "Seller") and the California Statewide Communities Development Authority (the "Purchaser"), this Office delivered an opinion (the "Opinion") dated the Pricing Date as counsel for the Seller in connection with the sale of the Seller's Proposition 1A Receivable (as defined in the Sale Agreement), the execution of documents related thereto and certain other related matters.

Capitalized terms used but not defined herein shall have the meanings given to such terms in the Sale Agreement.

I confirm that you may continue to rely upon the Opinion as if it were dated as of the date hereof. Each Credit Enhancer and the underwriters of the Bonds may rely upon this legal opinion as if it were addressed to them. This letter is delivered to you pursuant to Section 2(b)(ii)(1) of the Sale Agreement.

Very truly yours,

By: _____
Seller's Counsel

**EXHIBIT C1
CLERK'S CERTIFICATE**

CERTIFICATE OF THE
CITY CLERK OF
CITY OF LODI, CALIFORNIA

Dated: Pricing Date

The undersigned City Clerk of the City of Lodi (the "Seller"), a local agency of the State of California within the meaning of Section 6585(f) of the California Government Code, does hereby certify that the foregoing is a full, true and correct copy of Resolution No. _____ duly adopted at a regular meeting of the City Council of said Seller duly and legally held at the regular meeting place thereof on the _____ day of _____, 2009, of which meeting all of the members of said City Council had due notice and at which a quorum was present and acting throughout, and that at said meeting said resolution was adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

I do hereby further certify that I have carefully compared the same with the original minutes of said meeting on file and of record in my office and that said resolution is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes and that said resolution has not been amended, modified or rescinded since the date of its adoption and the same is now in full force and effect.

I do hereby further certify that an agenda of said meeting was posted at least 72 hours before said meeting at a location in the City of Lodi, California freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

Capitalized terms used but not defined herein shall have the meanings given to such terms in the Purchase and Sale Agreement, dated as of November 1, 2009, between the Seller and the California Statewide Communities Development Authority.

WITNESS by my hand as of the Pricing Date.

By: _____
City Clerk of the City of Lodi, California

**EXHIBIT C2
SELLER CERTIFICATE**

SELLER CERTIFICATE

Dated: Pricing Date

We, the undersigned officers of the **City of Lodi** (the “Seller”), a local agency of the State of California within the meaning of Section 6585(f) of the California Government Code, holding the respective offices herein below set opposite our signatures, do hereby certify that on the date hereof the following documents (the “Seller Transaction Documents”) were officially executed and delivered by the Authorized Officer or Officers whose names appear on the executed copies thereof, to wit:

Document

1. Purchase and Sale Agreement, dated as of November 1, 2009 (the “Sale Agreement”), between the Seller and the California Statewide Communities Development Authority (the “Purchaser”).
2. Irrevocable Instructions For Disbursement of Seller’s Proposition 1A Receivable to the Controller of the State of California, dated the Closing Date.
3. Bill of Sale, dated the Closing Date.

Capitalized terms used herein and not defined herein shall have the meaning given such terms in the Sale Agreement.

We further certify as follows:

1. At the time of signing the Seller Transaction Documents and the other documents and opinions related thereto, we held said offices, respectively, and we now hold the same.
2. The representations and warranties of the Seller contained in the Seller Transaction Documents are true and correct as of the date hereof in all material respects.
3. The **City Council** duly adopted its resolution (the “Resolution”) approving the sale of the Seller’s Proposition 1A Receivable at a meeting of the **City Council** which was duly called and held pursuant to law with all public notice required by law and at which a quorum was present and acting when the Resolution was adopted, and such Resolution is in full force and effect and has not been amended, modified, supplemented or rescinded.

Name, Official Title _____

Signature

Blair King, City Manager

Jordan Ayers, Deputy City Manager

I HEREBY CERTIFY that the signatures of the officers named above are genuine.

Dated: Pricing Date

By: _____
City Clerk of the City of Lodi, California

EXHIBIT C3
BILL OF SALE AND BRINGDOWN CERTIFICATE

BILL OF SALE AND BRINGDOWN CERTIFICATE

Pursuant to terms and conditions of the Purchase and Sale Agreement (the “Sale Agreement”), dated as of November 1, 2009, between the undersigned (the “Seller”) and the California Statewide Communities Development Authority (the “Purchaser”), and in consideration of the obligation of the Purchaser to pay and deliver to the Seller the Purchase Price (as defined in the Sale Agreement), in two equal installment payments to be made on January 15, 2010, and May 3, 2010 (collectively, the “Payment Dates”), the Seller does hereby (a) transfer, grant, bargain, sell, assign, convey, set over and deliver to the Purchaser, absolutely and not as collateral security, without recourse except as expressly provided in the Sale Agreement, the Proposition 1A Receivable as defined in the Sale Agreement (the “Proposition 1A Receivable”), and (b) assign to the Purchaser, to the extent permitted by law (as to which no representation is made), all present or future rights, if any, of the Seller to enforce or cause the enforcement of payment of the Proposition 1A Receivable pursuant to the Act and other applicable law. Such transfer, grant, bargain, sale, assignment, conveyance, set over and delivery is hereby expressly stated to be a sale and, pursuant to Section 6588.6(b) of the California Government Code, shall be treated as an absolute sale and transfer of the Proposition 1A Receivable, and not as a grant of a security interest by the Seller to secure a borrowing. Seller specifically disclaims any right to rescind the Agreement, or to assert that title to the Proposition 1A Receivable has not passed to the Purchaser, should Purchaser fail to make the installment payments in the requisite amounts on the Payment Dates.

The Seller hereby certifies that the representations and warranties of the Seller set forth in the Certificate of the **City Clerk** dated the Pricing Date, the Seller Certificate dated the Pricing Date and in the Transaction Documents to which the Seller is a party are true and correct in all material respects as of the date hereof (except for such representations and warranties made as of a specified date, which are true and correct as of such date). Capitalized terms used but not defined herein shall have the meanings given to such terms in the Sale Agreement.

Dated: Closing Date

CITY OF LODI

By: _____
Authorized Officer

EXHIBIT D
IRREVOCABLE INSTRUCTIONS TO CONTROLLER

IRREVOCABLE INSTRUCTIONS FOR DISBURSEMENT
OF PROPOSITION 1A RECEIVABLE OF
CITY OF LODI

Dated: Closing Date

Office of the Controller
State of California
P.O. Box 942850
Sacramento, California 94250-5872

Re: Notice of Sale of Proposition 1A Receivable by the **City of Lodi** and
Wiring Instructions Information Form

Dear Sir or Madam:

Pursuant to Section 6588.6(c) of the California Government Code, **City of Lodi** (the "Seller") hereby notifies you of the sale by Seller, effective as of the date of these instructions written above, of all right, title and interest of the Seller in and to the "Proposition 1A Receivable" as defined in Section 6585(g) of the California Government Code (the "Proposition 1A Receivable"), namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code.

By resolution, the Seller's **City Council** authorized the sale of the Proposition 1A Receivable to the California Statewide Communities Development Authority (the "Purchaser") pursuant to a Purchase and Sale Agreement, dated as of November 1, 2009 (the "Purchase and Sale Agreement") and a Bill of Sale, dated the Closing Date (as defined in the Purchase and Sale Agreement). The Proposition 1A Receivable has been pledged and assigned by the Purchaser pursuant to an Indenture, dated as of November 1, 2009 (the "Indenture") between the Purchaser and Wells Fargo Bank, National Association, as Trustee (the "Trustee").

The Seller hereby irrevocably requests and directs that, commencing as of the date of these instructions written above, all payments of the Proposition 1A Receivable (and documentation related thereto) be made directly to Wells Fargo Bank, National Association, as Trustee, in accordance with the wire instructions and bank routing information set forth below.

Please note that the sale of the Proposition 1A Receivable by the Seller is irrevocable and that: (i) the Seller has no power to revoke or amend these instructions at any time; (ii) the Purchaser shall have the power to revoke or amend these instructions only if there are no notes of the Purchaser outstanding under the Indenture and the Indenture has been discharged; and (iii) so long as the Indenture has not been discharged, these instructions cannot be revoked or amended by the Purchaser without the consent of the Trustee. Should

the Purchaser, however, deliver a written notice to the Office of the Controller stating that: (a) the Seller failed to meet the requirements set forth in the Purchase and Sale Agreement; (b) the Purchaser has not waived such requirements; and (c) the Purchaser has not purchased the Proposition 1A Receivable as a result of the circumstances described in (a) and (b) above, then these instructions shall be automatically rescinded and the Seller shall again be entitled to receive all payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code.

Bank Name: Wells Fargo Bank, N.A.
Bank ABA Routing #: 121000248
Bank Account #: 0001038377
Bank Account Name: Corporate Trust Clearing
Further Credit To: CSCDA Proposition 1A Bonds
Bank Address: 707 Wilshire Blvd., 17th Floor
MAC E2818-176
Los Angeles, CA 90017
Bank Telephone #: (213) 614-3353
Bank Contact Person: Robert Schneider

Please do not hesitate to call the undersigned if you have any questions regarding this transaction. Thank you for your assistance in this matter.

Very truly yours,

CITY OF LODI

By: _____
Authorized Officer

EXHIBIT E
ESCROW INSTRUCTION LETTER

ESCROW INSTRUCTION LETTER

_____, 2009

California Statewide Communities Development Authority
1100 K Street
Sacramento, CA 95814

Re: Proposition 1A Receivable Financing

Dear Sir or Madam:

The **City of Lodi** (the “Seller”) hereby notifies you of its agreement to participate in the California Statewide Communities Development Authority Proposition 1A Receivable Financing. By adoption of a resolution (the “Resolution”) authorizing the sale of its Proposition 1A Receivable, the Seller’s **City Council** has agreed to sell to the California Statewide Communities Development Authority (the “Purchaser”), for a purchase price that meets the conditions set forth in the Resolution, all of its right, title and interest in the Proposition 1A Receivable.

Enclosed herewith are the following documents which have been duly approved and executed by the Seller and which are to be held in escrow by Orrick, Herrington & Sutcliffe LLP, as transaction counsel (“Transaction Counsel”), as instructed below:

1. certified copy of the Resolution, together with a certificate of the **City Clerk**, dated the Pricing Date;
2. the Seller Certificate, dated the Pricing Date;
3. the Opinion of Seller’s Counsel, dated the Pricing Date;
4. the Opinion of Seller’s Counsel (bringdown opinion), dated the Closing Date;
5. the Purchase and Sale Agreement, dated as of November 1, 2009;
6. the Bill of Sale and Bringdown Certificate, dated the Closing Date; and
7. the Irrevocable Instructions to Controller, dated the Closing Date.

The foregoing documents are to be held in escrow by Transaction Counsel and shall be delivered on the Closing Date (as defined in the Purchase and Sale Agreement), provided that such Closing Date occurs on or before December 31, 2009.

Should (i) the Closing Date not occur on or before December 31, 2009, or (ii) Transaction Counsel receive prior to the Closing Date written notification from Seller or Seller's Counsel stating, respectively and in good faith, that the representations made in the Seller's Certificate are not true and accurate, or the opinions set forth in the Opinion of Seller's Counsel are not valid, in each case as of the Closing Date and provided that the Purchaser may, in its sole discretion, choose to waive receipt of such representations or opinions, then this agreement shall terminate and Transaction Counsel shall destroy all of the enclosed documents.

Very truly yours,

CITY OF LODI

By: _____
Authorized Officer

Enclosures

cc: Orrick, Herrington & Sutcliffe LLP

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE SALE OF THE SELLER'S PROPOSITION 1A RECEIVABLE FROM THE STATE; AND DIRECTING AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

=====

WHEREAS, pursuant to Section 25.5 of Article XIII of the California Constitution and Chapter 14 of the California Statutes of 2009 (Assembly Bill No. 15), as amended (the "Act"), certain local agencies within the State of California (the "State") are entitled to receive certain payments to be made by the State on or before June 30, 2013, as reimbursement for reductions in the percentage of the total amount of ad valorem property tax revenues allocated to such local agencies during the State's 2009-10 fiscal year (the "Reimbursement Payments"), which reductions have been authorized pursuant to Sections 100.05 and 100.06 of the California Revenue and Taxation Code; and

WHEREAS, the City of Lodi, a local agency within the meaning of Section 6585(f) of the California Government Code (the "Seller"), is entitled to and has determined to sell all right, title and interest of the Seller in and to its "Proposition 1A receivable", as defined in Section 6585(g) of the California Government Code (the "Proposition 1A Receivable"), namely, the right to payment of moneys due or to become due to the Seller pursuant to Section 25.5(a)(1)(B)(iii) of Article XIII of the California Constitution and Section 100.06 of the California Revenue and Taxation Code, in order to obtain money to fund public capital improvements or working capital; and

WHEREAS, the Seller is authorized to sell or otherwise dispose of its property as the interests of its residents require; and

WHEREAS, the California Statewide Communities Development Authority, a joint exercise of powers authority organized and existing under the laws of the State (the "Purchaser"), has been authorized pursuant to Section 6588(x) of the California Government Code to purchase the Proposition 1A Receivable; and

WHEREAS, the Purchaser desires to purchase the Proposition 1A Receivable and the Seller desires to sell the Proposition 1A Receivable pursuant to a purchase and sale agreement by and between the Seller and the Purchaser in the form presented to this City Council (the "Sale Agreement") for the purposes set forth herein; and

WHEREAS, in order to finance the purchase price of the Proposition 1A Receivable from the Seller and the purchase price of other Proposition 1A Receivables from other local agencies, the Purchaser will issue its bonds (the "Bonds") pursuant to Section 6590 of the California Government Code and an Indenture (the "Indenture"), by and between the Purchaser and Wells Fargo Bank, National Association, as trustee (the "Trustee"), which Bonds will be payable solely from the proceeds of the Seller's Proposition 1A Receivable and other Proposition 1A Receivables sold to the Purchaser by local agencies in connection with the issuance of the Bonds; and

WHEREAS, the Seller acknowledges that (i) any transfer of its Proposition 1A Receivable to the Purchaser pursuant to the Sale Agreement shall be treated as an absolute sale and transfer of the property so transferred and not as a pledge or grant of a security interest by City of Lodi to secure a borrowing, (ii) any such sale of its Proposition 1A Receivable to the Purchaser shall automatically be perfected without the

need for physical delivery, recordation, filing or further act, (iii) the provisions of Division 9 (commencing with Section 9101) of the California Commercial Code and Sections 954.5 to 955.1 of the California Civil Code, inclusive, shall not apply to the sale of its Proposition 1A Receivable, and (iv) after such transfer, the Seller shall have no right, title, or interest in or to the Proposition 1A Receivable sold to the Purchaser and the Proposition 1A Receivable will thereafter be owned, received, held and disbursed only by the Purchaser or a trustee or agent appointed by the Purchaser; and

WHEREAS, the Seller acknowledges that the Purchaser will grant a security interest in the Proposition 1A Receivable to the Trustee and any credit enhancer to secure payment of the Bonds; and

WHEREAS, a portion of the proceeds of the Bonds will be used by the Purchaser to, among other things, pay the purchase price of the Proposition 1A Receivable; and

WHEREAS, the Seller will use the proceeds received from the sale of the Proposition 1A Receivable for any lawful purpose as permitted under the applicable laws of the State.

NOW THEREFORE, the City Council of the City of Lodi hereby resolves as follows:

Section 1. All of the recitals set forth above are true and correct, and this City Council hereby so finds and determines.

Section 2. The Seller hereby authorizes the sale of the Proposition 1A Receivable to the Purchaser for a price equal to the amount certified as the Initial Amount (as defined in the Sale Agreement) by the County auditor pursuant to the Act. The form of Sale Agreement presented to the City Council is hereby approved. An Authorized Officer (as set forth in Appendix A of this Resolution, attached hereto and by this reference incorporated herein) is hereby authorized and directed to execute and deliver the Sale Agreement on behalf of the Seller, which shall be in the form presented at this meeting.

Section 3. Any Authorized Officer is hereby authorized and directed to send, or to cause to be sent, an irrevocable written instruction to the State Controller (the "Irrevocable Written Instruction") notifying the State of the sale of the Proposition 1A Receivable and instructing the disbursement pursuant to Section 6588.6(c) of California Government Code of the Proposition 1A Receivable to the Trustee, on behalf of the Purchaser, which Irrevocable Written Instruction shall be in the form presented at this meeting.

Section 4. The Authorized Officers and such other Seller officers, as appropriate, are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents, including but not limited to, if required, appropriate escrow instructions relating to the delivery into escrow of executed documents prior to the closing of the Bonds, and such other documents mentioned in the Sale Agreement or the Indenture, which any of them may deem necessary or desirable in order to implement the Sale Agreement and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 5. All consents, approvals, notices, orders, requests and other actions permitted or required by any of the documents authorized by this Resolution, whether before or after the sale of the Proposition 1A Receivable or the issuance of the Bonds, including without limitation any of the foregoing that may be necessary or desirable in connection

with any default under or amendment of such documents, may be given or taken by an Authorized Officer without further authorization by this City Council, and each Authorized Officer is hereby authorized and directed to give any such consent, approval, notice, order or request, to execute any necessary or appropriate documents or amendments, and to take any such action that such Authorized Officer may deem necessary or desirable to further the purposes of this Resolution.

Section 6. The City Council acknowledges that, upon execution and delivery of the Sale Agreement, the Seller is contractually obligated to sell the Proposition 1A Receivable to the Purchaser pursuant to the Sale Agreement and the Seller shall not have any option to revoke its approval of the Sale Agreement or to determine not to perform its obligations thereunder.

Section 7. This Resolution shall take effect from and after its adoption and approval.

Dated: October 21, 2009

=====

I hereby certify that Resolution No. 2009-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held October 21, 2009, by the following vote:

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

LARRY D. HANSEN
Mayor

Attest:

RANDI JOHL, City Clerk

APPROVED AS TO FORM:

SELLER'S COUNSEL

BY: _____
D. STEPHEN SCHWABAUER
City Attorney, City of Lodi

Dated: _____

2009-_____

APPENDIX A
CITY OF LODI

Authorized Officers:

Blair King, City Manager
Jordan Ayers, Deputy City Manager; or

Any designee of any of them, as appointed in a written certificate of such Authorized Officer delivered to the Trustee.



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing Expenditure of Grant Funding and Authorizing the City Manager to Enter into a Contract with Cool the Earth, Incorporated to Conduct a New Energy Education Pilot Program for the Electric Utility Department (EUD)

MEETING DATE: October 21, 2009

PREPARED BY: Interim Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing the expenditure of grant funding and authorizing the City Manager to enter into a contract with Cool the Earth, Incorporated to conduct a new energy education pilot program for the Electric Utility Department.

BACKGROUND INFORMATION: As part of the American Recovery & Reinvestment Act of 2009, the United States Department of Energy created the Energy Efficiency & Conservation Block Grant Program (EE & CBG). The City of Lodi, California has received a grant in the amount of \$586,200 for ten programs, five of which are to be administered by the EUD. EUD is requesting authorization to spend the \$198,000 granted to these programs, which have been described previously to the City Council:

Lodi Keep Your Cool Program	\$25,000
Lodi Lodging Energy Efficiency Pilot Project	\$48,000
Lodi Cool the Earth Educational Pilot Project	\$25,000
Lodi Energy Efficient Home Improvement Rebate Program	\$50,000
Low-Income Customer Refrigerator Replacement Program	\$50,000

For existing programs, the funds will be used to increase rebates and increase the number of customers who can be served. The Lodging Energy Efficiency and Cool the Earth are new programs for Lodi.

Lodi Cool The Earth Educational Pilot Project: EUD is requesting that the City Council authorize the City Manager to execute a professional services contract with Cool The Earth, Incorporated, to conduct this program on behalf of EUD. The project expenditure is not to exceed the \$25,000 EE&CBG grant. This pilot project is designed for students in grades K through 6 in both private and public schools within the Lodi city limits. The interactive and engaging program teaches students about renewable energy resources, energy/water conservation, global warming, greenhouse gas or carbon emissions, as well as sustainable living practices. With the \$25,000 allocation, a total of twelve school sites in Lodi will be able to participate, and it is anticipated that the energy savings derived from this pilot project will approach two million kilowatt hours annually.

Cool The Earth, Incorporated has implemented this one-of-a-kind program in some 100 school sites throughout northern California. In addition, electric utilities, such as PG & E are currently utilizing this program, while several other municipal utilities are considering a Cool The Earth campaign in their service territories. In light of this, EUD finds that Cool The Earth, Incorporated is uniquely qualified to

APPROVED: _____
Blair King, City Manager

conduct this program and requests that Lodi City Council dispense with the bid process, pursuant to Lodi Ordinance 3.20.070.

FUNDING: Energy Efficiency & Conservation Block Grant (an element of the American Recovery & Reinvestment Act of 2009), in the amount of \$198,000. This is a federally-funded program, administered by the United States Department of Energy.

Jordan Ayers
Deputy City Manager/Internal Services Director

Kenneth A. Weisel
Interim Electric Utility Director

PREPARED BY: Rob Lechner, Manager, Customer Service and Programs

KAW/RSL/lst

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING EXPENDITURE OF GRANT FUNDING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH COOL THE EARTH, INCORPORATED TO CONDUCT A NEW ENERGY EDUCATION PILOT PROGRAM FOR THE ELECTRIC UTILITY DEPARTMENT

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby authorizes the expenditure of funding from the American Recovery & Reinvestment Act of 2009/Energy Efficiency & Conservation Block Grant, for programs as previously described to the City Council, up to the following amounts:

Lodi Keep Your Cool Program	\$25,000
Lodi Lodging Energy Efficiency Pilot Project	\$48,000
Lodi Cool the Earth Educational Pilot Project	\$25,000
Lodi Energy Efficient Home Improvement Rebate Program	\$50,000
Low-Income Customer Refrigerator Replacement Program	\$50,000; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute and the Electric Utility Director is authorized to administer a professional services agreement with Cool The Earth, Incorporated to conduct the Lodi Cool The Earth Pilot Project.

Dated: October 21, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held October 21, 2009, by the following Vote:

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

RANDI JOHL
City Clerk

2009-_____



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Authorize Legal Transfer of Title of Ownership for Various City of Lodi Historical Documents to the San Joaquin County Historical Museum

MEETING DATE: October 21, 2009

PREPARED BY: City Clerk

RECOMMENDED ACTION: Authorize legal transfer of title of ownership for various City of Lodi historical documents to the San Joaquin County Historical Museum.

BACKGROUND INFORMATION: In September, the City Clerk's Office was contacted by a representative of the San Joaquin County Historical Museum regarding various City of Lodi historical records it has in its possession. A majority of these records at the museum have clear title of ownership with the County (see attached list marked Exhibit A); however, some have no record of legal transfer of ownership on file (which are designated on the list with an asterisk). The County is requesting authorization from the City of Lodi to transfer title of ownership of those records from the City to the San Joaquin County Historical Museum. Both the City Clerk and City Attorney have reviewed the records in question, and it was determined that they were not required to be maintained by the City. It would be appropriate for those records to be housed at the County Museum for historical purposes as they currently are.

FISCAL IMPACT: N/A

FUNDING AVAILABLE: N/A

Randi Johl
City Clerk

RJ/jmr

Attachments

APPROVED: _____
Blair King, City Manager

City of Lodi Records
in
San Joaquin County Historical Society and Museum

Preliminary Finding Aid
August 20, 2009

Assessor's Office

Assessment Book of Property Assessed by the State Board of Equalization in the
City of Lodi, California, for the Year 1935 (see Oversize)
Assessment Districts 77-737-43 to 77-737-57
Assessment Districts 77-737-58 to 77-737-63
Assessment Districts 77-737-116 to 77-737-128
Assessment Districts 77-737-129 to 77-737-133
Assessment Roll Index n.d.
Assessment Roll Index 1910
Assessment Roll Index 1911
Assessment Roll Index 1912
*Assessment Roll Index by Subdivision 1927
Assessment Roll Index 1928
Assessment Roll Index 1929
Assessment Roll Index 1936
Assessment Roll Index 1937
Assessment Roll Index 1938
Assessment Roll Index 1939
Assessment Roll Index 1940
Assessment Roll Index 1941
Assessment Roll Index 1942
Assessment Roll 1907-1909
Assessment Roll [1] 1919
Assessment Roll [2] 1919
Assessment Roll 3 1919
Assessment Roll 4 1919
Assessment Roll 5 1919
Assessment Roll 1920
Assessment Roll 1921-1922
Assessment Roll 1923
Assessment Roll 1924
Assessment Roll 1925
Assessment Roll 1926
Assessment Roll 1927
Assessment Roll 1928
Assessment Roll 1929
Assessment Roll 1930
Assessment Roll 1931

Assessment Roll 1932
 Assessment Roll 1933
 Assessment Roll 1934
 Assessment Roll 1935
 Assessment Roll 1936
 Assessment Roll 1937
 Assessment Roll 1938
 Assessment Roll 1939
 Assessment Roll 1940
 Assessment Roll 1941
 Assessment Roll 1942
 Assessment Roll 1943
 Assessment Roll 1935 Equalized Assessed Valuations and Special Assessments
 (see Oversize)
 Assessment Roll 1936 Equalized Assessed Valuations and Special Assessments
 (see Oversize)
 Assessment Roll 1937-1938 Equalized Assessed Valuations and Taxes Charged
 to Tax Collector (see Oversize)
 Assessment Roll 1938-1939 Equalized Assessed Valuation and Taxes Charged to
 Tax Collector (see Oversize)
 Assessment Roll 1939-1940 Equalized Assessed Valuation and Taxes Charged to
 Tax Collector (see Oversize)
 Assessment Roll 1940-1941 Equalized Assessed Valuation and Taxes Charged to
 Tax Collector (see Oversize)
 Assessment Roll 1942-1943 Equalized Assessed Valuations and Taxes Charged
 to Tax Collector (see Oversize)
 Assessor's Plat Book 1928
 Assessor's Plat Book n.d.
 Personal Property Taxes 1934-1944
 *Record of Street Assessment n.d.
 Street Improvement Bonds and Coupons Cancelled Vol. 1 Series A1 to E-4 1918-
 1920
 Street Improvement Bonds and Coupons Cancelled Vol. 2 Series E-4 to I1 1920
 Street Improvement Bonds and Coupons Cancelled Vol. 3 Series I-2 to L8 1920-
 1922
 Street Improvement Bonds and Coupons Cancelled Vol. 4 Series L8 to P6 1922
 Street Improvement Bonds and Coupons Cancelled Vol. 5 Series P6 to R10 1922
 Street Improvement Bonds and Coupons Cancelled Vol. 6 Series S1 to V10 1922
 Street Improvement Bonds and Coupons Cancelled Vol. 7 Series W1 to Z10-
 AA10 1922
 Street Improvement Bonds and Coupons Cancelled Vol. 8 1923
 Street Improvement Bonds and Coupons Cancelled Vol. 9 1924
 Street Improvement Bonds and Coupons Cancelled Vol. 10 1925-1926

Licensing Office

Record of Licenses 1907-1913

Police Department

- *Cash Book Nov. 1934-Feb. 1938
- *Cash Book Mar. 1938-Jan. 1941
- *Cash Book Jan. 1941-Apr. 1943
- *Cash Book May 1943-Feb. 1945
- *Cash Book Mar. 1945-Apr. 1946
- *Cash Book May 1946-Apr. 1947
- *Cash Book Apr. 1947-Dec. 1947
- *Cash Book Jan. 1948-Dec. 1950
- *Cash Book Monthly Summary 1935-1947

Various Records

- Abstracts of Mortgages Real Property March 1908-1909
- City Council Minutes 1916-1920
- List of Transfer of Real Property 1908-1909
- Scrapbooks of Accidents 1962 (see Oversize)
- *Unsorted Records 1908-1924 (1 of 2) (one Hollinger box)
- *Unsorted Records 1908-1924 (2 of 2) (one Hollinger box)

Oversize

- Assessment Book of Property Assessed by the State Board of Equalization in the City of Lodi, California, for the Year 1935
- *Assessment Roll 1935 Equalized Assessed Valuations and Special Assessments
- *Assessment Roll 1936 Equalized Assessed Valuations and Special Assessments
- *Assessment Roll 1937-1938 Equalized Assessed Valuations and Taxes Charged to Tax Collector
- *Assessment Roll 1938-1939 Equalized Assessed Valuation and Taxes Charged to Tax Collector
- *Assessment Roll 1939-1940 Equalized Assessed Valuation and Taxes Charged to Tax Collector
- *Assessment Roll 1940-1941 Equalized Assessed Valuation and Taxes Charged to Tax Collector
- *Assessment Roll 1942-1943 Equalized Assessed Valuations and Taxes Charged to Tax Collector
- *Assessor's Plat Book 1928
- *Assessor's Plat Book n.d.
- Scrapbooks of Accidents 1962



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolutions Amending the Order of Business for City Council Meetings and the City Council Protocol Manual and Adopt Council Policy Regarding Invocations.

MEETING DATE: October 21, 2009

SUBMITTED BY: City Attorney

RECOMMENDED ACTION: Adopt Resolutions Amending the Order of Business for City Council Meetings and the City Council Protocol Manual; and Adopt Council Policy Regarding Invocations.

BACKGROUND INFORMATION: Attached is the Invocation Policy that Council directed be prepared at their meeting held September 30, 2009. In light of the adoption of this Invocation Policy, the Order of Business for City Council meetings will also need to be amended, Resolution attached.

FUNDING: N/A

FISCAL IMPACT: Potential Litigation Costs.

D. Stephen Schwabauer
City Attorney

APPROVED: _____
Blair King, City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL SETTING FORTH THE ORDER OF BUSINESS FOR CITY COUNCIL MEETINGS, THEREBY REPEALING RESOLUTION 2005-10

=====

WHEREAS, pursuant to Ordinance No. 1699, adopted by the Lodi City Council on February 7, 2001, Section 2.04.100 of the Lodi Municipal Code relating to City Council Meetings, the Order of Business provides that the Council shall establish by Resolution the agenda order of business:

C-1 Call to Order / Roll call;

C-2 Announcement of Closed Session;

C-3 Adjourn to Closed Session;

NOTE: The following items will commence no sooner than 7:00 p.m.

C-4 Return to open session / disclosure of action

A. Call to Order / Roll call;

B. Pledge of allegiance;

C. Presentations:

C-1 Awards;

C-2 Proclamations;

C-3 Presentations;

D. Consent calendar (Reading; comments by the public; Council action);

E. Comments by the public on non-agenda items;

F. Comments by the City Council Members on non-agenda items;

G. Comments by the City Manager on non-agenda items

H. Public hearings;

I. Communications;

I-1 Claims filed against the City of Lodi;

I-2 Appointments;

I-3 Miscellaneous;

J. Regular calendar;

K. Ordinances;

L. Adjournment

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the Order of Business for City Council meetings as set forth above; and
BE IT FURTHER RESOLVED that this Resolution shall be effective immediately upon passage.

Dated: October 21, 2009

=====

I hereby certify that Resolution No. 2009-____ was passed and adopted by the Lodi City Council in a regular meeting held October 21, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-____

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY
COUNCIL ADOPTING POLICY REGARDING
LEGISLATIVE INVOCATIONS BEFORE
MEETINGS OF THE LODI CITY COUNCIL

=====

The Lodi City Council (“the Council”) is an elected legislative and deliberative public body, serving the citizens of Lodi, California, and after hearing makes the following findings:

WHEREAS, the Council wishes to maintain a tradition of solemnizing its proceedings by allowing for a pluralistic call to civic responsibility according to the faiths or beliefs of Lodi’s citizens (the “Invocation”) before each meeting, for the benefit of the Council; and

WHEREAS, the Council now desires to adopt this formal, written policy to clarify and codify its Invocation practices and amend the Council Protocol Manual adopted by Resolution No. 2006-45 accordingly; and

WHEREAS, in *Marsh v. Chambers*, 463 U.S. 783 (1983), the United States Supreme Court rejected a challenge to the Nebraska Legislature’s practice of opening each day of its sessions with a prayer by a chaplain paid with taxpayer dollars, and specifically concluded, “The opening sessions of legislative and other deliberative public bodies with prayer is deeply embedded in the history and tradition of this country. From colonial times through the founding of the Republic and ever since, the practice of legislative prayer has coexisted with the principles of disestablishment and religious freedom.” *Id.*, at 786; and

WHEREAS, the United States Supreme Court has determined, “The content of [such] prayer is not of concern to judges where. . .there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief.” *Marsh*, 463 U. S. at 794-795. Thus, *Marsh* focuses on exploitation of the prayer opportunity and efforts, direct or not, to proselytize; to promote or sell a particular religion; and

WHEREAS, in *Simpson v. Chesterfield County Bd. of Supervisors*, 404 F.3d 276 (4th Cir. 2004), *cert. denied*, the United States Court of Appeals for the Fourth Circuit reviewed and specifically approved as constitutional the prayer policy of a county board, and made a number of findings about the policy; and

WHEREAS, the Council acknowledges the general guidance provided by the Fourth Circuit’s findings in *Simpson*, including the fact that the policy there:

(1) Allowed for invocations for the benefit of the legislative body itself “rather than for the individual leading the invocation or for those who might also be present,” *Id.*, at 284; and

(2) Established a practice in which various clergy in the county’s religious community were invited on a rotating basis to present invocations before meetings of the board; *Id.*, at 279; and

(3) Thus, “made plain that [the county board] was not affiliated with any one specific faith” by allowing different persons from different religious convictions and backgrounds to offer the invocations. *Id.*, at 286; and

WHEREAS, in *Pelphrey v. Cobb County, Georgia*, 547 F.3d 1263, 1271 (11th Cir. 2008), the Eleventh Circuit embarked on a thorough and scholarly examination of the *Marsh* test for invocations when it affirmed as constitutional the invocation policy of a county commission. In so doing, the Eleventh Circuit reached very similar findings as to those of the Fourth Circuit in *Simpson*, and the Council finds its findings also provide useful guidance:

(1) The *Marsh* Court considered several factors to determine whether the legislative prayers at issue had been exploited to advance one faith in violation of the Establishment Clause - the Court weighed the chaplain's religious affiliation, his tenure before the legislative body, and the overall nature of his prayers. *Marsh*, 463 U.S. at 792-95. The “nonsectarian” nature of a chaplain's prayers is but one factor in this fact-intensive analysis and it does not form the basis for a bright-line rule. *Pelphrey*, 547 F.3d at 1271; and

(2) An invocation policy which results in prayers from speakers from a wide cross section of a municipality's religious leaders (i.e., leaders of Christian, Jewish, Muslim and Unitarian faiths), and which allows prayers that include specific references from each of the various faiths, does not advance, proselytize or disparage any particular religious faith. *Id.* at 1277-1278; and

WHEREAS, the Council notes that the Ninth Circuit, in an unpublished decision, has also acknowledged that a policy for invocations that, “as is traditional in Congress, rotate[s] among leaders of different faiths, sects, and denominations” may pass constitutional muster due to the fact that such a policy does not proselytize or disparage any particular religious belief. *Bacus v. Palo Verde Unified School District Board of Education*, 52 Fed.Appx. 355, 356 (9th Cir.2002); and

WHEREAS, the Council acknowledges the decision of California Second District Court of Appeal in *Rubin v. City of Burbank*, 101 Cal.App.4th 1194 (2002), which found illegal an invocation policy that allowed references to particular faiths. However, the Council believes the *Rubin* holding does not apply to the policy set forth herein because:

(1) The *Rubin* policy was not open to all religious groups within the City of Burbank; and

(2) The *Rubin* policy was not open to non-religious groups; and

(3) Appearances under the *Rubin* policy were controlled by a pastoral association; and

(4) The *Rubin* Invocation was given during the Council meeting;

WHEREAS, invocations consistent with the policy adopted herein are currently offered before the United States House of Representatives, United States Senate, and the California Senate; and

WHEREAS, the Council intends and has intended in past practice, to adopt a policy that does not proselytize, advance or disparage any particular faith or religious

belief or show any purposeful preference of one religious view to the exclusion of others;
and

WHEREAS, the Council recognizes its constitutional duty to interpret, construe, and amend its policies and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, the Council accepts as binding the applicability of general principles of law and all the rights and obligations afforded under the United State Constitution and the Constitution of the State of California.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that the Council hereby adopts the following written policy regarding legislative invocations before meetings of the Council, to wit:

1. In order to solemnize proceedings of the Council, it is the policy of the Council to allow for a legislative invocation (the "Invocation") to be offered before its meetings for the benefit of the Council.

2. The Invocation shall occur at 6:55 p.m. prior to the opening and noticed start time of the Council's meeting and shall be listed on the agenda.

3. No member or employee of the Council or any other person in attendance at the meeting shall be required to participate in any Invocation that is offered.

4. The Invocation shall be voluntarily delivered by an eligible person as detailed below. To ensure that such person (the "Invocation Speaker") is selected from among a wide pool on a rotating basis, the Invocation Speaker shall be selected according to the following procedure:

- a. The City Clerk (the "Clerk") shall compile and maintain a database (the "Invocation List") of the religious congregations and secular groups with an established presence within and around the City of Lodi.
- b. The Invocation List shall be compiled by referencing the listing for "churches," "congregations," or other religious assemblies and nonprofit civic groups in the annual Yellow Page phone book(s) published for the City of Lodi, research from the Internet, and consultation with local Chambers of Commerce. All religious and secular groups with an established presence in the local community of Lodi including Lodi citizens who must leave Lodi to attend a house of worship are eligible to be included in the Invocation List. Any such group not otherwise identified for participation may request its inclusion by specific written communication to the Clerk.
- c. This policy is intended to be and shall be applied in a way that is all-inclusive of every diverse religious and secular group within and around the City of Lodi. The Invocation List is to be compiled and used for purposes of logistics, efficiency and equal opportunity for all who may choose to participate in the Invocation.

- d. The Invocation List shall also include the name and contact information of any chaplain who may serve one or more of the fire departments or law enforcement agencies of the City of Lodi.
 - e. The Invocation List shall be updated annually, by reasonable efforts of the Clerk.
 - f. Within thirty (30) days of the effective date of this policy, and annually each calendar year thereafter, the Clerk shall mail an invitation addressed to each group listed on the Invocation List, as well as to the individual chaplains included on the Invocation List.
 - g. Respondents to the invitation letter shall be scheduled on a first-come, first-serve basis to deliver the Invocation.
5. No Invocation Speaker shall receive compensation for his or her service.
 6. The Clerk shall make every reasonable effort to ensure that the eligible Invocation Speakers that are scheduled to give the Invocation before the Council meetings represent a variety of view points from within and around the City of Lodi. In any event, no Invocation Speaker shall be scheduled to offer an Invocation at consecutive meetings of the Council, or at more than two (2) Council meetings in any calendar year.
 7. Neither the Council nor the Clerk shall engage in any prior inquiry, review of, or involvement in, the content of any Invocation. Moreover, the Invocation may be given in a manner that respectfully references the faith or beliefs of the Invocation Speaker. However, no Invocation Speaker shall give an Invocation that seeks to: 1) convert those present to a particular religious belief or seeks to demean a particular religious belief or lack thereof; 2) advocates a political agenda; or 3) asserts the accuracy, inaccuracy, or primacy of any religious belief or lack thereof. Invocation Speakers who violate this policy shall be permanently removed from the Invocation List and their Invocation may be interrupted and terminated by the Mayor.
 8. Shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Mayor shall introduce the Invocation Speaker, and invite only those who wish to do so to stand for those observances given for the benefit of the Council.
 9. In the event that the Invocation Speaker does not or cannot appear as scheduled, or in the event that no Invocation Speaker has volunteered or been scheduled for a particular Council meeting, shortly before the opening gavel that officially begins the meeting and the agenda/business of the public, the Mayor shall announce a moment of silence for individual reflection; and invite only those who wish to do so to stand for those observances given for the benefit of the Council.
 10. This policy is not intended, and shall not be implemented or construed in any way, to affiliate the Council with, nor express the Council's preference for or against, any faith or religious denomination, belief, affiliation or lack thereof. Rather, this policy is intended to acknowledge and express the Council's respect for the diversity of religious and non-religious thought

represented and practiced among the citizens within and around the City of Lodi.

- 11. To clarify the Council's intentions, as stated herein above, the following disclaimer shall be included in at least 10 point font under the Invocation Agenda Item:

"Invocations may be offered by any of the various religious and non-religious organizations within and around the City of Lodi. Invocations are voluntary offerings of private citizens, to and for the benefit of the Council. The views or beliefs expressed by the Invocation Speaker have not been previously reviewed or approved by the Council, and the Council does not endorse the beliefs or views of any Invocation Speaker or religious organization."

NOW, THEREFORE, BE IT FURTHER RESOLVED that this policy shall become effective immediately.

Dated: October 21, 2009

=====

I hereby certify that Resolution No. 2009-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held October 21, 2009, by the following vote:

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

LARRY D. HANSEN
Mayor

Attest:

RANDI JOHL
City Clerk

2009-____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Set Public Hearing for November 4, 2009, to Consider the Updated Planning Division's Hourly Rate and Setting Various Fire Inspection Fees.

MEETING DATE: October 21, 2009

PREPARED BY: Community Development Department

RECOMMENDED ACTION: Set Public Hearing for November 4, 2009, to Consider the Updated Planning Division's Hourly Rate and Setting Various Fire Inspection Fees.

BACKGROUND INFORMATION: In June 2006, the City Council adopted the Planning Division hourly rate for billing purposes and setting the deposit amounts for various Planning applications. Since that time, the cost for personnel and services has increased. A new analysis was prepared by the Finance Department which indicates the fully burdened rate for Planning services to be \$132.00 per hour.

In August 2008, the City contracted with the firm MGT of America to prepare a cost of services analysis that would meet legal requirements and methodology for Building related fees. The City Council adopted this methodology and a new fee schedule earlier this year. The fully burdened hourly rate for building services was set at \$133.00 per hour. As part of this year's budget, the Community Development Department took on the tasks of providing Fire Inspection services for development related projects. We are now looking to apply the Building services hourly rate to those services. In 2005, the current Fire Department Fee schedule was approved by the City Council. That schedule based Fire Department fees at a rate of \$75.00 per hour. The fees proposed will increase as a result in the difference in hourly rate from \$75.00 per hour to \$133.00 per hour.

FISCAL IMPACT: There should be a positive fiscal impact as a result of the recommended action by relating the revenue collected to the actual cost of service.

FUNDING AVAILABLE: N/A

Konradt Bartlam
Community Development Director

APPROVED: _____
Blair King, City Manager



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Set Public Hearing on November 18, 2009 to Introduce Ordinance Amending Chapter 13.20 "Electrical Service" Sections 225 and 227 Titled Schedule NEM -- Net Energy Metering and Schedule CEM -- Co-Energy Metering Rider (EUD)

MEETING DATE: October 21, 2009

PREPARED BY: Interim Electric Utility Director

RECOMMENDED ACTION: Set a Public Hearing on November 18, 2009, to introduce an ordinance amending Chapter 13.20 "Electrical Service" sections 225 and 227 titled Schedule NEM--Net Energy Metering and Schedule CEM--Co-Energy Metering Rider to revise and extend credit for customer-generated energy and make clarifications.

BACKGROUND INFORMATION: State of California Assembly Bill 58 (AB58) allows for municipally owned utilities to establish a "co-metering" rate for solar installations larger than 10 kW. Currently the co-metering rate provides a credit of one-half (½) of the applicable energy charges for all generated electricity provided to the City. The current ordinance also limits participation to residential and small commercial (G1 and G2). Proposed revisions would tie the co-metering credit to the full average cost of energy bought by the Electric Utility Department (EUD) and extend eligibility to all customer classes. AB 58 also provides for netting of energy costs for solar installations up to 10 kW for small customers. The proposed revisions would clarify that for both net metering and co-metering installations, EUD would retain environmental and capacity attributes, such as renewable energy credits and local resource adequacy credit for any installation covered by these riders.

FISCAL IMPACT: The proposed revisions will have minor fiscal impact on EUD. Changes in revenue will be offset by reductions in power costs. EUD will recover its cost to provide service.

Kenneth A. Weisel
Interim Electric Utility Director

KAW/rl/kb/lst
Attachments

APPROVED: _____
Blair King, City Manager



CITY OF LODI

ELECTRIC UTILITY DEPARTMENT

SCHEDULE NEM

NET ENERGY METERING RIDER

PURPOSE:

The purpose of this rider is to establish rates, terms and conditions for providing net metering services to customers generating electricity using solar and wind facilities of 10kW or less in size. This rider complies with California State legislation requiring every electric utility in the state, including municipally owned utilities, to develop a standard contract or tariff providing for net energy metering, as defined below.

APPLICABILITY:

This schedule is applicable to service for customers where a part or all of the electrical requirements of the customer can be supplied from a solar or wind power production source owned and operated by the customer (customer-generated). Customer-generators must currently be served under Lodi's residential and small commercial (G1 and G2) rate schedules. Availability of this schedule to eligible customer-generators will be on a first-come, first-served basis and will be available until such time the total rated generating capacity used by eligible customer-generators equals two and one-half percent (2.5%) of the City of Lodi aggregate customer annual peak demand.

The solar or wind generation source must: 1.) have a capacity of 10kW or less, 2.) be located on the customer-generator's premises, 3.) be connected for parallel operation with Lodi's distribution facilities, and 4.) be intended for the sole purpose of offsetting a part or all of the customer-generator's own electrical requirements. In no case shall the power or energy generated by the customer-owned solar or wind source be available for resale, except as specified under this rider.

Additional terms and conditions for service, including terms of interconnection and parallel operation, are specified in a customer-specific Electrical Interconnection and Net Energy Metering Payment Agreement.

RATES:

Charges for electricity supplied by the City will be based on metered usage in accordance with Special Conditions (3) and (5) below. Rates charged under this schedule will be in accordance with the eligible customer-generator's otherwise applicable rate schedule. Public Benefit charges and monthly customer charges shall not be by-passable.

CITY OF LODI

ELECTRIC UTILITY DEPARTMENT

SCHEDULE NEM

NET ENERGY METERING RIDER

SPECIAL CONDITIONS:

- (1) **Other Agreements:** A signed Electrical Interconnection and Net Metering Payment Agreement between the customer-generator and the City is required for service under this schedule.
- (2) **Metering Equipment:** Net energy metering shall be accomplished using a single meter capable of registering the flow of electricity in two directions. If customer's existing electrical meter is not capable of measuring the flow of electricity in two directions, the customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is capable of measuring electricity in both directions.
- (3) **Net Energy Metering and Billing:** Net Energy is defined as measuring the difference between the electricity supplied by the City through the electric grid to the eligible customer-generator and electricity generated by an eligible customer-generator and fed back into the electric grid over a 12-month period.

In the event that the electricity supplied by the City during the 12-month period exceeds the electricity generated by the eligible customer-generator during the same period, the eligible customer is a net electricity consumer and the City shall bill the customer for the net consumption during the 12-month period based on the retail price per kilowatt-hour for eligible customer-generator's rate class over the same period.

The City shall provide the customer-generator with net electricity consumption information on each regular bill. That information shall include the current amount owed to the City for the net electricity consumed. Customer-generator may exercise the option to pay monthly for the net energy consumed, but in any event shall be responsible for any payments due at the end of each 12-month period.

- (4) **Attributes:** Any Capacity Attributes or Environmental Attributes associated with the renewable energy produced by the customer-generator at sites subject to this schedule shall belong to the City. Capacity Attributes include, but are not limited to, System Resource Adequacy Capacity and Local Resource Adequacy Capacity, if any. Environmental Attributes include, but are not limited to, Renewable Portfolio Standard recognition, Renewable Energy Credits, Greenhouse Gas Credits, and Energy Reduction Credits, if any.

CITY OF LODI

ELECTRIC UTILITY DEPARTMENT

SCHEDULE NEM

NET ENERGY METERING RIDER

- (5) **Excess Energy:** Net energy metering will be administered on an annualized basis, beginning with the month of interconnection of the customer's generating system with the City's electrical system. Electric generation production may result in a dollar credit carrying forward to the next billing period. If a credit accumulation results in a net customer-owned generation credit at the end of the annualized year, unused dollar credits will be set to zero and not be carried into the new annualized year.
- (6) **Rules and Regulations:** Other conditions are specified in the City of Lodi Electric Utility Department's Rules, Regulations and Engineering Standards shall apply to this electric rate schedule.

CITY OF LODI

ELECTRIC UTILITY DEPARTMENT

SCHEDULE CEM

CO-ENERGY METERING RIDER

PURPOSE:

The purpose of this rider is to establish rates, terms and conditions for providing co-energy metering service to customers generating electricity using solar and wind facilities greater than 10 kW and not more than 1 MW in size. This rider complies with California State legislation allowing municipally owned utilities to develop a standard contract or tariff providing for co-energy metering, as defined below.

APPLICABILITY:

This schedule is applicable to service for customers where a part or all of the electrical requirements of the customer can be supplied from a solar or wind power production source owned and operated by the customer (customer-generator). Availability of this schedule to eligible customer-generators will be on a first-come, first-served basis and will be available until such time the total rated generating capacity used by eligible customer-generators equals two and one-half percent (2.5%) of the City of Lodi aggregate customer annual peak demand.

The solar or wind generation source must: 1) be rated not more than 1 MW and not be eligible for Schedule NEM – Net Energy Metering Rider, 2) be located on the customer-generator's premises, 3) be connected for parallel operation with Lodi's distribution facilities, and 4) be intended for the sole purpose of offsetting a part or all of the customer-generator's own electrical requirements. In no case shall the power or energy generated by the customer-owned solar or wind source be available for resale, except as specified under this rider.

Additional terms and conditions for service, including terms of interconnection and parallel operation, are specified in a customer-specific Electrical Interconnection and Co-Energy Metering Payment Agreement.

RATES:

Charges for electricity supplied by the City will be based on the co-metered usage in accordance with Special Conditions (c), (d) and (f) below. Rates charged under this schedule will be in accordance with the eligible customer-generator's otherwise applicable rate schedule.

CITY OF LODI

ELECTRIC UTILITY DEPARTMENT

SCHEDULE CEM

CO-ENERGY METERING RIDER

Energy Supplied Charges: The metered electricity supplied by the City to the customer-generator over the applicable billing period will be billed at the applicable service rate in effect when the service was rendered. All conditions, charges, adjustments and taxes under the applicable rate schedule shall be in effect. None of the charges of the applicable rate schedule shall be by-passable.

Energy Transmitted Credit: The metered electricity generated by the customer-generator and supplied to the City over the applicable billing period will be credited at the Baseline Energy Cost rate specified in Schedule ECA plus the Energy Cost Adjustment rate for the applicable billing period.

SPECIAL CONDITIONS:

- (1) **Other Agreements:** A signed Electrical Interconnection and Co-Energy Metering Payment Agreement between the customer-generator and the City is required for service under this schedule.
- (2) **Metering Equipment:** Co-Energy metering shall be accomplished using two meters – the customer revenue meter of record and a separate generation meter. The customer-generator shall be responsible for all expenses involved in purchasing and installing required meters.
- (3) **Co-Energy Metering:** Co-Energy metering is defined as the dual measurement of (i) the electricity supplied by the City through the electric grid to the eligible customer-generator and (ii) the electricity generated by an eligible customer-generator from the customer-owned solar or wind source.
- (4) **Co-Energy Billing:** The customer-generator shall receive a “net bill” from the City for each billing period. The co-energy metering net billing calculation shall be composed of the Energy Supplied Charges less the Energy Transmitted Credit.

All net charges are due at the time of billing. Electric generation production may result in a dollar credit carrying forward to the next billing period, subject to Special Condition (e) below.

- (5) **Attributes:** Any Capacity Attributes or Environmental Attributes associated with the renewable energy produced by the customer-generator at sites subject to this schedule shall belong to the City. Capacity Attributes include, but are not limited

CITY OF LODI

ELECTRIC UTILITY DEPARTMENT

SCHEDULE CEM

CO-ENERGY METERING RIDER

to, System Resource Adequacy Capacity and Local Resource Adequacy Capacity, if any. Environmental Attributes include, but are not limited to, Renewable Portfolio Standard recognition, Renewable Energy Credits, Greenhouse Gas Credits, and Energy Reduction Credits, if any.

- (6) **Excess Energy:** Co-Energy metering will be administered on an annualized basis, beginning with the month of interconnection of the customer's generating system with the City's electrical system. Electric generation production may result in a dollar credit carrying forward to the next billing period. If a credit accumulation results in a net customer-owned generation credit at the end of the annualized year, unused dollar credits will be set to zero and not be carried into the new annualized year.
- (7) **Rules and Regulations:** Other conditions as specified in the City of Lodi Electric Utility Department's Rules, Regulations and Engineering Standards shall apply to this electric rate schedule.

ORDINANCE NO.

AN ORDINANCE OF THE LODI CITY COUNCIL AMENDING
CHAPTER 13.20, "ELECTRICAL SERVICE," BY
REPEALING AND REENACTING SECTION 13.20.225,
SCHEDULE NEM – NET ENERGY METERING RIDER, AND
SECTION 13.20.227, SCHEDULE CEM – CO-ENERGY
METERING RIDER

=====

BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Lodi Municipal Code Section 13.20.225 Schedule NEM – Net Energy Metering Rider is hereby repealed and reenacted to read as follows:

A. **PURPOSE:** The purpose of this rider is to establish rates, terms and conditions for providing net metering services to customers generating electricity using solar and wind facilities of 10kW or less in size. This rider complies with California State legislation requiring every electric utility in the state, including municipally owned utilities, to develop a standard contract or tariff providing for net energy metering, as defined below.

B. **APPLICABILITY:** This schedule is applicable to service for customers where a part or all of the electrical requirements of the customer can be supplied from a solar or wind power production source owned and operated by the customer (customer-generated). Customer-generators must currently be served under Lodi's residential and small commercial (G1 and G2) rate schedules. Availability of this schedule to eligible customer-generators will be on a first-come, first-served basis and will be available until such time the total rated generating capacity used by eligible customer-generators equals two and one-half percent (2.5%) of the City of Lodi aggregate customer annual peak demand.

The solar or wind generation source must: 1.) have a capacity of 10kW or less, 2.) be located on the customer-generator's premises, 3.) be connected for parallel operation with Lodi's distribution facilities, and 4.) be intended for the sole purpose of offsetting a part or all of the customer-generator's own electrical requirements. In no case shall the power or energy generated by the customer-owned solar or wind source be available for resale, except as specified under this rider.

Additional terms and conditions for service, including terms of interconnection and parallel operation, are specified in a customer-specific Electrical Interconnection and Net Energy Metering Payment Agreement.

C. **RATES:** Charges for electricity supplied by the City will be based on metered usage in accordance with Special Conditions (3) and (5) below. Rates charged under this schedule will be in accordance with the eligible customer-generator's otherwise applicable rate schedule. Public Benefit charges and monthly customer charges shall not be by-passable.

D. SPECIAL CONDITIONS:

1. Other Agreements: A signed Electrical Interconnection and Net Metering Payment Agreement between the customer-generator and the City is required for service under this schedule.
2. Metering Equipment: Net energy metering shall be accomplished using a single meter capable of registering the flow of electricity in two directions. If customer's existing electrical meter is not capable of measuring the flow of electricity in two directions, the customer-generator shall be responsible for all expenses involved in purchasing and installing a meter that is capable of measuring electricity in both directions.
3. Net Energy Metering and Billing: Net Energy is defined as measuring the difference between the electricity supplied by the City through the electric grid to the eligible customer-generator and electricity generated by an eligible customer-generator and fed back into the electric grid over a 12-month period.

In the event that the electricity supplied by the City during the 12-month period exceeds the electricity generated by the eligible customer-generator during the same period, the eligible customer is a net electricity consumer and the City shall bill the customer for the net consumption during the 12-month period based on the retail price per kilowatt-hour for eligible customer-generator's rate class over the same period.

The City shall provide the customer-generator with net electricity consumption information on each regular bill. That information shall include the current amount owed to the City for the net electricity consumed. Customer-generator may exercise the option to pay monthly for the net energy consumed, but in any event shall be responsible for any payments due at the end of each 12-month period.

4. Attributes: Any Capacity Attributes or Environmental Attributes associated with the renewable energy produced by the customer-generator at sites subject to this schedule shall belong to the City. Capacity Attributes include, but are not limited to, System Resource Adequacy Capacity and Local Resource Adequacy Capacity, if any. Environmental Attributes include, but are not limited to, Renewable Portfolio Standard recognition, Renewable Energy Credits, Greenhouse Gas Credits, and Energy Reduction Credits, if any.
5. Excess Energy: Net energy metering will be administered on an annualized basis, beginning with the month of interconnection of the customer's generating system with the City's electrical system. Electric generation production may result in a dollar credit carrying forward to the next billing period. If a credit accumulation results in a

net customer-owned generation credit at the end of the annualized year, unused dollar credits will be set to zero and not be carried into the new annualized year.

- 6, Rules and Regulations: Other conditions are specified in the City of Lodi Electric Utility Department's Rules, Regulations and Engineering Standards shall apply to this electric rate schedule.

SECTION 2. Lodi Municipal Code Section 13.20.227 Schedule CEM – Co-Energy Metering Rider is hereby repealed and reenacted to read as follows:

- A. **PURPOSE:** The purpose of this rider is to establish rates, terms and conditions for providing co-energy metering service to customers generating electricity using solar and wind facilities greater than 10 kW and not more than 1 MW in size. This rider complies with California State legislation allowing municipally owned utilities to develop a standard contract or tariff providing for co-energy metering, as defined below.

- B. **APPLICABILITY:**

This schedule is applicable to service for customers where a part or all of the electrical requirements of the customer can be supplied from a solar or wind power production source owned and operated by the customer (customer-generator). Availability of this schedule to eligible customer-generators will be on a first-come, first-served basis and will be available until such time the total rated generating capacity used by eligible customer-generators equals two and one-half percent (2.5%) of the City of Lodi aggregate customer annual peak demand.

The solar or wind generation source must: 1) be rated not more than 1 MW and not be eligible for Schedule NEM – Net Energy Metering Rider, 2) be located on the customer-generator's premises, 3) be connected for parallel operation with Lodi's distribution facilities, and 4) be intended for the sole purpose of offsetting a part or all of the customer-generator's own electrical requirements. In no case shall the power or energy generated by the customer-owned solar or wind source be available for resale, except as specified under this rider.

Additional terms and conditions for service, including terms of interconnection and parallel operation, are specified in a customer-specific Electrical Interconnection and Co-Energy Metering Payment Agreement.

- C. **RATES:** Charges for electricity supplied by the City will be based on the co-metered usage in accordance with Special Conditions (3), (4), and (6) below. Rates charged under this schedule will be in accordance with the eligible customer-generator's otherwise applicable rate schedule.

1. Energy Supplied Charges: The metered electricity supplied by the City to the customer-generator over the applicable billing period will be billed at the applicable service rate in effect when the service was rendered. All conditions, charges, adjustments and taxes under the applicable rate schedule shall be in effect. None of the charges of the applicable rate schedule shall be by-passable.
2. Energy Transmitted Credit: The metered electricity generated by the customer-generator and supplied to the City over the applicable billing period will be credited at the Baseline Energy Cost rate specified in Schedule ECA plus the Energy Cost Adjustment rate for the applicable billing period..

D. SPECIAL CONDITIONS:

1. Other Agreements: A signed Electrical Interconnection and Co-Energy Metering Payment Agreement between the customer-generator and the City is required for service under this schedule.
2. Metering Equipment: Co-Energy metering shall be accomplished using two meters – the customer revenue meter of record and a separate generation meter. The customer-generator shall be responsible for all expenses involved in purchasing and installing required meters.
3. Co-Energy Metering: Co-Energy metering is defined as the dual measurement of (i) the electricity supplied by the City through the electric grid to the eligible customer-generator and (ii) the electricity generated by an eligible customer-generator from the customer-owned solar or wind source.
4. Co-Energy Billing: The customer-generator shall receive a “net bill” from the City for each billing period. The co-energy metering net billing calculation shall be composed of the Energy Supplied Charges less the Energy Transmitted Credit.

All net charges are due at the time of billing. Electric generation production may result in a dollar credit carrying forward to the next billing period, subject to Special Condition (e) below.

5. Attributes: Any Capacity Attributes or Environmental Attributes associated with the renewable energy produced by the customer-generator at sites subject to this schedule shall belong to the City. Capacity Attributes include, but are not limited to, System Resource Adequacy Capacity and Local Resource Adequacy Capacity, if any. Environmental Attributes include, but are not limited to, Renewable Portfolio Standard recognition, Renewable Energy Credits, Greenhouse Gas Credits, and Energy Reduction Credits, if any.
6. Excess Energy: Co-Energy metering will be administered on an annualized basis, beginning with the month of interconnection of the customer's

generating system with the City's electrical system. Electric generation production may result in a dollar credit carrying forward to the next billing period. If a credit accumulation results in a net customer-owned generation credit at the end of the annualized year, unused dollar credits will be set to zero and not be carried into the new annualized year.

7. Rules and Regulations: Other conditions as specified in the City of Lodi Electric Utility Department's Rules, Regulations and Engineering Standards shall apply to this electric rate schedule.

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 towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 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. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 6. This ordinance shall be published pursuant to law and shall become effective 30 days from the date of passage and adoption.

SECTION 7. The amended Schedules referenced above shall be effective on applicable electric utility billings prepared by the City of Lodi on or after February 1, 2010, or the first date allowable under State law.

Approved this ____ day of _____, 2009

LARRY D. HANSEN
MAYOR

ATTEST:

RANDI JOHL
City Clerk

State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was introduced at a regular meeting of the City Council of the City of Lodi held November 18, 2009, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held _____, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. ____ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL
City Clerk

Approved to Form:

D. STEPHEN SCHWABAUER
City Attorney



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Set Public Hearing for November 18, 2009, to Consider Unmet Transit Needs in Lodi

MEETING DATE: October 21, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Set a public hearing for November 18, 2009, to consider unmet transit needs in Lodi.

BACKGROUND INFORMATION: The San Joaquin Council of Governments (SJCOG) is required to conduct an annual assessment of the existing transit system prior to the allocation of Local Transportation Funds for non-transit purposes (TDA Section 99401.5). SJCOG, the San Joaquin Regional Transit District, and local jurisdictions are sponsoring several upcoming Unmet Transit Needs hearings in San Joaquin County, including Lodi. Any comments received from those meetings will be communicated to City staff. It should be noted that many of the comments are given directly via email to SJCOG staff throughout the year.

Unmet Transit Needs are defined as transportation services not currently provided to those residents who use or would use public transportation regularly, if available, to meet their life expectations. SJCOG's Social Services Transportation Committee (SSTAC) will evaluate the comments received based on a reasonableness test of six criteria. The criteria include community acceptance, equity, potential ridership, cost effectiveness, operational feasibility, and funding. The funding criterion requires the imposed service does not cause the public agency to incur expenses in excess of the maximum allocation of TDA funds. Completion of the Draft Unmet Transit Needs study is scheduled for February 2010 with adoption of the Final Unmet Transit Needs study in April 2010.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

F. Wally Sandelin
Public Works Director

Prepared by Paula J. Fernandez, Transportation Manager/Senior Traffic Engineer

FWS/PJF/pmf

cc: Tanisha Taylor, San Joaquin Council of Governments
Aaron Hoyt, San Joaquin Council of Governments

APPROVED: _____
Blair King, City Manager

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

AGENDA TITLE: Public Hearing to Consider Resolution Modifying Transit Budget and Authorizing City Manager to Implement Modifications

MEETING DATE: October 21, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Conduct a public hearing to consider a resolution modifying the Transit budget and authorizing the City Manager to implement the modifications.

BACKGROUND INFORMATION: As a result of recent actions related to adoption of the California State Budget, San Joaquin County Council of Governments staff has instructed local transit operators to reduce their Fiscal Year 2009/10 Transportation Development Act (TDA) revenue estimates by 20 percent. Federal revenue levels will remain the same as in the previous fiscal year. As a result, Lodi Transit revenues are expected to be \$443,775 less than projected in the current budget.

Transit service costs overall have been operating at lower than the budgeted level for the first four months of this fiscal year. As a result, operations costs through October are on track to come in approximately \$70,000 below budget estimates. It is estimated the recommended service modifications will result in additional operation savings of approximately \$50,000. This leaves a remaining projected deficit of \$323,775 (\$443,775 - \$70,000 - \$50,000) that must be offset by service reductions over the next eight months. It is crucial that quick action be taken to implement changes by November 1, 2009, in order to minimize the severity of service reductions.

There are no undesignated reserves within the Transit Fund available for operations. An alternative to service reductions is to use General Fund revenues to cover all or part of the projected deficit. This is not a recommended alternative. Exhibit A provides the projected revenues, expenditures, and financial statistics for Fiscal Year 2009/10. The subsidy per passenger on the Fixed Route service is \$4.17 per passenger and \$21.08 per passenger on Dial-A-Ride/VineLine service.

A series of public meetings has been held to inform the public about the pending service changes. Notices for the meetings have been posted on all transit buses, bus shelters, Lodi Station, LOEL Senior Center, and Hutchins Street Square and published in the *Lodi News Sentinel* and *Stockton Record*. In addition, a public outreach effort solicited feedback from transit passengers regarding the service modifications. The results of the public meetings and public outreach will be presented to City Council at the Public Hearing.

The transit contract with MV Transportation requires that the City purchase a minimum of 40,000 revenue hours but no more than 50,000 revenue hours per year. Without any service modifications, this year's transit services are on course to operate at approximately 44,000 revenue hours. Lowering the transit

APPROVED: _____
Blair King, City Manager

services to the minimum operating level of 40,000 revenue hours generates only another \$120,000 in additional cost savings. As a result, contract renegotiation is required to address the projected deficit.

Contract renegotiation involves the resetting of fixed cost and revenue hour payments to MV Transportation that are determined by the mix of transit services, hours of operation, and days of operation. The attached draft contract amendment (Exhibit B) resets the range of revenue hours, the fixed costs, and the price per revenue hour. All other provisions of the existing contract remain in place.

Staff diligently worked to evaluate several transit service scenarios that provide the most service to the most riders while providing a \$323,775 cost reduction over the next eight months. The primary objectives included: 1) maintaining as many of the routes as possible, 2) affecting the fewest number of riders as possible, 3) addressing passenger input, and 4) reducing costs.

Currently, the transit service operates as follows:

Current Service

Dial-A-Ride/VineLine Same Day Service	All Days	All Dial-A-Ride operating hours
Fixed Route (5 routes)	Monday through Friday	6:15 a.m. – 6:54 p.m.
Dial-A-Ride/VineLine	Monday through Friday	6:15 a.m. – 9:00 p.m.
Fixed Route (4 routes)	Saturday and Sunday	7:45 a.m. – 3:09 p.m.
Dial-A-Ride/VineLine	Saturday	7:45 a.m. – 6:00 p.m.
Dial-A-Ride/VineLine	Sunday	7:45 a.m. – 4:00 p.m.
Express Route (3 routes)	Monday through Friday	6:10 a.m. – 7:40 a.m. and 2:15 a.m. – 3:40 p.m.
All Transit Services	7 holidays (New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day)	No Service

Current Fares

Fares to ride Fixed and Express Routes are \$1.00 for general public and \$0.50 for Seniors/Disabled/Medicare. With reservations, fares on Dial-A-Ride/VineLine are \$5.00 for general public and \$1.50 for Seniors/Disabled/Medicare. Without reservations or "Same Day Service" on Dial-A-Ride, fares are \$10.00 for general public and \$3.00 for Seniors/Disabled/Medicare. It costs passengers \$1.00 more to ride outside the City limits (specifically, Woodbridge or Arbor Mobile Home Park in Acampo per contract).

Alternatives

At the October 6th Shirtsleeve Session, staff presented the following Alternative A. This alternative has been very slightly modified to match the times with current schedules. Also, the Dial-A-Ride/VineLine

hours have been matched to the Express Route schedules in order to meet federal requirements for ADA paratransit:

Alternative A

Dial-A-Ride/VineLine Same Day Service	All Days	Not Available
Fixed Route (5 routes)	Monday through Friday	7:45 a.m. – 5:20 p.m.
Express Route (3 routes)	Monday through Friday	6:10 a.m. – 7:40 a.m. and 2:15 a.m. – 3:40 pm
Fixed Route (4 routes)	Saturday and Sunday	No Service
Dial-A-Ride/VineLine	Monday through Friday	6:10 a.m. – 5:20 p.m.
Dial-A-Ride/VineLine	Saturday and Sunday	No Service
All Transit Services	10 holidays and 8 furlough days	No Service

Based on MV Transportation’s funding model, the cost savings under Alternative A for the remaining eight months is \$438,400. The total estimated revenue hours for Alternative A is 33,100 hours.

At the Shirtsleeve Session, City Council suggested operating longer hours during the weekday to accommodate commuters (8 a.m. to 6 p.m.) and providing Saturday service (9 a.m. to 4 p.m.). Again, utilizing the current bus schedule Alternative B was developed and includes the following services:

Alternative B

Dial-A-Ride/VineLine Same Day Service	All Days	Not Available
Fixed Route (5 routes)	Monday through Friday	7:45 a.m. – 6:10 p.m.
Express Route (3 routes)	Monday through Friday	6:10 a.m. – 7:40 a.m. and 2:15 a.m. – 3:40 p.m.
Fixed Route (4 routes)	Saturday	9:15 a.m. – 3:08 p.m.
Fixed Route (4 routes)	Sunday	No Service
Dial-A-Ride/VineLine	Monday through Friday	6:10 a.m. – 6:10 p.m.
Dial-A-Ride/VineLine	Saturday	9:15 a.m. – 3:08 p.m.
Dial-A-Ride/VineLine	Sunday	No Service
All Transit Services	9 holidays (Nov. 25 & Dec. 24 added)	No Service

Based on MV Transportation’s funding model, the cost savings under Alternative B for the remaining eight months is \$333,100. The total estimated revenue hours for Alternative B is 36,900 hours.

The primary concern with any service modification is the number of passengers affected by the change. To summarize the number of affected passengers, Exhibit C presents the passenger statistics on an annual and daily basis for specific times and services.

It is staff’s objective to have the Council provide specific direction on the level of transit service and authorize the City Manager to negotiate and execute an amended contract with MV Transportation based

on Council approved level of transit service. This allows service changes to be implemented by November 1, 2009. Delays in implementing operating cost savings measures will result in more service cuts over a shorter period of time.

At the Shirtsleeve Session, the City Manager briefly discussed utilizing American Recovery and Reinvestment Act (ARRA) funds. Based on discussions with San Joaquin Council of Governments staff, it is uncertain if we can amend the current ARRA capital transit grant prior to the end of the fiscal year. If this were possible, there might be up to \$150,000 available for transit operations.

FISCAL IMPACT: The transit service modifications will allow the City of Lodi to use available TDA, FTA, Measure K, transit fares, and other revenues to pay for transit operations for FY 2009/10.

FUNDING AVAILABLE: No General Fund revenues are needed to cover the projected deficit for proposed service modifications.

F. Wally Sandelin
Public Works Director

Prepared by Paula J. Fernandez, Transit Manager/Senior Traffic Engineer

FWS/PJF/pmf

Attachments

Exhibit A

Budget Information:

Revenues	\$3,034,170
Expenditures	<u>- 3,477,945</u>
Funding Shortfall	\$443,775
Operations Savings (4 mos)	<u>- 70,000</u>
Operations Savings (Nov – June)	<u>- 50,000</u>
Projected Deficit	\$343,775

Financial Statistics:

Operating Cost per Passenger

Fixed Route = \$4.84 per passenger

DAR/VineLine = \$22.65 per passenger

Farebox Recovery per Passenger

Fixed Route = \$0.67 per passenger

DAR/VineLine = \$1.57 per passenger

Subsidy per passenger

Fixed Route = \$4.17 per passenger

DAR/VineLine = \$21.08 per passenger

Exhibit B

The Draft MV Transportation Contract Amendment will be presented to City Council as a Blue Sheet at the Public Hearing.

PASSENGER USAGE OF TRANSIT SERVICE

Service	TIME	ANNUAL	AVERAGE DAILY
Dial-A-Ride/VineLine Same Day Service:	NA	14,818	48 (M-F) 22 (Sat) 20 (Sun)
Fixed Route: Monday-Friday	6:10 am – 7:45 am	53,081	251
Fixed Route: Monday-Friday	7:45 am – 6:10 pm	168,124	795
Fixed Route: Monday-Friday	6:10 pm – 6:54 pm	1,057	5
Current (Fixed Route/Express) Weekday Service:	6:10 am – 6:54 pm	222,262	1,051
Fixed Route: Saturday	7:45 am – 9:15 am	2,000	35
Fixed Route: Saturday	9:15 am – 3:09 pm	9,143	160
Current (Fixed Route/Express) Saturday Service:	7:45 am – 3:09 pm	11,143	195
Fixed Route: Sunday	7:45 am – 9:15 am	864	17
Fixed Route: Sunday	9:15 am – 3:09 pm	7,822	154
Current (Fixed Route/Express) Sunday Service:	7:45 am – 3:09 pm	8,686	171
Alternative A			
DAR/VineLine: Monday-Friday	6:15 am – 5:20 pm	42,173	160
DAR/VineLine: Monday-Friday	5:20 pm – 9:00 pm	2,899	11
Current (DAR/VineLine) Weekday Service:	6:15 am – 9:00 pm	45,072	171
Alternative B			
DAR/VineLine: Monday-Friday	6:15 am – 6:10 pm	42,436	161
DAR/VineLine: Monday-Friday	6:10 pm – 9:00 pm	2,636	10
Current (DAR/VineLine) Weekday Service:	6:15 am – 9:00 pm	45,072	171
Alternative B			
DAR/VineLine: Saturday	7:45 am – 9:15 am	1,128	21
DAR/VineLine: Saturday	9:15 am – 3:09 pm	2,686	50
DAR/VineLine: Saturday	3:09 pm – 6:00 pm	484	9
Current (DAR/VL) Saturday Service:	7:45 am – 6:00 pm	4,298	80
DAR/VineLine: Sunday	7:45 am – 9:15 am	710	14
DAR/VineLine: Sunday	9:15 am – 3:09 pm	2,739	54
DAR/VineLine: Sunday	3:09 pm – 4:00 pm	102	2
Current (DAR/VL) Sunday Service:	7:45 am – 4:00 pm	3,551	70
All Services: Holiday – Friday after Thanksgiving Day (2008 data)	NA	NA	302
All Services: Holiday – Christmas Eve (2008 data)	NA	NA	190



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 SERVICE AND ROUTE MODIFICATIONS DUE TO STATE BUDGET CUTS FOR LOCAL TRANSIT SERVICES

PUBLISH DATE: SATURDAY, SEPTEMBER 19, 2009

LEGAL AD

TEAR SHEETS WANTED: One (1) please

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

DATED: THURSDAY, SEPTEMBER 17, 2009

**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) _____ CF _____ MB _____ JMR (initials)



DECLARATION OF POSTING

PUBLIC HEARING TO CONSIDER SERVICE AND ROUTE MODIFICATIONS DUE TO STATE BUDGET CUTS FOR LOCAL TRANSIT SERVICES

On Friday, September 18, 2009, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider service and route modifications due to State budget cuts for local transit services (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 September 18, 2009, at Lodi, California.

ORDERED BY:

**RANDI JOHL
CITY CLERK**


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: October 21, 2009

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

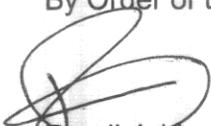
NOTICE IS HEREBY GIVEN that on **Wednesday, October 21, 2009**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

- a) **Service and route modifications due to State budget cuts for local transit services.**

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: September 16, 2009

Approved as to form:



D. Stephen Schwabauer
City Attorney

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
MODIFYING THE TRANSIT BUDGET AND
AUTHORIZING THE CITY MANAGER TO IMPLEMENT
THE MODIFICATIONS

=====

WHEREAS, as a result of recent actions related to adoption of the California State Budget, San Joaquin County Council of Governments staff has instructed local transit operators to reduce their Fiscal Year 2009/10 Transportation Development Act (TDA) revenue estimates by 20 percent. Lodi Transit revenues are expected to be \$443,000 less than projected in the current budget; and

WHEREAS, Transit service costs overall have been operating at lower than the budgeted level for the first four months of this fiscal year, and as a result, operations costs through October are on track to come in approximately \$70,000 below budget estimates. Recommended service modifications will result in additional operation savings of approximately \$50,000, leaving a remaining projected deficit of \$323,000 that must be offset by service reductions over the next eight months; and

WHEREAS, a public hearing was set at the September 16, 2009, City Council meeting and a series of public meetings have been held to inform the public about the pending service changes; and

WHEREAS, the transit contract with MV Transportation requires that the City purchase a minimum of 40,000 revenue hours but no more than 50,000 revenue hours per year. A contract renegotiation is required to address the projected deficit; and

WHEREAS, contract renegotiation involves the resetting of fixed cost and revenue hour payments to MV Transportation that are determined by the mix of transit services, hours of operation, and days of operation; all other provisions of the existing contract remain in place; and

WHEREAS, staff evaluated several transit service scenarios that provide the most service to the most riders while providing a \$323,000 cost reduction over the next eight months. The primary objectives included: 1) maintaining as many of the routes as possible, 2) affecting the fewest number of riders as possible, 3) addressing passenger input, and 4) reducing costs; and

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to enter into a revised agreement with MV Transportation to reduce costs by the following measures:

- 1.
- 2.
- 3.
- 4.

Dated: October 21, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held October 21, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-_____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Conduct a Public Hearing To Consider Introducing An Ordinance Amending The San Joaquin County Multi-Species Habitat Conservation And Open Space Plan And Adopt A Resolution Setting The Development Fees For 2010

MEETING DATE: October 21, 2009

PREPARED BY: Community Development Department

RECOMMENDED ACTION: Conduct a public hearing to consider introducing an Ordinance amending the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan and adopt a Resolution setting the development fees for 2010.

BACKGROUND INFORMATION: On February 21, 2001, the City of Lodi adopted the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). The Plan includes a schedule of fees to be paid by property owners who propose to develop their property with non-agricultural uses. These fees are used to mitigate for the cumulative impacts of new development on habitat lands within Lodi and San Joaquin County. According to the Plan, it is necessary for all jurisdictions covered by the Plan to approve the Habitat Conservation Plan (HCP) fees in order for the jurisdiction to continue to participate in the Plan. The fees are reviewed on an annual basis.

The original Ordinance adopting this program called for the fees to be adjusted before April 30th of each year with the adjustments being effective by July 1st. These dates have been changed by San Joaquin Council of Governments by having the effective date January 1st of each year, therefore a change in the Ordinance is now appropriate. No other changes are contemplated.

On August 19, 2009, The SJCOG Board unanimously approved the HCP fee schedule for 2010. All local jurisdictions are requested to approve the new fee schedule that will take effect on January 1, 2010.

FISCAL IMPACT: N/A

FUNDING AVAILABLE: N/A

Rad Bartlam
Community Development Director

Attachments:

APPROVED: _____
Blair King, City Manager



S J C O G, Inc.

555 East Weber Avenue • Stockton, CA 95202

(209) 468-3913 • FAX (209) 468-1084

San Joaquin County Multi-Species Habitat Conservation & Open Space Plan (SJMSCP)

Larry Hansen
CHAIR

Ann Johnston
VICE CHAIR

Andrew T. Chesley
PRESIDENT

Member Agencies

CITIES OF
ESCALON,
LATHROP,
LODI,
MANTECA,
RIPON,
STOCKTON,
TRACY,
AND
THE COUNTY OF
SAN JOAQUIN

2010 Updated Habitat Fees*

Habitat Type	Fee Per Acre
Multi-Purpose Open Space	\$7,307
Natural	\$ 14,615
Agriculture	\$ 14,615
Vernal Pool - uplands	\$ 42,071
Vernal Pool - wetted	\$ 80,766

* Effective January 1, 2010 – December 31, 2010

2010 Endowment Fees with In-lieu Land**

Type of Preserve	Enhancement Cost/acre	Land Management Cost/acre	TOTAL PER ACRE ENDOWMENT
Agricultural Habitat Lands	\$2,943.89	\$1,65968	\$4,603.57
Natural Lands	\$2,943.89	\$1,65968	\$4,603.57
Vernal Pool Habitat			
<i>Vernal Pool Grasslands</i>	\$554.38	\$6,073.69	\$6,628.07
<i>Vernal Pool Wetted</i>	\$39,249.51	\$6,073.69	\$45,323.20

** Effective January 1, 2010 – December 31, 2010 in lieu of fees to be used as the endowment for the preserve (Category B & C)

Staff Report

SUBJECT: 2010 SJMSCP Development Fees

RECOMMENDED ACTION: Motion to Recommend to SJCOG, Inc. to Approve the 2010 SJMSCP Development Fees as Adjusted Pursuant to Land Sale Comparables and Consumer Price Index

SUMMARY:

In accordance with the SJMSCP and the new financial analysis model adopted by the SJCOG, Inc. Board in late 2006 and the subsequent yearly fee updates, SJCOG, Inc. staff shall notify each local jurisdiction regarding proposed annual adjustments to the SJMSCP development fees. The development fees are calculated using a formula method which will be adjusted annually as shown in the table below [FEE = Category A (acquisition) + Category B (assessment & enhancement) + Category C (management & admin)]. Each component of the formula is adjusted using a specific mechanism which relates to the individual component in the fees. The development fees established must be adopted by each of the jurisdictions and would become effective on January 1st of the subsequent year for projects using the SJMSCP.

The overall result was a slight increase in the fees from 2009 to 2010 shown in the table below.

2010 SJMSCP Development Fees

Habitat Type	Category A	Category B	Category C	Total Fee	Rounded Fee*
Open Space	\$5,005.55	\$1,471.94	\$829.84	\$7,307.34	\$7,307
AG/Natural	\$10,011.11	\$2,943.89	\$1,659.68	\$14,614.67	\$14,615
Vernal Pool (grasslands)	\$35,442.51	\$554.38	\$6,073.69	\$42,070.59	\$42,071
Vernal Pool (wetted)	\$35,442.51	\$39,249.51	\$6,073.69	\$80,765.72	\$80,766

2009 SJMSCP Development Fees

Habitat Type	Category A	Category B	Category C	Total Fee	Rounded Fee*
<i>Open Space</i>	\$4,804.56	\$1,437.45	\$810.39	\$7,052.10	\$7,052
<i>AG/Natural</i>	\$9,608.52	\$2,874.89	\$1,620.78	\$14,104.19	\$14,104
<i>Vernal Pool (grasslands)</i>	\$34,092.20	\$541.39	\$5,931.34	\$40,564.93	\$40,565
<i>Vernal Pool (wetted)</i>	\$34,092.20	\$38,329.60	\$5,931.34	\$78,353.14	\$78,353

DISCUSSION:

Category A (acquisition) - Comparables

This category is directly related to land valuation based on comparables which occur in specific zones of the plan. This category is evaluated on a yearly basis by taking all qualified comparables in each zone, including SJCOG, Inc. easements, to set a weighted cost per acre using the same methodology as in the Financial Analysis Update in 2006 created by EPS. The SJCOG, Inc. easements are evaluated using the appraised value of the property in the before condition to be included with the fee title sales of other property occurring in San Joaquin County meeting specific criteria below. The final weighted cost per acre of each zone is calculated into a blended rate under SJMSCP Fee Category A (acquisition) figure for each habitat type (Attachment 1-Tables A-D).

The criteria to determine valid comparables used in the weighted calculation are:

1. All SJCOG, Inc. transactions (fee title and appraised value of unencumbered property)
2. Sales not less than 40 acres
3. Sales not greater than 500 acres
4. No parcels with vineyard or orchard (except SJCOG, Inc. transactions for special needs)
5. Must be land which would fulfill mitigation under the plan
6. Not greater than 2 years old from the date of June 30th of each year with all acceptable comparables included (criteria 1-5). A minimum of 10 acceptable comparables are required for analysis. If the minimum of 10 transactions are not available, the time period will extend at 3 month intervals prior to the beginning date until 10 comparables are gathered.

The calculation results in a minimal increase to the Agricultural/Natural Habitat type of Category A (acquisition) component to be **\$10,011.11**.

Category B (assessment & enhancement) - Consumer Price Index

This category is a straight forward use of an average of the California Consumer Price Index (CPI) calculator, as reported by the California Department of Finance, for a 12 month period following a fiscal year (July – June) to keep up with inflation on a yearly basis. The California CPI calculation was an increase of **2.4%**.

The calculation results in an increase of the Agricultural/Natural Habitat type Category B (Assessment & Enhancement) component to be **\$2,943.89**.

Category C (management & administration) - Consumer Price Index

This category is a straight forward use of an average of the California Consumer Price Index (CPI) calculator, as reported by the California Department of Finance, for a 12 month period following a fiscal year (July – June) to keep up with inflation on a yearly basis. The California CPI calculation was an increase of **2.4%**.

The calculation results in an increase of the Agricultural/Natural Habitat type Category C (Management & Administration) component to be **\$1,659.68**.

SJCOG, Inc. staff calculated the fees using the SJMSCP Financial Analysis formula model [FEE = Category A (acquisition) + Category B (assessment & enhancement) + Category C (management & admin)] which is shown in Table 1-8 and final fee table in attachment 2. The overall result in the calculations was a slight increase in the fees from the 2009 to the 2010 shown in the table below.

2010 SJMSCP Development Fees

Habitat Type	Category A	Category B	Category C	Total Fee	Rounded Fee*
Open Space	\$5,005.55	\$1,471.94	\$829.84	\$7,307.34	\$7,307
AG/Natural	\$10,011.11	\$2,943.89	\$1,659.68	\$14,614.67	\$14,615
Vernal Pool (grasslands)	\$35,442.51	\$554.38	\$6,073.69	\$42,070.59	\$42,071
Vernal Pool (wetted)	\$35,442.51	\$39,249.51	\$6,073.69	\$80,765.72	\$80,766

2009 SJMSCP Development Fees

Habitat Type	Category A	Category B	Category C	Total Fee	Rounded Fee*
<i>Open Space</i>	<i>\$4,804.56</i>	<i>\$1,437.45</i>	<i>\$810.39</i>	<i>\$7,052.10</i>	<i>\$7,052</i>
<i>AG/Natural</i>	<i>\$9,608.52</i>	<i>\$2,874.89</i>	<i>\$1,620.78</i>	<i>\$14,104.19</i>	<i>\$14,104</i>
<i>Vernal Pool (grasslands)</i>	<i>\$34,092.20</i>	<i>\$541.39</i>	<i>\$5,931.34</i>	<i>\$40,564.93</i>	<i>\$40,565</i>
<i>Vernal Pool (wetted)</i>	<i>\$34,092.20</i>	<i>\$38,329.60</i>	<i>\$5,931.34</i>	<i>\$78,353.14</i>	<i>\$78,353</i>

RECOMMENDATION:

Staff recommends the HTAC approve the recommendation to SJCOG, Inc. to adopt the 2010 SJMSCP Development Fees.

*Prepared by: Steve Mayo, Senior Habitat Planner
M:\STAFFRPT\2009\August\HTAC\2010 SJMSCP Development Fees*

Table A. *Central Zone Properties*

Address	APN	Zone	Sale Date	Price	Acres	Price/Acre	Hab Type	Appreciated Price	Appreciated Price/Acre
18813 W Brandt Rd, Lodi, CA	019-200-25	Central	07/02/2007	\$1,450,000.00	40.00	\$36,250.00	C34	\$1,727,916.67	\$43,197.92
9346 Kaiser Rd, Stockton CA	201-120-01	Central	07/17/2007	\$650,000.00	137.00	\$4,744.53	C34	\$774,583.33	\$5,653.89
10 W Lorenzen Rd, Tracy, CA	239-140-04	Central	08/08/2007	\$675,000.00	71.60	\$9,427.37	C34	\$798,750.00	\$11,155.73
9898 S Jack Tone Road, Stockton, CA	203-020-02	Central	09/26/2007	\$758,000.00	49.18	\$15,412.77	C34	\$890,650.00	\$18,110.00
19298 S Alder Ave, Tracy, CA	213-190-02	Central	09/27/2007	\$1,125,000.00	97.67	\$11,518.38	C34	\$1,321,875.00	\$13,534.09
1000 E Critchett Rd, Tracy, CA	241-110-33	Central	10/23/2007	\$1,250,000.00	41.43	\$30,171.37	C34	\$1,458,333.33	\$35,199.94
18228 E Gawne Rd, Stockton CA	185-030-04	Central	11/30/2007	\$400,000.00	80.00	\$5,000.00	C34	\$463,333.33	\$5,791.67
3750 W Tredway Road, Lodi, CA	055-180-04	Central	02/04/2008	\$532,500.00	196.12	\$2,715.17	C34	\$603,500.00	\$3,077.20
28200 Dry Creek Rd. Galt, CA	009-050-10	Central	03/03/2008	\$275,000.00	76.95	\$3,573.75	C34	\$309,375.00	\$4,020.47
16499 E State Route 88, Lockeford, CA	019-170-23	Central	03/07/2008	\$1,397,000.00	91.83	\$15,212.89	C34	\$1,571,625.00	\$17,114.51
16751 N Clements Rd, Lodi, CA	053-170-14	Central	03/17/2008	\$1,397,000.00	80.00	\$17,462.50	C34	\$1,571,625.00	\$19,645.31
12312 N Tully Rd, Lodi, CA	065-040-42	Central	03/19/2008	\$340,000.00	40.14	\$8,470.35	C34	\$382,500.00	\$9,529.15
13497 S Murphy Rd, Escalon, CA	203-130-03	Central	04/01/2008	\$1,760,000.00	106.66	\$16,501.03	C34	\$1,965,333.33	\$18,426.15
627 W Vernalis Rd, Tracy, CA	255-160-28	Central	04/18/2008	\$1,475,000.00	52.22	\$28,245.88	C34	\$1,647,083.33	\$31,541.24
15757 E Sargent Rd, Lodi, CA	053-070-06	Central	06/02/2008	\$4,500,000.00	198.50	\$22,670.03	C34	\$4,950,000.00	\$24,937.03
12108 E Kettleman Ln, Lodi, CA	063-250-01	Central	08/14/2008	\$759,000.00	75.88	\$10,002.64	C34	\$822,250.00	\$10,836.19
355 W Vernalis Rd, Tracy CA	255-160-29	CSW	08/29/2008	\$615,000.00	52.22	\$11,777.10	C34	\$666,250.00	\$12,758.52
W Bethany Rd, Tracy, CA	209-290-34	CSW	09/23/2008	\$1,537,269.00	143.67	\$10,700.00	C34	\$1,652,564.18	\$11,502.50
26444 N Cherokee Lane Galt, CA	005-200-17	Central	12/17/2008	\$440,000.00	40.00	\$11,000.00	C34	\$462,000.00	\$11,550.00
28142 S Kasson Rd, Tracy CA	241-110-08	Central	12/18/2008	\$2,000,000.00	96.99	\$20,620.68	C34	\$2,100,000.00	\$21,651.72
14088 E Kettleman Ln. Lodi, CA	053-050-01	Central	01/21/2009	\$1,040,000.00	108.72	\$9,565.86	C34	\$1,083,333.33	\$9,964.43
2600 N Cherokee Lane Galt, CA	005-200-15	Central	01/23/2009	\$1,050,000.00	78.00	\$13,461.54	C34	\$1,093,750.00	\$14,022.44
Alegre Property*		Central	11/24/2008	\$1,106,000.00	158.00	\$7,000.00	C34	\$1,170,516.67	\$7,408.33
Nakagawa Property*		Central	01/11/2008	\$4,078,500.00	331.67	\$12,296.86	C34	\$4,248,437.50	\$12,809.23
Hilder Property*		Central	01/11/2008	\$14,074,500.00	1279.50	\$11,000.00	C34	\$14,660,937.50	\$11,458.33
Seegers Property*		Central	11/30/2007	\$843,100.00	84.31	\$10,000.00	C34	\$976,590.83	\$11,583.33
* SJCOG, Inc. Preserves			TOTAL	\$41,994,869.00	3510.48	\$11,962.71		\$49,373,113.34	\$14,064.49

Table B. *Delta Properties*

Address	APN	Zone	Sale Date	Price	Acres	Price/Acre	Hab Type	Appreciated Price	Appreciated Price/Acre
15650 W Finck Rd, Tracy, CA	189-050-44	Delta	08/05/2008	\$1,375,000.00	177.00	\$7,768.36	C34	\$1,489,583.33	\$8,415.73
9900 W Kile Rd. Thornton, CA	001-150-02	Delta	11/20/2008	\$625,000.00	51.58	\$12,117.10	C34	\$661,458.33	\$12,823.93
26142 N Blossom Rd. Thornton, CA	001-150-01	Delta	11/20/2008	\$825,000.00	52.00	\$15,865.38	C34	\$873,125.00	\$16,790.87
3234 Robrets Rd. Stockton, CA	162-130-07	Delta	04/16/2009	\$484,500.00	57.17	\$8,474.72	C34	\$492,575.00	\$8,615.97
			TOTAL	\$3,309,500.00	337.75	\$9,798.67		\$3,516,741.67	\$10,412.26

Table C. *Southwest Zone Properties*

Address	APN	Zone	Sale Date	Price	Acres	Price/Acre	Hab Type	Appreciated Price	Appreciated Price/Acre
28550 W Corral Hollow Road, Tracy, CA	263-200-17	SW	11/20/2007	\$200,001.60	240	\$833.34	G	\$231,668.39	\$965.28
18740 W Corral Hollow Road, Tracy, CA	263-220-04	SW	09/17/2008	\$400,000.00	53.45	\$7,483.63	G	\$429,999.88	\$8,044.90
Elworthy/Bogetti Property*		SW	09/29/2006	\$790,000.00	790	\$1,000.00	G	\$1,007,249.13	\$1,275.00
Elworthy/McDonald/Bogetti Property*		SW	05/17/2007	\$2,170,000.00	2170	\$1,000.00	G	\$2,622,081.53	\$1,208.33
* SJCOG, Inc. Preserves			TOTAL	\$3,560,001.60	3253.45	\$1,094.22		\$4,290,998.93	\$1,318.91

Table D. *Encumbered Properties**

Address	APN	Zone	Sale Date	Price	Acres	Price/Acre	Hab Type	Appreciated Price	Appreciated Price/Acre
Caffese Trust / Leventini		Delta	10/17/2003	\$550,000.00	179.91	\$3,057.08	C34	\$643,500.00	\$3,576.79
Rurup Trust / Suppenant		Delta	01/09/2004	\$425,000.00	195	\$2,179.49	C34	\$494,062.50	\$2,533.65
Hammer Trust / Morais		Delta	06/25/2004	\$854,000.00	388.89	\$2,195.99	C34	\$982,100.00	\$2,525.39
Nature Conservancy		Delta	07/22/2004	\$658,000.00	328.8	\$2,001.22	C34	\$755,055.00	\$2,296.40
Heritage Land Co. / Olagaray Bros PTP		Delta	04/13/2005	\$712,000.00	215.64	\$3,301.80	C34	\$801,000.00	\$3,714.52
Wing Levee Propety**		Delta	11/09/2007	\$2,200,000.00	361.27	\$6,089.63	C34	\$2,304,500.00	\$6,378.89
** SJCOG, Inc. Preserve			TOTAL	\$5,399,000.00	1,669.51	\$3,233.88		\$5,980,217.50	\$3,582.02

10 comparables required for Study

2010 Fees	Acquisition Costs	Assessment & Enhancement	Management and Administration	Total	Total Rounded
Other Open Space	\$5,005.55	\$1,471.94	\$829.84	\$7,307.34	\$7,307
Natural/Ag Lands	\$10,011.11	\$2,943.89	\$1,659.68	\$14,614.67	\$14,615
Vernal Pool Grasslands	\$35,442.51	\$554.38	\$6,073.69	\$42,070.59	\$42,071
Vernal Pool Wetted	\$35,442.51	\$39,249.51	\$6,073.69	\$80,765.72	\$80,766

Calculations:

Table 1 **Per-Acre Land Value Summary**
SJMSCP 2010 Fee Evaluation

Land Use		Central Zone	Primary Zone of the Delta	Southwest Zone***
Fee Title	a*	\$14,064	\$8,167	\$1,500
Row Crops/Grazing	b**	\$3,582	\$3,332	\$500
Easement Costs	a-b	\$10,482	\$4,835	\$1,000

*based off of 7/01/07-6/30/09 Applicable Ag Sale Comparables (Table A & B)

Zone Based on lower market rents for row crop land.

***based on standard easement cost of Southwest Zone of \$1,000/ac.

Table 2 **Per Acre Acquisition Cost Summary**

Land Use Category		SJMSCP Zone			Total Weighted Acquisition Cost A+B+C
		Central Zone A	Primary Zone of the Delta B	Southwest Zone C	
Easement Cost by Zone (1)	d	\$10,482	\$4,835	\$1,000	
Natural Lands					
Riparian					
Percent in Zone (2)	e	89%	11%	0%	
Weighted Costs (3)	d*e	\$9,329.40	\$531.81	\$0.00	\$9,861.21
Delta Submerged Aquatic					
Percent in Zone (2)	f	0%	100%	0%	
Weighted Costs (3)	d*f	\$0	\$4,835	\$0	\$4,835
Other Water's Edge					
Percent in Zone (2)	g	100%	0%	0%	
Weighted Costs (3)	d*g	\$10,482	\$0	\$0	\$10,482
Southwest Grasslands					
Percent in Zone (2)	h	0%	0%	100%	
Weighted Costs (3)	d*h	\$0	\$0	\$1,000	\$1,000
Vernal Pool Wetted (4)		n/a	n/a	n/a	\$11,252
Vernal Pool Grasslands (4)		n/a	n/a	n/a	\$11,252
Agricultural Lands					
Percent in Zone (2)	i	97%	3%	0%	
Weighted Costs (3)	d*i	\$10,168.00	\$145.04	\$0.00	\$10,313.04

(1) See Table 2.

(2) Percent of total lands in each category assumed to be in a given zone. Based on 1996 Economic Analysis

(3) Weighted average cost based on proportion of total land in each zone. Assumes easement acquisition for lands categorized as agriculture, riparian, delta submerged, other's waters edge, and southwest grasslands.

(4) Assumes fee title acquisition for vernal pool lands. Vernal pools fee title land costs assumed to be about 80% of average Central Zone fee title costs.

Table 3 **Total Acquisition Costs**

SJMSCP 2010 Fee Evaluation

Preserve Types	Cost per Acre (1)	Transaction Costs (2) 5%	Total Land Acquisition Costs
Agricultural Lands	\$10,313.04	\$515.65	\$10,828.69
Natural Lands			

Attachment 2

Riparian	\$9,861.21	\$493.06	\$10,354.27
Delta Submerged Aquatic	\$4,834.64	\$241.73	\$5,076.37
Other Water's Edge	\$10,482.47	\$524.12	\$11,006.59
Southwest Grasslands	\$1,000.00	\$50.00	\$1,050.00
Vernal Pool Wetted	\$11,251.59	\$562.58	\$11,814.17
Vernal Pool Grasslands	\$11,251.59	\$562.58	\$11,814.17

(1) See Table 3. Assumes easement purchases in all cases except fee title purchases for vernal pool lands.

(2) Transaction costs include biological baseline, appraisal, escrow, and survey costs.

Table 4 **Total Per-Acre Costs**
SJMSCP 2010 Fee Evaluation

Preserve Type	Land Acquisition	% of Total Preserve Lands	Total Preserve Acres	Total Costs of Acquisition
Agricultural Lands	\$10,828.69	57%	57,635	\$624,111,370.52
Natural Lands				
Riparian	\$10,354.27	19%	19,185	\$198,646,657.79
Delta	\$5,076.37	0%	10	\$50,763.74
Other Water's Edge	\$11,006.59	2%	1,584	\$17,434,444.10
Southwest Grasslands	\$1,050.00	4%	4,146	\$4,353,300.00
Average of Natural/Ag Lands	\$10,230.09	82%	82,560	\$844,596,536.15
Vernal Pool Wetted	\$11,814.17	2%	354	\$4,182,216.75
Vernal Pool Grasslands	\$11,814.17	16%	17328	\$204,715,965.48

Table 5 **Total Preserve Costs, Breakdown by Category**
SJMSCP 2010 Fee Evaluation

Preserve Type	Total Preserve Acres	Acquisition Costs	
		Per Acre	Total
Vernal Pool Wetted	2,121	\$11,814.17	\$25,057,857.96
Vernal Pool Grasslands	15,561	\$11,814.17	\$183,840,324.27
Nat/Ag Lands	82,860	\$10,230.09	\$847,665,564.26
Total	100,542		\$1,056,563,746.49

Table 6 **Vernal Pool Surface and Grasslands / Acquisition Component**
SJMSCP 2010 Fee Evaluation

Preserve Type	Acres Converted	Acquisition Costs
Vernal Pool Wetted	707	
Total Cost		\$25,057,857.96
Fee per Acre		\$35,442.51
Vernal Pool Grasslands	5,187	
Total Cost		\$183,840,324.27
Fee per Acre		\$35,442.51

Table 7 **Nat/Ag Land and Open Space / Acquisition Component**
SJMSCP 2010 Fee Evaluation

Preserve Type	Land Acquisition		Total
	Land Acquisition	Transaction	
Cost associated with Nat/Ag Lands Conversion	\$805,282,286.05	\$42,383,278.21	\$847,665,564.26
Nat/Ag Land Conversion	65,940	65,940	65,940

Attachment 2

Other Open Space Conversion	37,465	37,465	37,465
Multiplier for Nat/Ag Land Conversion	1	1	1
Multiplier for Other Open Space	0.5	0.5	0.5
Land Acquisition Component of Nat/Ag Lands Fee	\$9,510.55	\$500.56	\$10,011.11

Table 8 Cat B & C Fee Component Calcs

SJMSCP 2010 Fee Evaluation

CPI 7/08-6/09

2.40%

		Assessment & Enhancement	Management and Administration
Fee	% of Land Preser.	B	C
Other Open Space		\$1,471.94	\$829.84
Natural/Ag Lands	82%	\$2,943.89	\$1,659.68
Vernal Pool Grasslands	16%	\$554.38	\$6,073.69
Vernal Pool Wetted	2%	\$39,249.51	\$6,073.69

SAN JOAQUIN COUNCIL OF GOVERNMENTS
BOARD OF DIRECTORS
SJCOG Conference Room
555 E. Weber Avenue
Stockton, CA 95202

August 27, 2009

MINUTES

1. The Board meeting was called to order by Chairman Larry Hansen at 5:00 p.m. and introduced Ross Chittenden, Caltrans D-10 Director the newest ex-officio member of the SJCOG Board.

Roll Call:

Board Members Present:

Supervisor Steve Bestolarides, San Joaquin County; Vice Mayor Steve DeBrum, Manteca; Councilman Dale Fritchen, Stockton; Mayor Larry Hansen, Lodi; Councilman Gary Haskin, Escalon; Mayor Ann Johnston, Stockton; Vice Mayor Kathy Miller, Stockton; Mayor Kristy Sayles, Lathrop; Mayor Chuck Winn, Ripon.

Ex-Officio Members Present:

Mr. Ross Chittenden, Caltrans; Mr. Gary Giovanetti, SJRTD; Mr. Steve Herum, Port of Stockton.

Board Members Absent:

Mayor Brent Ives, Tracy; Supervisor Leroy Ornellas, San Joaquin County; Supervisor Ken Vogel, San Joaquin County.

Ex-Officio Members Absent:

None.

Staff Members Present:

Andrew T. Chesley, Executive Director; Steve Dial, Deputy Executive Director/CFO; Dana Cowell, Deputy Director; Rebecca Montes, Manager of Administrative Services; Kevin Sheridan, Project Manager; Dianne Barth, Public Communication Manager; Mike Swearingen, Senior Regional Planner; Wil Ridder, Senior Regional Planner; Donald Mascardo, Associate Regional Planner; Kim Anderson, Associate Regional Planner; Steve Mayo, Senior Habitat Planner; Tanisha Taylor, Senior Regional Planner; Aaron Hoyt, Associate Regional Planner; Laura Brunn, Associate Regional Planner; Kim Kloeb, Senior Regional Planner; Yvette Davis, Associate Regional Planner; Lynnetta Castle-Martinez, Fiscal Assistant II; Nancy Trevino, Fiscal Assistant II; Tisha Singleton, Fiscal Assistant I; Teresa Garcia, Planner Technician; Vik Sharma, IT Support Technician; Rosie Vargas, Office Services Supervisor; Katy Castro, Office Assistant; Rod Attebery, Counsel.

2. **Recognitions/Presentations:**
ARRA Project Delivery

3. **Public Comments:**

None

4. **Minutes of July 23, 2009**

It was moved/seconded (Johnston/DeBrum) to approve the July 23, 2009 minutes as submitted. Motion passed unanimously 9/0 with a voice vote.

5. **Consent Calendar Items:**

- A. SJCOG Monthly Financial Report & Transportation Authority Monthly Investment Report
- B. San Joaquin Air Pollution Control District Updated Memorandum of Understanding with the 8 San Joaquin Valley MPO's
- C. Highway 99/120 Interchange Contract Amendment with Quincy Engineers
- D. Citizens Advisory Committee Membership Appointment
- E. Federal Transit Administration (FTA) Section 5310 Elderly and Disabled Special Need Transit 2009 Federal Funding Cycle Recommendation
- F. Audit Engagement Letter Addendum 2007/08
- G. Measure K Cooperative Agreement with San Joaquin Regional Transit District (SJRTD) FY 2009/10 Interregional Services

Supervisor Bestolarides stated in regards to item F in the future when there are cost over runs the item should be presented to the Board before approval. Supervisor Bestolarides asked in regards to item G is the dollar amount part of the overall loan agreement or separate. Mr. Dial said separate. Mayor Johnston expressed concerns regarding the Maintenance of Effort cost. Mr. Dial stated staff will come back in September with a proposal on how to deal with the MOE. Mr. Dial stated that he understands the comment was, if there is no MOE the audit should reflect that. Vice Mayor DeBrum requested to pull item F *Audit Engagement Letter Addendum 07/08*.

It was moved/seconded (Bestolarides/Johnston) to approve the consent calendar items A through G with the exception of item F. Motion passed unanimously 9/0 with a roll call vote.

Committee members continued to discuss item F regarding their concerns. Mr. Dial stated staff understands that the MOE audit is different from others and COG staff will make sure the auditors understand those complexities and that staff will be more aggressive in monitoring the MOE in the future.

It was moved/seconded (Bestolarides/Sayles) to approve item F of the consent calendar. Motion passed 8/1 with a roll call vote and with Vice Mayor DeBrum casting a no vote.

6. **SAN JOAQUIN COUNCIL OF GOVERNMENTS ITEMS FOR DISCUSSION/ACTION:**

A. **TIGER Public/Private Policy Proposal**

Mr. Cowell presented this item discussing the policy consideration, costs and public benefits of the staff report. Mr. Cowell stated staff has been supportive of and has encouraged public/private partnerships, however unique circumstances of these

proposals would not be appropriate at this time. Mr. Cowell stated the Executive Committee voted unanimously to deny these two requests for Public Agency Sponsorship at their August meeting. Staff's recommendation is to deny the request, that SJCOG serve as Public Agency Sponsor for these two privately developed TIGER grant proposals.

It was moved/seconded (Bestolarides/Hansen) to deny the request that SJCOG serve as Public Agency Sponsor for these two privately developed TIGER grant proposals. Motion passed unanimously 9/0 by voice vote.

B. Commute Connection 2008-09 Annual Report

Ms. Davis presented this item with a powerpoint presentation. Ms. Davis gave a brief background and stated Commute Connection also provides services for Stanislaus County residents under a contract with Stanislaus Council of Governments. Ms. Davis reviewed the 2008-09 accomplishments, Marketing/Outreach, Regional Efforts/Grants and the program profile.

Chairman Hansen asked for clarification on the ride matches attempted and successful ride matches. Ms. Davis stated those numbers are based on a placement rate survey. Ms. Davis stated that staff is aware that there are a lot more car pools that are not registered with the program.

Mayor Winn asked if the S.J. Valley Air Pollution District on Trip Reduction Rule 9410 is already in place. Ms. Davis stated it is being developed now and the last public comment meeting will be held in September.

It was moved/seconded (Johnston/DeBrum) to accept the Commute Connection 2008-09 Annual Report. Motion passed unanimously 9/0 with a voice vote.

C. State Route 12 Corridor Study

Mr. Ridder presented this item with a powerpoint presentation. Mr. Ridder stated this study is a combination of several years of work in partnership with Caltrans and COG across Sacramento and Solano County to develop a scope of work and reasonable funding strategies. The study will be over a period of 18 months starting in November of this year. Caltrans has committed to funding \$500,000 of the study, with MTC, STA, SACOG and SJCOG providing the remaining funds. Additionally, Caltrans District 10 has made available over \$100,000 for public outreach support.

Supervisor Bestolarides asked what is the difference between this study and the previous 2006 study and where is the funding coming from. It was projected from the 2010-11 budget year. Mr. Ridder said the original study with Caltrans D10 as the lead only went to the Rio Vista Bridge. Staff suggested based upon some additional work it's most appropriate to look at the corridor from I-5 to 80 to understand the activity of the corridor. Also, to get more into depth on what are some of the long term alternatives of improvements in trying to develop a strategy around this. The City of Rio Vista is looking at a Bridge alignment, their recognition from that is anywhere from \$200 to \$500 million alone. Supervisor Bestolarides asked if the \$117,000 coming out

of the general Measure K fund. Mr. Ridder said it would be coming out of general planning.

Vice Mayor DeBrum asked for clarification on the restudying of 99 to Rio Vista and what portion of that work was completed. Mr. Ridder said the product of the work done in the 2006 corridor study from 99 to Rio Vista Bridge went to safety operations improvements that are currently on their way of delivering. The next step is to looking at more of long term type of improvements that would be applicable to the corridor; this could include a full alignment.

It was moved/seconded (Hansen/Johnston) to authorize the SJCOG Executive Director to enter into a funding agreement with the Metropolitan Transportation Commission, the Solano Transportation Authority, the Sacramento Area Council of Governments, and Caltrans for an amount not to exceed \$117,000 by Resolution R-10-05. Motion passed unanimously 9/0 with a voice vote.

D. American Recovery and Reinvestment Act (ARRA) Delivery Progress Report

Mr. Ridder reported on April 2009 the SJCOG Board took action on programming ARRA funds to a series of roadway projects. Since then staff has been working in partnership with Caltrans D10 and member jurisdictions in promoting the delivery of those projects to ensure these funds are not lost to our region. Mr. Ridder stated some guidelines have changed and deadlines have advanced. Caltrans expressed concern on two projects that are at risk of not being able to complete the appropriate federal environmental and right-of-way acquisition process within the timelines. Mr. Ridder stated the two projects are the City of Manteca's Atherton Road Extension Project and the City of Tracy's Corral Hollow Widening Project. Staff has worked with Caltrans and the local agencies to explore the opportunity to exchange these ARRA funds with other federal funds that are programmed in this region. This action would allow the ARRA funds to be obligated within the required timeline and give both projects sufficient time to complete the environmental process and right-of-way acquisition.

Chairman Hansen asked when will we anticipate funding some of the projects. Mr. Ridder said the majority of our projects have been obligated and should start seeing some construction occurring in San Joaquin County. Chairman Hansen suggested just like with the MK funds, have signs that say ARRA funds have been awarded to these projects.

It was moved/seconded (Johnston/Sayles) to authorize SJCOG staff to coordinate funding exchanges on ARRA projects to ensure the use of ARRA funds and the delivery of ARRA projects. Motion passed unanimously 9/0 with a voice vote.

7. **INFORMATION ONLY ITEMS**

- A. State Transportation Improvement Program (STIP) Update
- B. San Joaquin County Regional Blueprint Workshop
- C. 2009 Measure K Renewal Strategic Plan Update
- D. 2010/2011 Unmet Transit Needs Process

This was for information only no action was taken.

8. **AIRPORT LAND USE COMMISSION:**
None.

*****ADJOURN SAN JOAQUIN COUNCIL OF GOVERNMENTS UNTIL THE CONCLUSION
OF THE SJCOG, INC. MEETING*****

9. **SJCOG, INC.:**

1. **Open Meeting of SJCOG, Inc./Roll Call:**

Roll call as previously stated.

2. **Public Comment:**

None.

3. **Consent Calendar items:**

- A. Phase II-RD 17 100-Year Levee Seepage Project
- B. Master Contract for Surveyor Services
- C. Mizuno Property Land in Lieu Dedication and Preserve Management Plan

Motion passed unanimously 9/0 by roll call to accept the consent calendar as submitted.

4. **SJCOG, INC. ITEMS FOR DISCUSSION/ACTION**

A. **2010 SJMSCP Development Fees**

Mr. Mayo presented this item stating in accordance with the financial analysis model adopted by the SJCOG, Inc. Board in late 2006, the 2010 SJSMCP development fees were calculated using the formula method shown in the table on the staff report. Mr. Mayo stated each component has its own criteria for evaluation with each part. Mr. Mayo stated the overall result was a 3.6% increase in the fees from 2009 to 2010. Mr. Mayo discussed Categories A, B, & C stating staff received comment from the Building Industry Association of Delta (BIA) regarding concerns on two of the comparable sales used. Staff discussed the issues with BIA and matters were resolved by removal of one comparable and a valid explanation for the second comparable being valid. In the blue folder there is a letter from BIA of Delta supporting the 2010 adjustment to the SJMSCP Development Fees.

It was moved/seconded (Johnston/Sayles) to approve the 2010 SJMSCP development fees as adjusted pursuant to land sale comparables and consumer price index. Motion passed unanimously 9/0 with a voice vote.

B. **Nakagawa Preserve Habitat Restoration Project**

Mr. Mayo gave a brief background on this item stating this is the largest acquisition taken by the habitat plan. It was a joint effort between USDA and SJCOG, Inc. to secure 200 acre easement, and then SJCOG, Inc secured another 88 acre easement. The family is interested in moving forward with the restoration. After much consideration of various potential restoration plans that would require extensive

costs and permitting the landowner desires to separate the two distinct areas by creation of a land levee. Mr. Mayo discussed attachment 1 and 2 of the staff report.

Mr. Mayo stated the agreement to be executed with Nakagawa family for work is not to exceed \$497,200.00 (including a 10% contingency) from land management funds.

Councilmember Haskin asked what kind of condition is the current levee easement. Mr. Mayo said about 95% of it. Councilman Haskin asked if this is flood protection. Mr. Mayo said yes.

It was moved/seconded (Johnston/Miller) to 1) approve the restoration plan; 2) approve of the restoration contract; and 3) authorize the Treasurer of SJCOG, Inc. to execute the agreement with landowner for work. Motion passed unanimously 9/0 with a voice vote.

5. SJMSCP INFORMATION ONLY ITEMS:

A. 2007 SJMSCP Audit Resolution

This item was for information only no action was taken

*****RECONVENE TO THE SJCOG BOARD MEETING*****

10. Chairman's Report:

None.

11. Council Members' Report:

None.

12. Ex-Officio Council Members' Report:

A. San Joaquin Regional Transit District

Mr. Giovanetti passed out RTD's newsletter and stated RTD is continuing to streamline services due to budget issues. Mr. Giovanetti reported on:

- The comprehensive operational analysis which is almost completed.
- RTD will be implementing "Metro Hopper" a deviated fixed route service program. The Metro Hopper is comprised of six routes, each with a one-mile deviation window.
- In August RTD will partner with Kaiser and United Way to offer free rides for anyone who boards the bus to the neighbors of health which is a health fair.
- RTD's employee Leroy Goo a coach operator was given a National Safety Council award which covers 13 western states. Mr. Goo also received S.J. County Safety Council award.

B. Caltrans District 10

Mr. Chittenden thanked the Board for him welcoming as an ex-officio to the COG Board and is honored to be the Caltrans D10 Director. Mr. Chittenden stated prior roles with Caltrans were related to expanding the transparency and improving accountability,

primarily in project areas. Mr. Chittenden announced Kome Ajise has been assigned to Sacramento for a couple of years and one of his tasks was to organize the TIGER committee and be the focal point for Caltrans and the State of California. Mr. Chittenden stated because of the third furlough day Caltrans now has 14% less man power, which is going to have some impact. Mr. Chittenden indicated that Caltrans will be looking at projects, project schedules, the ability of dollars and contract for delivery. Mr. Chittenden reported that Caltrans will have a 3 day closure on SR 12 and it will occur on September 15, 16 & 17th.

C. Port of Stockton

Mr. Herum passed out a handout which is the Executive Summary of what's going on at the Port of Stockton. Mr. Herum briefly discussed the following items:

- Security Fence
- Competing Substation
- Yara Project
- Appreciation for Project on the TIGER list

13. Executive Director's Report:

A. Status of SB 716

Mr. Chesley stated several months ago the Board opposed SB 716 and authorized the Executive Director to negotiate with Senator Wolk and appropriate agencies over the context of the bill. Mr. Chesley briefly discussed the provisions of the bill that would be required by the year 2013. In negotiation with Senator Wolk and partner agencies the provisions of the bill will be affected in the year 2015. Mr. Chesley stated the City of Tracy will probably fall under these provisions. The Senator appreciates that we have articulated what are concerns were and if there are no objections he would like to state the provisions the Board objected to are removed.

B. California Transportation Commission Action on I-205 Fund Close-out Costs

Mr. Chesley stated he appreciates Mr. Chittenden taking on the role as Director for D10. Mr. Chesley stated he met with Mr. Chittenden to negotiate on this issue. Mr. Chesley stated that the Board authorized him to spend up to \$350,000 of MK to resolve the I-205 related issues. Unfortunately, Mr. Chittenden said the Department of Transportation was not going to be able to live with the agreement that the Board had worked out on this provision. Caltrans will be taking the provision to the CTC to their meeting in Long Beach on September 10. There will be no MK money invested in the project; however \$1.2 million of future programming from the STIP will be used to make up the difference of the shortfall. Mr. Chesley stated he was disappointed with Department of Transportation not being able to live with the original agreement.

Chairman Hansen asked what does this do in establishing a precedent, and how can this be avoided in the future. Mr. Chesley said the issue started early on in the project with the involvement between the department and ourselves in terms of making decisions that resulted in the increase costs, we did not have in place the kind of cooperation that we do today.

C. San Joaquin Valley MPO Fall Policy Conference

Mr. Chesley announced that October 1 & 2 is the S.J. Valley Fall Policy Conference in Fresno.

D. Focus on the Future

Mr. Chesley announced on October 4-6 is the Focus on the Future Conference in Hollywood. Mr. Chesley stated this is one of the best conferences in dealing with transportation and specifically the sales tax matter and would encourage anyone who is interested to attend.

Mr. Chesley reported that there is a provision in the ARRA funding that it is required that signs be posted.

Mayor Winn stated he had the opportunity to attend some of the S.J. Valley Regional Policy meetings in Fresno and recognized Mr. Chesley for his diligence, energy and efforts with SB 716. Mayor Winn stated that Mr. Chesley is well respected and recognized by other County's and he is very proud to be represented by Mr. Chesley.

14. CLOSED SESSION

A. Government Code Section 54956.9(a): Conference with Legal Counsel

Existing Litigation the Surland Companies, LLC v. San Joaquin County Airport Land Use Commission Case No. 39-2009-00221911-CU-PT-STK

15. RETURN FROM CLOSED SESSION

A. Report on any Action taken in Closed Session

Chairman Larry Hansen

Chairman Hansen stated there was no reportable action.

16. Adjournment:

There being no further business to discuss, the meeting was adjourned to Thursday, September 24, 2009 at 5:00 p.m. SJCOG Conference Room.



*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 AMENDING AN ORDINANCE REGARDING THE SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN AND ADOPT RESOLUTION SETTING THE DEVELOPMENT FEES FOR 2010

PUBLISH DATE: SATURDAY, OCTOBER 10, 2009

LEGAL AD

TEAR SHEETS WANTED: One (1) please

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

DATED: THURSDAY, OCTOBER 8, 2009

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) _____ JMR _____ CF _____ MB (initials)



DECLARATION OF POSTING

PUBLIC HEARING TO CONSIDER AMENDING AN ORDINANCE REGARDING THE SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN AND ADOPT RESOLUTION SETTING THE DEVELOPMENT FEES FOR 2010

On Friday, October 9, 2009, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider reallocation of available Urban County Community Development Block Grant and HOME Program funding (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 October 9, 2009, at Lodi, California.

ORDERED BY:

**RANDI JOHL
CITY CLERK**


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: October 21, 2009

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, October 21, 2009**, 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) **Introducing an ordinance amending the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan and adopt resolution setting the development fees for 2010.**

Information regarding this item may be obtained in the Community Development Department, 221 West Pine Street, Lodi, (209) 333-6711. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2nd Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

Randi Johl
City Clerk

Dated: October 7, 2009

Approved as to form:

D. Stephen Schwabauer
City Attorney

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING LODI MUNICIPAL CODE CHAPTER 15.68, "SAN JOAQUIN COUNTY MULTI-SPECIES HABITAT CONSERVATION AND OPEN SPACE PLAN DEVELOPMENT FEES," BY REPEALING AND REENACTING SECTION 15.68.020(B), "ANNUAL ADJUSTMENT"

=====

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Chapter 15.68, "San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) Development Fees," Section 15.68.020(B), "Annual Adjustment," is hereby repealed and reenacted to read as follows:

- B. Annual Adjustment. The Fee established pursuant to a resolution shall be adjusted each year by an amount consistent with the California Construction Cost Index (CCCI) as published by the Engineering News Record and/or in conformance with Section 7.5.2.2. of the SJMSCP, and as approved by SJCOG, Inc.

The proposed fee adjustments shall be adopted by the Lodi City Council in order to be effective by January 1st of each year.

SECTION 2. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 4. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 5. This ordinance shall be published 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 thirty days from and after its passage and approval.

Approved this ____ day of _____, 2009

LARRY D. HANSEN
Mayor

Attest:

RANDI JOHL
City Clerk

State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was introduced at a regular meeting of the City Council of the City of Lodi held October 21, 2009, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held _____, 2009, by the following vote:

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

I further certify that Ordinance No. ____ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL
City Clerk

Approved as to Form:

JANICE D. MAGDICH
Deputy City Attorney

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AMENDING THE SAN JOAQUIN COUNTY MULTI-
SPECIES HABITAT CONSERVATION AND OPEN
SPACE PLAN DEVELOPMENT FEE

=====

WHEREAS, the City Council of the City of Lodi adopted an ordinance establishing the authority for collection of a Development Fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) for all new developments pursuant to the SJMSCP within the City of Lodi; and

WHEREAS, a "Fee Study" dated July 16, 2001, was prepared, which analyzed and identified the costs, funding, and cost-benefit of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan; and

WHEREAS, the purpose of the SJMSCP Development Fee is to finance the goals and objectives of the SJMSCP that include, but are not limited to, preserve land acquisition, preserve enhancement, land management, and administration that compensate for such lands lost as a result of future development in the City of Lodi and in San Joaquin County; and

WHEREAS, after considering the Fee Study and the testimony received at the public hearing, the Lodi City Council approved said report; and further found that the future development in the City of Lodi will need to compensate cumulative impacts to threatened, endangered, rare, and unlisted SJMSCP Covered Species and other wildlife and compensation for some non-wildlife related impacts to recreation, agriculture, scenic values and other beneficial Open Space uses; and

WHEREAS, an "Updated Fee Study" dated November 2, 2006, was prepared, which analyzed and identified the costs, funding, and indexing of the SJMSCP; and

WHEREAS, the SJMSCP Development Fees are divided into three categories: vernal pool habitat, natural land and agricultural habitat land, and multi-purpose open space conversion; and

WHEREAS, the SJMSCP Development Fees for these three categories will be increased consistent with the Updated Fee Study findings for the year 2010. A table illustrating the Development Fee increases for the three categories of land is attached hereto as Exhibit "A"; and

WHEREAS, to ensure that the SJMSCP development fees keep pace with inflation, annual adjustments, based on the method set forth in this resolution, shall be made to the fees annually; and

WHEREAS, the Updated Fee Study with the SJMSCP and the fee amendment were available for public inspection and review in the office of the City Clerk for more than ten days prior to the date of this Public Hearing.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi as follows:

1. The City Council finds and declares that the purposes and uses of the Development Fee, and the determination of the reasonable relationship between the fees' uses and the type of development project on which the fees are imposed, are all established in Ordinance 1701, and remain valid, and the City Council therefore adopts such determinations.
2. The City Council finds and declares that since adoption of Ordinance 1701, the cost of land has increased in San Joaquin County; and that in order to maintain the reasonable relationship established by Ordinance 1701, it is necessary to increase the Development Fee for the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan.
3. The Development Fee for natural lands, agricultural land, vernal pool habitat and multi-purpose open space conversion shall be consistent with the table identified in Exhibit "A" and attached hereto.
4. The Fee provided in this resolution shall be effective on January 1, 2010, which is at least sixty (60) days after the adoption of this resolution.

NOW, THEREFORE, BE IT DETERMINED AND RESOLVED that the City of Lodi City Council hereby approves the proposed Habitat Conservation and Open Space fee adjustment.

Dated: October 21, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held October 21, 2009, by the following vote:

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

RANDI JOHL
City Clerk

2009-_____



S J C O G, Inc.

555 East Weber Avenue • Stockton, CA 95202

(209) 468-3913 • FAX (209) 468-1084

San Joaquin County Multi-Species Habitat Conservation & Open Space Plan (SJMSCP)

Larry Hansen
CHAIR

Ann Johnston
VICE CHAIR

Andrew T. Chesley
PRESIDENT

Member Agencies

CITIES OF
ESCALON,
LATHROP,
LODI,
MANTECA,
RIPON,
STOCKTON,
TRACY,
AND
THE COUNTY OF
SAN JOAQUIN

2010 Updated Habitat Fees*

Habitat Type	Fee Per Acre
Multi-Purpose Open Space	\$7,307
Natural	\$ 14,615
Agriculture	\$ 14,615
Vernal Pool - uplands	\$ 42,071
Vernal Pool - wetted	\$ 80,766

* Effective January 1, 2010 – December 31, 2010

2010 Endowment Fees with In-lieu Land**

Type of Preserve	Enhancement Cost/acre	Land Management Cost/acre	TOTAL PER ACRE ENDOWMENT
Agricultural Habitat Lands	\$2,943.89	\$1,65968	\$4,603.57
Natural Lands	\$2,943.89	\$1,65968	\$4,603.57
Vernal Pool Habitat			
<i>Vernal Pool Grasslands</i>	\$554.38	\$6,073.69	\$6,628.07
<i>Vernal Pool Wetted</i>	\$39,249.51	\$6,073.69	\$45,323.20

** Effective January 1, 2010 – December 31, 2010 in lieu of fees to be used as the endowment for the preserve (Category B & C)



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Post for Expiring Terms on the Lodi Animal Advisory Commission, Lodi Senior Citizens Commission, San Joaquin County Mosquito & Vector Control District, San Joaquin Valley Unified Air Pollution Control District Citizens Advisory Committee, and Site Plan and Architectural Review Committee and Post for Vacancies on the Lodi Arts Commission and the Lodi Library Board of Trustees

MEETING DATE: October 21, 2009

PREPARED BY: City Clerk

RECOMMENDED ACTION: Direct the City Clerk to post for expiring terms on the Lodi Animal Advisory Commission, Lodi Senior Citizens Commission, San Joaquin County Mosquito & Vector Control District, San Joaquin Valley Unified Air Pollution Control District Citizens Advisory Committee, and Site Plan and Architectural Review Committee and post for vacancies on the Lodi Arts Commission and the Lodi Library Board of Trustees.

BACKGROUND INFORMATION: Several terms are due to expire on various boards and commissions. Further, the City Clerk's Office received letters of resignation from Lodi Arts Commissioner Laura Heinitz and Library Board of Trustee Claudia Velez. It is, therefore, recommended that the City Council direct the City Clerk to post for the expiring terms and vacancies shown below.

Lodi Animal Advisory Commission

Rose Hilliard Term to expire December 31, 2009
Phillip N. Laughlin Term to expire December 31, 2009

Lodi Senior Citizens Commission

Winona Ellwein Term to expire December 31, 2009
Phyllis Rabusin Term to expire December 31, 2009

San Joaquin County Mosquito & Vector Control District

Jack Fiori Term to expire December 31, 2009

San Joaquin Valley Unified Air Pollution Control District Citizens Advisory Committee

Wade Broughton (Primary) Term to expire January 31, 2010
Randall S. Blank (Alternate) Term to expire January 31, 2010

Site Plan and Architectural Review Committee

Mitchell Slater Term to expire January 1, 2010

APPROVED: _____
Blair King, City Manager

Post for Expiring Terms on the Lodi Animal Advisory Commission, Lodi Senior Citizens Commission, San Joaquin County Mosquito & Vector Control District, San Joaquin Valley Unified Air Pollution Control District Citizens Advisory Committee, and Site Plan and Architectural Review Committee and Post for Vacancies on the Lodi Arts Commission and the Lodi Library Board of Trustees
October 21, 2009
Page Two

Lodi Arts Commission

Laura Heinitz Term to expire July 1, 2010

Lodi Library Board of Trustees

Claudia Maria Velez Term to expire June 30, 2012

Government Code Section 54970 et seq. requires that the City Clerk post for vacancies to allow citizens interested in serving to submit an application. The City Council is requested to direct the City Clerk to make the necessary postings.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/JMR



TM

CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Monthly Protocol Account Report
MEETING DATE: October 21, 2009
PREPARED BY: City Clerk

RECOMMENDED ACTION: None required, information only.

BACKGROUND INFORMATION: The City Council, at its meeting of July 19, 2000, adopted Resolution No. 2000-126 approving a policy relating to the City's "Protocol Account." As a part of this policy, it was directed that a monthly itemized report of the "Protocol Account" be provided to the City Council.

Attached please find the cumulative report through September 30, 2009.

FISCAL IMPACT: N/A

FUNDING AVAILABLE: See attached.

Randi Johl
City Clerk

RJ/JMR

Attachment

APPROVED: _____
Blair King, City Manager



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Review of Potential Video Franchise Ordinance, Establishing the Obligations of Cable Operators Providing Service in the City of Lodi Under a State Franchise Agreement

MEETING DATE: October 21, 2009

PREPARED BY: City Manager's Office

RECOMMENDED ACTION: Review a potential video franchise ordinance establishing the obligations of cable operators providing service in the City of Lodi under a State Franchise Agreement.

BACKGROUND INFORMATION: In September 2006, Governor Schwarzenegger signed into law AB 2987, known as the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which established a new framework for the regulation of cable television. Prior to 2007, no cable company was allowed to construct or operate a cable television system in any California city without receiving a franchise or license to operate from the city. This structure allowed cities to negotiate terms of their local franchise agreements, covering all aspects of operation from customer service standards to franchise fees. Under DIVCA, the power to issue franchise agreements belongs solely to the California Public Utilities Commission.

A new ordinance is proposed in order for the City to assume all rights available to it under DIVCA. Now that Comcast and AT&T provide video service within the City of Lodi under franchise agreements issued by the CPUC, the City needs to adopt a new ordinance that would harmonize local regulations with state law.

A summary of the changes under DIVCA:

- By obtaining state franchises, video companies have the right to use/build in the public right-of-way in exchange for a franchise fee. Cities still have the right to require encroachment permits and may regulate the time, place and manner of installation of the cable infrastructure. This proposed ordinance affirms that right.
- DIVCA established the franchise fee that requires companies to pay 5 percent of gross revenues for operations in each city. Again, this proposed ordinance affirms that right.
- DIVCA requires state franchise holders to comply with state and federally mandated service standards (attached). Cities, however, will be responsible for enforcing the standards. Adopting the proposed ordinance gives the City that ability.
- Cities are required to establish a schedule of penalties for any material breach of the state and federal customer service standards. This proposed ordinance establishes a schedule of these penalties.
- Previously, cities had great latitude for negotiating the operating and financial support that cable companies would provide for Public, Educational and Government (PEG) channels

APPROVED:


Blair King, City Manager

through the local franchise agreement. Under DIVCA, cities can require a fee of 1 percent of gross operating revenues for PEG support via ordinance (or continue an existing PEG fee of up to 3 percent). This proposed ordinance would establish this fee. Under our previous local franchise agreement, we did not receive a PEG fee from Comcast or its predecessors because the cable companies provided noncash support. Cities, however, can no longer require noncash benefits such as cable service to community buildings, staff support for broadcasting, provision of audio and video equipment and access to studio facilities.

- Cities may examine the cable companies' business records to ensure full payment of franchise fees. The City affirms that right in the proposed ordinance.

The new situation under DIVCA, which prevents cities from requiring support for PEG programming, presents the biggest change, challenge and opportunity for the City of Lodi. Comcast notified the City in May 2009 that it would phase out staffing support for broadcasting City Council meetings. We have completed this transition. Last month, City staff began operating the cameras and other video equipment at the Carnegie Forum during City Council meetings.

Adopting the maximum 1 percent PEG fee will raise approximately \$80,000 in annual PEG revenue from Comcast and AT&T for local public access needs. With the end of Comcast's noncash support, the City needs a new revenue source to provide a similar level of service. For instance, the City does not have the technical capability to transmit broadcasts of City Council or any other meeting from the Community Center theater, which has been chosen on two occasions in the past year as the venue for meetings with widespread interest. Also, the existing video equipment at the Carnegie Forum is aging and will eventually need replacing.

A local PEG fee, which typically appears as a separate line on cable customers' bills, would generate the money needed for those equipment needs. In addition, implementing a local PEG fee opens other possibilities, such as having the equipment to film and broadcast other community events, creating local public service announcements, covering local musical talent to producing shows of local interests. DIVCA does not allow the City to use those funds for operations.

If we do not adopt an ordinance establishing the obligations of local video companies and PEG fee, any equipment purchases for local programming will occur on an as-needed basis with the General Fund absorbing the cost. Also, the City will not be able to exert the limited authority available through DIVCA.

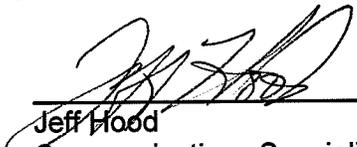
Based on Council direction, staff will bring a State Video Franchises ordinance to be introduced at the November 4, 2009 meeting.

FISCAL IMPACT:

Adopting the proposed ordinance with a 1-percent PEG fee will generate approximately \$80,000 per year for video-related capital acquisition/repairs. For a customer subscribing only to the 100-channel digital starter service, the increased cost would be approximately 58 cents a month.

FUNDING AVAILABLE:

Not applicable.



Jeff Hood
Communications Specialist

Attachments:

- A: Proposed Ordinance
- B: California Public Utilities Code Sec. 5870
- C: Federal customer service regulations

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI
AMENDING LODI MUNICIPAL CODE TITLE 5 – PERMITS AND
REGULATIONS – BY ADDING CHAPTER 5.17, “STATE VIDEO
FRANCHISES”**

=====

WHEREAS, the Legislature of the State of California (the State) has adopted the Digital Infrastructure and Video Competition Act of 2006 (DIVCA); and

WHEREAS, the Governor of the State of California signed DIVCA on September 29, 2006; and

WHEREAS, DIVCA became effective on January 1, 2007; and

WHEREAS, DIVCA establishes a regulatory structure for the State to issue franchises to video service providers; and

WHEREAS, DIVCA establishes that local entities, such as the City of Lodi, are responsible for administration and implementation of certain provisions of DIVCA; and

WHEREAS, DIVCA requires that the City establish, by ordinance, financial support provisions for Public, Educational and Governmental Access (PEG) channel facilities; and

WHEREAS, DIVCA requires that the City adopt, by ordinance or resolution, a schedule of penalties for any material breach by a State video franchise holder for violation of customer service and protection standards that the City is permitted to enforce; and

WHEREAS, as of October 21, 2009, there are two State-franchised cable operators providing cable service within the City; and

WHEREAS, two of the cable franchises in the City are held by Comcast and AT&T; and

WHEREAS, former City franchise-holder Comcast no longer provides noncash support to the City for PEG programming or facilities;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Lodi Municipal Code Title 5 – Permits and Regulations – is hereby amended by adding Chapter 5.17, “State Video Franchises” to read as follows:

CHAPTER 5.17 STATE CABLE TELEVISION FRANCHISES

Section:

- 5.17.010 Purpose.
- 5.17.020 Definitions and Interpretation of Language.
- 5.17.030 State Franchise Holder Fee.

- 5.17.040 State Franchise Holder PEG Fees.
- 5.17.050 Payment of Fees.
- 5.17.060 Audits.
- 5.17.070 Late Payments.
- 5.17.080 Lease of City Property or Network.
- 5.17.090 Customer Service and Consumer Protection Standards.
- 5.17.100 Penalties for Violations of Standards.
- 5.17.110 General Requirements.
- 5.17.120 Permits.
- 5.17.130 Terms and Conditions.
- 5.17.140 Relocation of Franchise Property and Appurtenances.
- 5.17.150 Removal of Abandoned Facilities.
- 5.17.160 Notification to Residents Regarding Construction or Maintenance.
- 5.17.170 Identification Required.
- 5.17.180 Construction Requirements and Protection of Health and Safety.
- 5.17.190 Reports to the Director of Public Works.
- 5.17.200 Emergency Alert Systems.
- 5.17.210 Interconnection for PEG Programming.
- 5.17.220 Notices.
- 5.17.230 Rights Reserved.
- 5.17.240 Compliance with Law.

5.17.010 PURPOSE.

This Chapter applies to all cable service or video service providers who are applying for, or have been awarded, a franchise under California Public Utilities Code Section 5800 et seq., the Digital Infrastructure and Video Competition Act of 2006, ("DIVCA"), to serve any area within the City of Lodi, including cable service or video service providers who are otherwise subject to DIVCA. By this Chapter the City of Lodi intends to assume to the fullest extent possible all obligations, rights and privileges afforded to it by DIVCA and any other applicable law. Moreover, to the extent this Ordinance is pre-empted by DIVCA now or as amended in the future, the requirement of DIVCA shall control.

5.17.020 DEFINITIONS AND INTERPRETATION OF LANGUAGE.

For purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given in this section. Unless otherwise expressly stated, words not defined in this Chapter shall be given the meaning set forth in California Public Utilities Code, Section 5800 et seq. as amended from time to time. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and "including" and "include" are not limiting. The word "shall" is always mandatory.

- (a) Access, PEG access, PEG use, or PEG. "Access," "PEG access," "PEG use," or "PEG" means the availability of a cable or video system for public, educational, or governmental use by various agencies, institutions, organizations, groups, and individuals, including the City of Lodi and its City use channels or any existing agreement between the City and any incumbent cable operator, to acquire, create, and distribute programming not under a state franchise holder's editorial control.

- (b) City. "City" means the City of Lodi, California.
- (c) City Council. "City Council" means the City Council of the City of Lodi.
- (d) City Manager. "City Manager" means the City Manager of the City of Lodi or his or her designee.
- (e) Gross revenues. "Gross revenues" means all revenues actually received by the holder of a state franchise that are derived from the operation of the holder's network to provide cable service or video service within the City of Lodi, subject to the specifications of California Public Utilities Code Section 5860.
- (f) Director. "Director" means the Director of Public Works of the City of Lodi or his or her designee.
- (g) State Franchise Holder, Holder of a State Franchise, Holder of the State Franchise, or Holder. "State Franchise Holder," "holder of a state franchise," "holder of the state franchise," or "holder" means any person or group of persons who has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in Public Utilities Code Section 5830, within any portion of the City of Lodi.

5.17.030 STATE FRANCHISE HOLDER FEE.

Any State Franchise Holder operating within the City shall pay to the City a State Franchise Holder fee equal to five percent of gross revenues, as defined in this Chapter and applicable law, unless a different amount is otherwise payable according to applicable law or resolution adopted by the City Council. Nothing in this section is intended to limit the City's ability to impose utility user taxes and other generally applicable taxes, fees and charges that are applied in a nondiscriminatory and competitively neutral manner.

5.17.040 STATE FRANCHISE HOLDER PEG FEES.

Any State Franchise Holder operating within the City shall pay to the City a PEG fee equal to one percent of gross revenues, as defined in this Chapter and applicable law, unless a different amount is payable in accordance with applicable law or resolution adopted by the City Council.

5.17.050 PAYMENT OF FEES.

The State Franchise Holder shall pay quarterly all fees required pursuant to this Chapter in a manner consistent with Public Utilities Code Section 5860. The State Franchise Holder shall deliver to the City by check or other means agreeable to the City Manager, a separate payment for the state franchise fee and the PEG fee not later than forty-five days after the end of each calendar quarter. Each payment made shall be accompanied by a report to the City Manager detailing how the payment was calculated, and shall include such additional information on appropriate forms as may be determined by the City Manager.

5.17.060 AUDITS.

The City may audit the business records of the holder of a State Franchise in a manner not inconsistent with California Public Utilities Code Section 5860(i).

5.17.070 LATE PAYMENTS.

In the event a State Franchise Holder fails to make any payment required by this Chapter on or before the due dates specified in this Chapter, the City shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent unless a different rate is set by applicable law or resolution adopted by the City Council.

5.17.080 LEASE OF CITY PROPERTY OR NETWORK.

To the extent not inconsistent with California Public Utilities Code Section 5840(q)(2)(B), in the event a State Franchise Holder desires to lease access to City property or to a network owned or controlled by the City, the City may set terms and charge a fee for access to the property or City network separate and apart from any franchise fee or other fee charged to the State Franchise Holders pursuant to this Chapter. The City Council may set any such fee by resolution.

5.17.090 CUSTOMER SERVICE AND CONSUMER PROTECTION STANDARDS.

Each State Franchise Holder shall comply with all applicable customer service and consumer protection standards, including, to the extent not inconsistent with California Public Utilities Code Section 5900, all existing and subsequently enacted customer service and consumer protection standards established by local, state or federal law and regulation.

5.17.100 PENALTIES FOR VIOLATIONS OF STANDARDS.

- (a) The City shall monitor compliance with and enforce the provisions of this Chapter and DIVCA.
- (b) For any material breach, as defined in California Public Utilities Code Section 5900(j), by a State Franchise Holder of applicable customer service and consumer protection standards, the City Manager, or the City Manager's designee, in his or her sole discretion may impose the following fines or penalties:
 - (1) For the first occurrence of a material breach, a fine of five hundred dollars shall be imposed for each day the violation remains in effect, not to exceed one thousand five hundred dollars for each violation.
 - (2) For a second material breach of the same nature within twelve months, a fine of one thousand dollars shall be imposed for each day the violation remains in effect, not to exceed three thousand dollars for each violation.
 - (3) For a third or further material breach of the same nature within twelve months, a fine of two thousand five hundred dollars shall be imposed for

each day the violation remains in effect, not to exceed seven thousand five hundred dollars for each violation.

- (c) Any penalties imposed by the City shall be imposed in a manner not inconsistent with California Public Utilities Code Section 5900.
- (d) To the extent not inconsistent with California Public Utilities Code Section 5900, the City, acting through its City Manager or his or her designee, in its sole discretion may waive, modify, or defer the imposition of a penalty.

5.17.110 GENERAL REQUIREMENTS.

Except as expressly provided in this Chapter, the provisions of this Chapter shall apply to all work performed by or on behalf of a State Franchise Holder upon, above or below any street, highway, sidewalk, parkway, alley or other public right-of-way of any kind whatsoever within the City.

5.17.120 PERMITS.

- (a) Prior to commencing any work, a State Franchise Holder shall apply for and obtain a permit in accordance with the applicable provisions of this Chapter and Chapter 12.04 of this Code and shall comply with all other applicable laws and regulations, including, but not limited to, all applicable requirements of Public Resources Code Section 21000 et seq. (the California Environmental Quality Act).
- (b) The Public Works Director shall either approve or deny a State Franchise Holder's application for any permit required under this Chapter in accordance with the applicable terms of Chapter 12.04.
- (c) If the Public Works Director denies a State Franchise Holder's application for a permit, the Director shall, at the time of notifying the applicant of denial, furnish to the applicant an explanation of the reason or reasons for the denial.
- (d) A State Franchise Holder that has been denied a permit by final decision of the Public Works Director may appeal the denial to the City Council whose decision shall be final. Upon receiving a notice of appeal, the City Council shall consider the permit de novo.
- (e) A State Franchise Holder whose permit has been revoked may appeal that decision to the City Council in writing within ten (10) days after issuance of the notice of revocation.

5.17.130 TERMS AND CONDITIONS.

The work of constructing, laying, replacing, maintaining, repairing, abandoning, or removing all property and appurtenances of the State Franchise Holder in, over, under, along, or across any City right-of-way as defined in Chapter 12.04 shall be done to the satisfaction of the Public Works Director and at the expense of the State Franchise Holder, and in accordance with the terms and conditions of Chapter 12.04.

5.17.140 RELOCATION OF FRANCHISE PROPERTY AND APPURTENANCES.

- (a) The City reserves the right to change the grade, change the width, or alter or change the location of any City right-of-way. If any Franchise Holder's property or appurtenance is installed or maintained by the State Franchise Holder on, along, under, over, in, upon, or across any public right-of way in a manner which prevents or interferes with any alteration or other change of grade, traffic needs, operation, maintenance, improvement, repair, construction, reconstruction, widening, or relocation of the right-of-way, or any work or improvement upon the right-of-way, the State Franchise Holder shall relocate any such property or appurtenances to the satisfaction of the Public Works Director at no expense to the City upon receipt of a written request from the Director to do so and in accordance with the terms of Chapter 12.04. Should the State Franchise Holder neglect or fail to relocate its facilities in a timely manner after receipt of any such notice, the State Franchise Holder shall be responsible for and shall reimburse the City for any and all costs or expenses incurred by City due to or arising from the failure to relocate the facilities.

- (b) The City reserves the right to lay, construct, repair, alter, relocate, and maintain subsurface or other facilities or improvements of any type or description in a governmental and water, sewer and Electric Utility capacity, but not in a proprietary capacity within the right-of-way over which the franchise is granted. If the City finds that the location or relocation of such facilities or improvements conflicts with the property or appurtenances laid, constructed, or maintained by the State Franchise Holder, whether such property was laid, constructed, or maintained before or after the facilities of the City were laid, the State Franchise Holder shall at no expense to the City, on or before the date specified in a written request from the Public Works Director, commence work to change the location as required by the Director. Should the State Franchise Holder neglect or fail to relocate its facilities within the period specified in any such notice, the State Franchise Holder shall be responsible for and shall reimburse the City for any and all additional costs or expenses incurred by the City due to the failure to relocate the facilities.

5.17.150 REMOVAL OF ABANDONED FACILITIES.

Upon the abandonment or other discontinuance of the use of all or a portion of its property, the State Franchise Holder shall remove the property in accordance with the terms of Chapter 12.04. If the State Franchise Holder fails to comply with the terms and conditions of abandonment or removal as may be required by this Chapter and Chapter 12.04, the Director of Public Works may remove, or cause to be removed, such facilities at the State Franchise Holder's expense and the State Franchise Holder shall pay to the City the cost of such work.

5.17.160 NOTIFICATION TO RESIDENTS REGARDING CONSTRUCTION OR MAINTENANCE.

- (a) Prior to any construction activity related to any cable service or video service, a State Franchise Holder shall provide public notification as required by the Public Works Director or applicable law.

- (b) To the extent practicable, equipment placed on private property shall be placed at the location requested by the property owner. A State Franchise Holder shall provide the private property owner with reasonable advance written notice of its plans to install equipment, and shall obtain express written consent from the private property owner before installing any equipment. The State Franchise Holder shall notify the property owner, in writing, that the property owner is not obligated to agree to the placement of equipment on the property or to enter into any agreement with the State Franchise Holder. Should a property owner notify the State Franchise Holder of his or her objection to any placement of equipment, the State Franchise Holder shall confer with the Public Works Director regarding appropriate location and placement of such equipment.

5.17.170 IDENTIFICATION REQUIRED.

Employees, agents, contractors, and subcontractors of any State Franchise Holder shall at all times be properly identified as employees or agents of the State Franchise Holder while performing any work or other activity within the City on behalf of the State Franchise Holder. Identification shall include the name of the employee or agent. The name and telephone number of the State Franchise Holder shall appear on all trucks and vehicles used by such personnel.

5.17.180 CONSTRUCTION REQUIREMENTS AND PROTECTION OF HEALTH AND SAFETY.

Each State Franchise Holder shall comply with all applicable construction requirements of Chapter 12.04 and shall undertake all necessary and appropriate means to protect and preserve health and safety, including complying with all construction requirements of Chapter 12.04 or as otherwise required by the Director of Public Works.

5.17.190 REPORTS TO THE DIRECTOR OF PUBLIC WORKS.

Each state franchise holder, within sixty days after the completion of any work, shall file with the Public Works Director an as-built set of drawings.

5.17.200 EMERGENCY ALERT SYSTEMS.

- (a) Each State Franchise Holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the State Franchise Holder's network.
- (b) To the extent not inconsistent with California Public Utilities Code Section 5880, each State Franchise Holder shall incorporate into its network the capability to permit the City in times of emergency to override the audio portion of all channels simultaneously. In addition, if feasible, each State Franchise Holder may be required to designate a channel, which may be a PEG channel, to be used for emergency broadcasts of both audio and video signals. The State Franchise Holder shall cooperate with the City in the use and operation of the emergency alert override system.

5.17.210 INTERCONNECTION FOR PEG PROGRAMMING.

Each holder of a State Franchise and each incumbent cable operator operating under a City franchise issued pursuant to this Code, shall negotiate with each other in good faith to interconnect their networks for the purpose of providing PEG programming including, but not limited to, any exclusive City use channel. Interconnection may be accomplished by any means authorized under California Public Utilities Code Section 5870(h). Each holder of a State Franchise and any incumbent cable operator shall provide interconnection of PEG channels, including any exclusive City use channel on reasonable terms and conditions and may not withhold the interconnection. If a holder of a State Franchise and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the City may require the incumbent cable operator to allow the holder of the State Franchise to interconnect its network with the incumbent cable operator's network at a technically feasible point on the State Franchise Holder's network as identified by the Holder or as otherwise permitted by applicable law. If no technically feasible point for interconnection is available, the holder of a State Franchise shall make an interconnection available to the channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the State Franchise Holder requesting the interconnection unless otherwise agreed to by the State Franchise Holder and the incumbent cable operator. To the extent not inconsistent with California Public Utilities Code Section 5870(h), the City Manager or the City Manager's designee may waive, modify, or defer this requirement of interconnection in his or her sole discretion.

5.17.220 NOTICES.

- (a) Each State Franchise Holder or applicant for a state franchise shall file with the City Manager and with the City's communications specialist or other City Manager designee a copy of all applications that the State Franchise Holder or applicant is required to file with the Public Utilities Commission.
- (b) Unless otherwise specified in this Chapter, all notices or other documentation that a State Franchise Holder is required to provide to the City under this Chapter or the California Public Utilities Code shall be provided to the City Manager and to the City's communications specialist.

5.17.230 RIGHTS RESERVED.

The rights reserved to the City of Lodi under this Chapter are in addition to all other applicable rights of the City, whether granted or reserved by other provisions of the Lodi Municipal Code or as otherwise authorized by federal or state law, and no action, proceeding, or exercise of a right by the City of Lodi shall affect any other rights which may be held by the City of Lodi.

5.17.240 COMPLIANCE WITH LAW.

Nothing contained in this Chapter shall be construed to exempt a State Franchise Holder from compliance with all applicable ordinances, rules, or regulations of the City of Lodi now in effect or which may be adopted that are not inconsistent with this Chapter or California Public Utilities Code Section 5800 et seq.

SECTION 2. All other provisions of Lodi Municipal Code shall remain unchanged and continue in full force and effect.

SECTION 3. Any provisions of the Lodi Municipal Code, or appendices thereto, or any other ordinances of the City, to the extent that they are inconsistent with this ordinance, and no further, are hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 5. This ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

SECTION 6. The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

SECTION 7. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 8. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 9. 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 10. The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal laws and this Ordinance shall be construed in light of that intent.

SECTION 11. 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 take effect thirty days from and after its passage and approval.

Approved this ____ day of _____, 2009

LARRY D. HANSEN
Mayor

Attest:

RANDI JOHL
City Clerk

=====

State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. _____ was introduced at a regular meeting of the City Council of the City of Lodi held October 21, 2009, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 2009, by the following vote:

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

I further certify that Ordinance No. _____ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL
City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney

5870. (a) The holder of a state franchise shall designate a sufficient amount of capacity on its network to allow the provision of the same number of public, educational, and governmental access (PEG) channels, as are activated and provided by the incumbent cable operator that has simultaneously activated and provided the greatest number of PEG channels within the local entity under the terms of any franchise in effect in the local entity as of January 1, 2007. For the purposes of this section, a PEG channel is deemed activated if it is being utilized for PEG programming within the municipality for at least eight hours per day. The holder shall have three months from the date the local entity requests the PEG channels to designate the capacity. However, the three-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the incumbent cable operator to make adequate interconnection available, as required by this section.

(b) The PEG channels shall be for the exclusive use of the local entity or its designee to provide public, educational, and governmental channels. The PEG channels shall be used only for noncommercial purposes. However, advertising, underwriting, or sponsorship recognition may be carried on the channels for the purpose of funding PEG-related activities. The PEG channels shall all be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law. After the initial designation of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is required by federal law. Each channel shall be capable of carrying a National Television System Committee (NTSC) television signal.

(c) (1) If less than three PEG channels are activated and provided within the local entity as of January 1, 2007, a local entity whose jurisdiction lies within the authorized service area of the holder of a state franchise may initially request the holder to designate not more than a total of three PEG channels.

(2) The holder shall have three months from the date of the request to designate the capacity. However, the three-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the

incumbent cable operator to make adequate interconnection available, as required by this section.

(d) (1) The holder shall provide an additional PEG channel when the nonduplicated locally produced video programming televised on a given channel exceeds 56 hours per week as measured on a quarterly basis. The additional channel shall not be used for any purpose other than to continue programming additional government, education, or public access television.

(2) For the purposes of this section, "locally produced video programming" means programming produced or provided by any local resident, the local entity, or any local public or private agency that provides services to residents of the franchise area; or any transmission of a meeting or proceeding of any local, state, or federal governmental entity.

(e) Any PEG channel provided pursuant to this section that is not utilized by the local entity for at least eight hours per day as measured on a quarterly basis may no longer be made available to the local entity, and may be programmed at the holder's discretion. At the time that the local entity can certify to the holder a schedule for at least eight hours of daily programming, the holder of the state franchise shall restore the channel or channels for the use of the local entity.

(f) The content to be provided over the PEG channel capacity provided pursuant to this section shall be the responsibility of the local entity or its designee receiving the benefit of that capacity, and the holder of a state franchise bears only the responsibility for the transmission of that content, subject to technological restraints.

(g) (1) The local entity shall ensure that all transmissions, content, or programming to be transmitted by a holder of a state franchise are provided or submitted in a manner or form that is compatible with the holder's network, if the local entity produces or maintains the PEG programming in that manner or form. If the local entity does not produce or maintain PEG programming in that manner or form, then the local entity may submit or provide PEG programming in a manner or form that is standard in the industry. The holder shall be responsible for any changes in the form of the transmission necessary to make it compatible with the technology or protocol utilized by the holder to deliver services. If the holder is required to change the form of the transmission, the local entity shall permit the holder to do so in a manner that is most economical to the holder.

(2) The provision of those transmissions, content, or programming to the holder of a state franchise shall constitute authorization for the holder to carry those transmissions, content, or programming. The holder may carry the transmission, content, or programming outside of the local entity's jurisdiction if the holder agrees to pay the local entity or its designee any incremental licensing costs incurred by the local entity or its designee associated with that transmission. Local entities shall be prohibited from entering into licensing agreements that impose higher

proportional costs for transmission to subscribers outside the local entity's jurisdiction.

(3) The PEG signal shall be receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than the equipment necessary to receive the lowest cost tier of service. The PEG access capacity provided shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service unless the signal is provided to the holder at a lower quality or with less functionality.

(h) Where technically feasible, the holder of a state franchise and an incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Holders of a state franchise and incumbent cable operators shall provide interconnection of the PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a holder of a state franchise and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the local entity may require the incumbent cable operator to allow the holder to interconnect its network with the incumbent's network at a technically feasible point on the holder's network as identified by the holder. If no technically feasible point for interconnection is available, the holder of a state franchise shall make an interconnection available to the channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the holder requesting the interconnection unless otherwise agreed to by the parties.

(i) A holder of a state franchise shall not be required to interconnect for, or otherwise to transmit, PEG content that is branded with the logo, name, or other identifying marks of another cable operator or video service provider. For purposes of this section, PEG content is not branded if it includes only production credits or other similar information displayed at the conclusion of a program. The local entity may require a cable operator or video service provider to remove its logo, name, or other identifying marks from PEG content that is to be made available through interconnection to another provider of PEG capacity.

(j) In addition to any provision for the PEG channels required under subdivisions (a) to (i), inclusive, the holder shall reserve, designate, and, upon request, activate a channel for carriage of state public affairs programming administered by the state.

(k) All obligations to provide and support PEG channel facilities and institutional networks and to provide cable services to community buildings contained in a locally issued franchise existing on December 31, 2006, shall continue until the local franchise expires, until the term of the franchise would have expired if it had not been terminated pursuant to subdivision (o) of Section 5840, or until January 1, 2009, whichever is later.

(l) After January 1, 2007, and until the expiration of the incumbent cable operator's franchise, if the incumbent cable operator has existing unsatisfied obligations under the franchise to remit to the local entity any cash payments for the ongoing costs of public, educational, and government access channel facilities or institutional networks, the local entity shall divide those cash payments among all cable or video providers as provided in this section. The fee shall be the holder's pro rata per subscriber share of the cash payment required to be paid by the incumbent cable operator to the local entity for the costs of PEG channel facilities. All video service providers and the incumbent cable operator shall be subject to the same requirements for recurring payments for the support of PEG channel facilities and institutional networks, whether expressed as a percentage of gross revenue or as an amount per subscriber, per month, or otherwise.

(m) In determining the fee on a pro rata per subscriber basis, all cable and video service providers shall report, for the period in question, to the local entity the total number of subscribers served within the local entity's jurisdiction, which shall be treated as confidential by the local entity and shall be used only to derive the per subscriber fee required by this section. The local entity shall then determine the payment due from each provider based on a per subscriber basis for the period by multiplying the unsatisfied cash payments for the ongoing capital costs of PEG channel facilities by a ratio of the reported subscribers of each provider to the total subscribers within the local entity as of the end of the period. The local entity shall notify the respective providers, in writing, of the resulting pro rata amount. After the notice, any fees required by this section shall be remitted to the applicable local entity quarterly, within 45 days after the end of the quarter for the preceding calendar quarter, and may only be used by the local entity as authorized under federal law.

(n) A local entity may, by ordinance, establish a fee to support PEG channel facilities consistent with federal law that would become effective subsequent to the expiration of any fee imposed pursuant to paragraph (2) of subdivision (l). If no such fee exists, the local entity may establish the fee at any time. The fee shall not exceed 1 percent of the holder's gross revenues, as defined in Section 5860. Notwithstanding this limitation, if, on December 31, 2006, a local entity is imposing a separate fee to support PEG channel facilities that is in excess of 1 percent, that entity may, by ordinance, establish a fee no greater than that separate fee, and in no event greater than 3 percent, to support PEG activities. The ordinance shall expire, and may be reauthorized, upon the expiration of the state franchise.

(o) The holder of a state franchise may recover the amount of any fee remitted to a local entity under this section by billing a recovery fee as a separate line item on the regular bill of each subscriber.

(p) A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section or resolve any dispute regarding the requirements set forth in this section, and no provider may

by barred from the provision of service or be required to terminate service as a result of that dispute or enforcement action.

Code of Federal Regulations (CFR)**47 CFR §76.309 Customer service obligations**

(a) A cable franchise authority may enforce the customer service standards set forth in section (c) of this rule against cable operators. The franchise authority must provide affected cable operators ninety (90) days written notice of its intent to enforce the standards.

(b) Nothing in this rule should be construed to prevent or prohibit:

(1) A franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards set forth in section (c) of this rule;

(2) A franchising authority from enforcing, through the end of the franchise term, pre-existing customer service requirements that exceed the standards set forth in section (c) of this rule and are contained in current franchise agreements;

(3) Any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted herein; or

(4) The establishment or enforcement of any State or municipal law or regulation concerning customer service that imposes customer service requirements that exceed, or address matters not addressed by, the standards set forth in section (c) of this rule.

(c) Effective July 1, 1993, a cable operator shall be subject to the following customer service standards:

(1) Cable system office hours and telephone availability.

(i) The cable operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(A) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained company representative on the next business day.

(ii) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.

(iii) The operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(iv) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

(v) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(2) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:

(i) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(ii) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.

(iii) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(iv) An operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(v) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(3) Communications between cable operators and cable subscribers.

(i) Refunds. Refund checks will be issued promptly, but no later than either-

(A) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(B) The return of the equipment supplied by the cable operator if service is terminated.

(ii) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(4) Definitions.

(i) Normal Business Hours. The term "normal business hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

(ii) Normal Operating Conditions. The term "normal operating conditions" means those service conditions which are within the control of the cable operator. Those conditions which are not within the control of the cable operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(iii) Service Interruption. The term "service interruption" means the loss of picture or sound on one or more cable channels.

Note to §76.309: Section 76.1602 contains notification requirements for cable operators with regard to operator obligations to subscribers and general information to be provided to customers regarding service. Section 76.1603 contains subscriber notification requirements governing rate and service changes. Section 76.1619 contains notification requirements for cable operators with regard to subscriber bill information and operator response procedures pertaining to bill disputes.

47 CFR §76.1602 Customer service -- general information.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Effective July 1, 1993, the cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

(1) Products and services offered;

(2) Prices and options for programming services and conditions of subscription to programming and other services;

(3) Installation and service maintenance policies;

(4) Instructions on how to use the cable service;

(5) Channel positions of programming carried on the system; and

(6) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(c) Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the cable system operator, including the address of the responsible officer of the local franchising authority.

47 CFR §76.1603 Customer service -- rate and service changes.

(a) A cable franchise authority may enforce the customer service standards set forth in paragraph (b) of this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

(b) Customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by §76.1602.

(c) In addition to the requirement of paragraph (b) of this section regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems

shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the operator need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain dayparts.

(d) A cable operator shall provide written notice to a subscriber of any increase in the price to be charged for the basic service tier or associated equipment at least 30 days before any proposed increase is effective. The notice should include the name and address of the local franchising authority.

(e) To the extent the operator is required to provide notice of service and rate changes to subscribers, the operator may provide such notice using any reasonable written means at its sole discretion.

(f) Notwithstanding any other provision of part 76 of this chapter, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State, or franchising authority on the transaction between the operator and the subscriber.

Note 1 to §76.1603: Section 624(h) of the Communications Act, 47 U.S.C. 544(h), contains additional notification requirements which a franchising authority may enforce.

Note 2 to §76.1603: Section 624(d)(3) of the Communications Act, 47 U.S.C. 544(d)(3), contains additional notification provisions pertaining to cable operators who offer a premium channel without charge to cable subscribers who do not subscribe to such premium channel.

Note 3 to §76.1603: Section 631 of the Communications Act, 47 U.S.C. 551, contains additional notification requirements pertaining to the protection of subscriber privacy.

47 CFR 76.1619 Information on subscriber bills.

(a) Effective July 1, 1993, bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(b) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days.

(c) A cable franchise authority may enforce the customer service standards set forth in this section against cable operators. The franchise authority must provide affected cable operators 90 days written notice of its intent to enforce standards.

United States Code ("USC")

47 USC §544(d) Cable service unprotected by Constitution

(1) Nothing in this subchapter shall be construed as prohibiting a franchising authority and a cable operator from specifying, in a franchise or renewal thereof, that certain cable services shall not be provided or shall be provided subject to conditions, if such cable services are obscene or are otherwise unprotected by the Constitution of the United States.

(2)(A) In order to restrict the viewing of programming which is obscene or indecent, upon the request of a subscriber, a cable operator shall provide (by sale or lease) a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

(B) Subparagraph (A) shall take effect 180 days after the effective date of this subchapter.

(3)(A) If a cable operator provides a premium channel without charge to cable subscribers who do not subscribe to such premium channel, the cable operator shall, not later than 30 days before such premium channel is provided without charge--

(i) notify all cable subscribers that the cable operator plans to provide a premium channel without charge;

(ii) notify all cable subscribers when the cable operator plans to offer a premium channel without charge;

(iii) notify all cable subscribers that they have a right to request that the channel carrying the premium channel be blocked; and

(iv) block the channel carrying the premium channel upon the request of a subscriber.

(B) For the purpose of this section, the term "premium channel" shall mean any pay service offered on a per channel or per program basis, which offers movies rated by the Motion Picture Association of America as X, NC-17, or R.

47 USC §544(h) Programming changes

A franchising authority may require a cable operator to do any one or more of the following:

(1) Provide 30 days' advance written notice of any change in channel assignment or in the video programming service provided over any such channel.

(2) Inform subscribers, via written notice, that comments on programming and channel position changes are being recorded by a designated office of the franchising authority.

47 USC §551 Protection of subscriber privacy

(a) Notice to subscriber regarding personally identifiable information; definitions

(1) At the time of entering into an agreement to provide any cable service or other service to a subscriber and at least once a year thereafter, a cable operator shall provide notice in the form of a separate, written statement to such subscriber which clearly and conspicuously informs the subscriber of—

(A) the nature of personally identifiable information collected or to be collected with respect to the subscriber and the nature of the use of such information;

(B) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of persons to whom the disclosure may be made;

(C) the period during which such information will be maintained by the cable operator;

(D) the times and place at which the subscriber may have access to such information in accordance with subsection (d) of this section; and

(E) the limitations provided by this section with respect to the collection and disclosure of information by a cable operator and the right of the subscriber under subsections (f) and (h) of this section to enforce such limitations.

In the case of subscribers who have entered into such an agreement before the effective date of this section, such notice shall be provided within 180 days of such date and at least once a year thereafter.

(2) For purposes of this section, other than subsection (h) of this section—

(A) the term “personally identifiable information” does not include any record of aggregate data which does not identify particular persons;

(B) the term “other service” includes any wire or radio communications service provided using any of the facilities of a cable operator that are used in the provision of cable service; and

(C) the term “cable operator” includes, in addition to persons within the definition of cable operator in section 522 of this title, any person who

(i) is owned or controlled by, or under common ownership or control with, a cable operator, and

(ii) provides any wire or radio communications service.

(b) Collection of personally identifiable information using cable system

(1) Except as provided in paragraph (2), a cable operator shall not use the cable system to collect personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned.

(2) A cable operator may use the cable system to collect such information in order to—

(A) obtain information necessary to render a cable service or other service provided by the cable operator to the subscriber; or

(B) detect unauthorized reception of cable communications.

(c) Disclosure of personally identifiable information

(1) Except as provided in paragraph (2), a cable operator shall not disclose personally identifiable information concerning any subscriber without the prior written or electronic consent of the subscriber concerned and shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the subscriber or cable operator.

(2) A cable operator may disclose such information if the disclosure is—

(A) necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the cable operator to the subscriber;

(B) subject to subsection (h) of this section, made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed;

(C) a disclosure of the names and addresses of subscribers to any cable service or other service, if—

(i) the cable operator has provided the subscriber the opportunity to prohibit or limit such disclosure, and

(ii) the disclosure does not reveal, directly or indirectly, the—

(I) extent of any viewing or other use by the subscriber of a cable service or other service provided by the cable operator, or

(II) the nature of any transaction made by the subscriber over the cable system of the cable operator; or

(D) to a government entity as authorized under chapters 119, 121, or 206 of title 18, except that such disclosure shall not include records revealing cable subscriber selection of video programming from a cable operator.

(d) Subscriber access to information

A cable subscriber shall be provided access to all personally identifiable information regarding that subscriber which is collected and maintained by a cable operator. Such information shall be made available to the subscriber at reasonable times and at a convenient place designated by such cable operator. A cable subscriber shall be provided reasonable opportunity to correct any error in such information.

(e) Destruction of information

A cable operator shall destroy personally identifiable information if the information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such information under subsection (d) of this section or pursuant to a court order.

(f) Civil action in United States district court; damages; attorney's fees and costs; nonexclusive nature of remedy

(1) Any person aggrieved by any act of a cable operator in violation of this section may bring a civil action in a United States district court.

(2) The court may award—

(A) actual damages but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorneys' fees and other litigation costs reasonably incurred.

(3) The remedy provided by this section shall be in addition to any other lawful remedy available to a cable subscriber.

(g) Regulation by States or franchising authorities

Nothing in this subchapter shall be construed to prohibit any State or any franchising authority from enacting or enforcing laws consistent with this section for the protection of subscriber privacy.

(h) Disclosure of information to governmental entity pursuant to court order

Except as provided in subsection (c)(2)(D) of this section, a governmental entity may obtain personally identifiable information concerning a cable subscriber pursuant to a court order only if, in the court proceeding relevant to such court order —

(1) such entity offers clear and convincing evidence that the subject of the information is reasonably suspected of engaging in criminal activity and that the information sought would be material evidence in the case; and

(2) the subject of the information is afforded the opportunity to appear and contest such entity's claim.



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Awarding Contract for Lodi Avenue Reconstruction Project, Union Pacific Railroad to Cherokee Lane (ESPL 5154 (036)), to Granite Construction Company, of Watsonville (\$2,098,885) and Appropriating Funds (\$2,518,662)

MEETING DATE: October 21, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution awarding the contract for the Lodi Avenue Reconstruction Project, Union Pacific Railroad to Cherokee Lane (ESPL 5154 (036)), to Granite Construction Company, of Watsonville, and appropriating funds in accordance with the recommendation shown below.

BACKGROUND INFORMATION: This project consists of removing the existing rails in Lodi Avenue, reconstructing the pavement with 11,780 tons of asphalt concrete, installing decorative street lights, installing landscape elements, and other incidental and related work, all as shown on the plans and specification for the above project.

Plans and specifications for this project were approved on June 17, 2009. The City received the following 10 bids for this project on October 7, 2009.

Bidder	Location	Base Bid
Engineer's Estimate		\$3,184,974.00
Granite Construction Company	Watsonville	\$2,098,885.00
DeSilva Gates Construction	Dublin	\$2,123,987.40
George Reed, Inc.	Lodi	\$2,131,323.65
A.M. Stephens Construction	Lodi	\$2,155,536.90
Top Grade Construction, Inc.	Stockton	\$2,165,765.00
Knife River Construction	Stockton	\$2,215,471.30
McGuire & Hester	Oakland	\$2,330,356.50
Teichert Construction	Stockton	\$2,247,951.00
G & L Brock Construction	Stockton	\$2,255,603.94
Diede Construction	Woodbridge	\$2,416,217.96

Staff is recommending the appropriation of \$2,518,662 to cover construction costs, staff time, and contingencies.

FISCAL IMPACT: There will be a less street maintenance for the new pavement on Lodi Avenue.

APPROVED: _____
Blair King, City Manager

Adopt Resolution Awarding Contract for Lodi Avenue Reconstruction Project, Union Pacific Railroad to Cherokee Lane (ESPL 5154 (036)) to Granite Construction Company, of Watsonville (\$2,098,885) and Appropriating Funds (\$2,518,662)
October 21, 2009
Page 2

FUNDING AVAILABLE:	Requested Appropriation:	
	American Recovery and Reinvestment Act Funds	\$2,244,461
	Measure K Smart Growth Funds	<u>274,201</u>
	Total:	\$2,518,662

Jordan Ayers
Deputy City Manager/Internal Service Director

F. Wally Sandelin
Public Works Director

Prepared by Lyman Chang, Senior Civil Engineer
FWS/LC/pmf
cc: City Attorney
Purchasing Officer
Assistant Streets and Drainage Manager
Water Services Manager

CITY OF LODI, CALIFORNIA

THIS CONTRACT made by and between the CITY OF LODI, State of California, herein referred to as the "City," and GRANITE CONSTRUCTION COMPANY, herein referred to as the "Contractor."

WITNESSETH:

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

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

Notice Inviting Bids	The July 2002 Edition,
Information to Bidders	Standard Specifications,
General Provisions	State of California,
Special Provisions	Business and Transportation Agency,
Bid Proposal	Department of Transportation
Contract	
Contract Bonds	
Plans	

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

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

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

ARTICLE III - The Contractor agrees to conform to the provisions of Chapter 1, Part 7, Division 2 of the Labor Code. The Contractor and any Subcontractor will pay the general prevailing wage rate and other employer payments for health and welfare, pension, vacation, travel time,

and subsistence pay, apprenticeship or other training programs. The responsibility for compliance with these Labor Code requirements is on the prime contractor.

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

Perform the work necessary to remove existing railroad tracks and install 11,780 tons of asphalt concrete, 2,100 linear feet of concrete curb and gutter, 17,000 square feet of concrete flatwork, 790 linear feet of storm drain pipe, 550 linear feet of 8-inch water pipe, 131 linear feet of 12-inch wastewater pipe, street light system, traffic signal system, traffic striping, and street landscape elements, and other incidental and related work, all as shown on the plans and specifications for "Lodi Avenue Reconstruction, Union Pacific Railroad to Cherokee Lane".

CONTRACT ITEMS

ITEM NO.	DESCRIPTION	UNIT	EST'D. QTY	UNIT PRICE	TOTAL PRICE
1.	Traffic Control	LS	1	\$ 83,000.00	\$ 83,000.00
2.	Construction Notification	LS	1	\$ 5,000.00	\$ 5,000.00
3.	Water Pollution Control	LS	1	\$ 10,000.00	\$ 10,000.00
4.	Excavation Safety	LS	1	\$ 9,122.00	\$ 9,122.00
5.	Clearing and Grubbing	LS	1	\$ 50,000.00	\$ 50,000.00
6.	Rail Removal	LS	1	\$ 35,000.00	\$ 35,000.00
7.	Roadway Excavation	CY	9,740	\$ 7.50	\$ 73,050.00
8.	Compact Original Ground	SF	202,420	\$ 0.15	\$ 30,363.00
9.	Concrete Subgrade Compaction	SF	21,104	\$ 1.25	\$ 26,380.00
10.	Asphalt Concrete	Ton	11,780	\$ 68.00	\$ 801,040.00

ITEM NO.	DESCRIPTION	UNIT	EST'D. QTY	UNIT PRICE	TOTAL PRICE
11.	Miscellaneous Concrete (3/8-Inch Aggregate)	Ton	20	\$ 125.00	\$ 2,500.00
12.	Concrete Curb and Gutter	LF	2,100	\$ 25.00	\$ 52,500.00
13.	Concrete Sidewalk Wheelchair Ramp	SF	3,284	\$ 5.50	\$ 18,062.00
14.	Stamped Concrete	SF	7,324	\$ 8.00	\$ 58,592.00
15.	Special Sidewalk Panel	EA	24	\$ 200.00	\$ 4,800.00
16.	Commercial Type Driveway and Gutter	SF	5,050	\$ 6.75	\$ 34,087.50
17.	Concrete Alley Approach	SF	196	\$ 7.00	\$ 1,372.00
18.	Through-the-Curb Drain	EA	2	\$ 650.00	\$ 1,300.00
19.	Install Street Sign Post	EA	30	\$ 135.00	\$ 4,050.00
20.	Install Street Sign	EA	48	\$ 50.00	\$ 2,400.00
21.	Double Yellow Centerline (Detail 22)	LF	3,250	\$ 1.00	\$ 3,250.00
22.	4-Inch White Line	LF	1,050	\$ 0.35	\$ 367.50
23.	4-Inch White Line (Detail 9)	LF	4,180	\$ 0.30	\$ 1,254.00
24.	8-Inch White Line (Detail 37B)	LF	100	\$ 1.00	\$ 100.00
25.	8-Inch White Line (Detail 38)	LF	582	\$ 1.00	\$ 582.00

ITEM NO.	DESCRIPTION	UNIT	EST'D. QTY	UNIT PRICE	TOTAL PRICE
26.	12-Inch White Line	LF	380	\$ 2.80	\$ 1,064.00
27.	Parking Stall Striping	EA	92	\$ 25.00	\$ 2,300.00
28.	Colored Crosswalk	SF	9,330	\$ 13.00	\$ 121,290.00
29.	Pavement Marking	SF	2,240	\$ 2.80	\$ 6,272.00
30.	Install Pavement Marker (Fire Hydrant)	EA	3	\$ 15.00	\$ 45.00
31.	Install Survey Monument Box	EA	2	\$ 500.00	\$ 1,000.00
32.	Street Light System	LS	1	\$150,000.00	\$ 150,000.00
33.	Traffic Signal System	LS	1	\$338,000.00	\$ 338,000.00
34.	Traffic Signal Interconnect System	LS	1	\$ 23,000.00	\$ 23,000.00
35.	Landscaping	LS	1	\$ 42,000.00	\$ 42,000.00
36.	12-Inch Clay Wastewater Pipe	LF	131	\$ 55.00	\$ 7,205.00
37.	Abandon Wastewater Pipe	LS	1	\$ 2,000.00	\$ 2,000.00
38.	Install 12-Inch Storm Drain (Lodi Avenue)	LF	533	\$ 28.00	\$ 14,924.00
39.	Install 12-Inch Storm Drain (Central Avenue)	LF	304	\$ 43.00	\$ 13,072.00
40.	Install Side Inlet Catch Basin	EA	6	\$ 785.00	\$ 4,710.00
41.	Install Drop Inlet Catch Basin	EA	1	\$ 680.00	\$ 680.00

ITEM NO.	DESCRIPTION	UNIT	EST'D. QTY	UNIT PRICE	TOTAL PRICE
42.	Rehab Storm Drain Manhole	EA	4	\$ 1,125.00	\$ 4,500.00
43.	Install Storm Drain Manhole	EA	3	\$ 1,650.00	\$ 4,950.00
44.	Install 24-Inch Riser	EA	2	\$ 540.00	\$ 1,080.00
45.	Abandon Catch Basin and Lateral	EA	2	\$ 550.00	\$ 1,100.00
46.	Install 6-Inch Water Pipe	LF	38	\$ 38.00	\$ 1,444.00
47.	Install 8-Inch Water Pipe	LF	553	\$ 34.00	\$ 18,802.00
48.	Install 6-Inch AWWA Water Valve	EA	1	\$ 1,000.00	\$ 1,000.00
49.	Install 8-Inch AWWA Water Valve	EA	3	\$ 1,375.00	\$ 4,125.00
50.	Install Blow-Off	EA	1	\$ 2,000.00	\$ 2,000.00
51.	Install Water Service	EA	3	\$ 3,200.00	\$ 9,600.00
52.	Install Fire Hydrant	EA	1	\$ 3,000.00	\$ 3,000.00
53.	Adjust Manhole Frame and Cover to Grade	EA	10	\$ 350.00	\$ 3,500.00
54.	Furnish Manhole Frame and Cover	EA	4	\$ 325.00	\$ 1,300.00
55.	Adjust Water Valve Frame and Cover to Grade	EA	12	\$ 250.00	\$ 3,000.00
56.	Adjust Monitoring Well Frame and Cover to Grade	EA	3	\$ 250.00	\$ 750.00

ITEM NO.	DESCRIPTION	UNIT	EST'D. QTY	UNIT PRICE	TOTAL PRICE
57.	Install City Furnished Iron Bench	EA	4	\$ 500.00	\$ 2,000.00
58.	Furnish and Install 6-Foot Planter Ring	EA	1	\$ 1,000.00	\$ 1,000.00
TOTAL					\$ 2,098,885.00

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

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

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

ARTICLE VIII - The Contractor agrees to commence work pursuant to this contract within 15 calendar days after the City Manager has executed the contract and to diligently prosecute to completion within 90 WORKING DAYS.

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

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

CONTRACTOR:

CITY OF LODI

By: _____
Blair King
City Manager

By: _____

Date: _____

Title

Attest:

City Clerk

(CORPORATE SEAL)

Approved As To Form

D. Stephen Schwabauer
City Attorney



**INSTRUCTIONS - LOCAL AGENCY BIDDER DBE INFORMATION
(CONSTRUCTION CONTRACTS) (Revised 03/09)****SUCCESSFUL BIDDER:**

The form requires specific information regarding the construction contract: Agency, Location, Project Description, Federal Aid Project Number (assigned by Caltrans-Local Assistance), Total Contract Amount, Bid Date, Bidder's Name, and Contract Goal.

The form has a column for the Contract Item Number (or Item No's) and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBEs. The DBE should provide a certification number to the Contractor and expiration date. The DBE contractors should notify the Contractor in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of DBE certified contractors to perform the work (must be certified on the date bids are opened and include DBE address and phone number). Enter DBE prime and subcontractors certification number. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own forces if a DBE.

IMPORTANT: Identify all DBE firms participating in the project--including all UDBEs listed on the UDBE Commitment form (Exhibit 15G(1)), regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

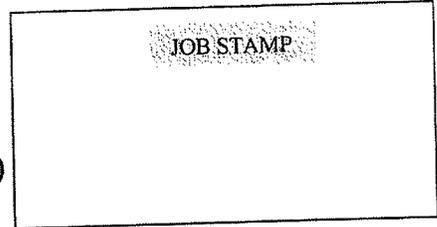
There is a column for the total DBE dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your bid pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.) See Section "Disadvantaged Business Enterprise (DBE)," of the Special Provisions (construction contracts); to determine how to count the participation of DBE firms.

Exhibit 15-G (2) must be signed and dated by the successful bidder. Also list a phone number in the space provided and print the name of the person to contact.

Local agencies should complete the Contract Award Date, Federal Share, Contract and Project Number fields, and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of contract execution. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

District DBE Coordinator should verify that all information is complete and accurate. Once the information has been verified, the **District Local Assistance Engineer** signs and dates the form.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
MONTHLY EMPLOYMENT REPORT
CEM-1204 (NEW 03/2009) DLA Modified



**AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)
MONTHLY EMPLOYMENT REPORT**

See instructions that follow

1. CONTRACT NO.		2. FEDERAL-AID PROJECT NUMBER (From special provisions)					
3. FIRST DAY OF REPORTING PERIOD (mm/dd/yy):		4. REPORT MONTH (mm/yy)		5. CONTRACTING AGENCY			
6. CONTRACTOR NAME AND ADDRESS							
7. EMPLOYMENT DATA							
		EMPLOYEES		HOURS		PAYROLL	
		NEW HIRES	EXISTING EMPLOYEES	NEW HIRES	EXISTING EMPLOYEES	NEW HIRES	EXISTING EMPLOYEES
PRIME CONTRACTOR DIRECT, ON-PROJECT JOBS							
SUBCONTRACTOR DIRECT, ON-PROJECT JOBS							
SUBCONTRACTOR NAME(S):		DBE					
		<input type="checkbox"/>					
		<input type="checkbox"/>					
		<input type="checkbox"/>					
		<input type="checkbox"/>					
		<input type="checkbox"/>					
		<input type="checkbox"/>					
PRIME AND SUBCONTRACTOR SUBTOTALS							
PRIME AND SUBCONTRACTOR TOTALS (NEW + EXISTING)							
8. CERTIFIED BY CONTRACTOR: (Signature and Title)						DATE	
TO BE COMPLETED BY AGENCY OR AUTHORIZED REPRESENTATIVE							
9. REVIEWED BY CONTRACT ADMINISTRATOR: (Signature and Title)						DATE	

COPY DISTRIBUTION: Original - Resident Engineer Copy - Contractor Copy - Caltrans District Local Assistance Engineer

ADA Notice For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
MONTHLY EMPLOYMENT REPORT
CEM-1204 (NEW 03/2009) DLA Modified

INSTRUCTIONS FOR COMPLETING ARRA MONTHLY EMPLOYMENT REPORT FORM

- BOX 1. *Contract Number.* The state-assigned project number or ID; district and expenditure authorization (EA).
- BOX 2. *Federal-aid Project Number.* The state-assigned federal-aid project number.
- BOX 3. *First Day of Reporting Period.* The first day of reporting period is the first day of the first payroll period of the month. If the beginning of the month splits the payroll period, then the report will include dates from the prior month as necessary to complete the payroll period.
- BOX 4. *Report Month.* The month and year covered by the report. Reported as "mm/yy" (e.g. May 2009 would be coded as "05/09.>").
- BOX 5. *Contracting Agency.* The name of the contracting agency. For state projects, enter Caltrans. For non-state projects, enter the name of the contracting agency (federal agency, tribe, MPO, city, county, etc.).
- BOX 6. *Contractor Name and Address.* The name and address of the contractor shall include the firm name, street address, city, state, and zip code.
- BOX 7. *Employment Data.*
Subcontractor Name(s). The name of each subcontractor that was active on the project for the reporting month.
Employees. The number of new hires and existing employees on the contractor's workforce that month, and the number of new hires and existing employees for each of the active subcontractors that month. Do not include material suppliers. Reported as a whole number.
Hours. The total hours on the specified project for the new hires and existing employees on the contractor's workforce that month, and the total hours for the new hires and existing employees for each of the active subcontractors that month. Reported as a whole number.
Payroll. The total dollar amount of wages paid by the contractor that month for employees on the specified project, and the total dollar amount of wages paid by each of the active subcontractors that month. Rounded to the nearest whole dollar and reported as a whole number. Refer to Section 9-1.03A(1), "Labor," of the *Standard Specifications*.
Prime and Subcontractor Subtotals. The subtotal for number of employees, hours and payroll for new hires and existing employees for the contractor and listed subcontractor(s).
Prime and Subcontractor Totals (New + Existing). The total number of employees, hours and payroll for the contractor and listed subcontractor(s).
- BOX 8. *Certified by Contractor.*
Name. Contractor representative or person responsible for certification of the information included on the form. By completing the form, the authorized representative certifies that they are knowledgeable of the hours worked and employment status for all employees. Contractors are responsible to maintain data to support the employment form and make it available to the state should it request supporting materials.
Date. The date that the contractor completed the employment form. Reported as "mm/dd/yy."
- BOX 9. *Reviewed by Contract Administrator.* (To be completed by the local agency or authorized representative.)
Name. Local agency representative, such as the resident engineer or contract manager, or authorized project representative responsible for reviewing the submitted form.
Date. The date that the state representative reviewed the form. Reported as "mm/dd/yy."

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL AWARDDING CONTRACT FOR LODI AVENUE RECONSTRUCTION PROJECT, UNION PACIFIC RAILROAD TO CHEROKEE LANE (ESPL 5154 (036)) AND FURTHER APPROPRIATING FUNDS

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on October 7, 2009, at 11:00 a.m. for the Lodi Avenue Reconstruction Project, Union Pacific Railroad to Cherokee Lane (ESPL 5154 (036)), described in the plans and specifications therefore approved by the City Council on June 17, 2009; and

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

Bidder	Bid
Granite Construction Company	\$2,098,885.00
DeSilva Gates Construction	\$2,123,987.40
George Reed, Inc.	\$2,131,323.65
A.M. Stephens Construction	\$2,155,536.90
Top Grade Construction, Inc.	\$2,165,765.00
Knife River Construction	\$2,215,471.30
McGuire & Hester	\$2,330,356.50
Teichert Construction	\$2,247,951.00
G & L Brock Construction	\$2,255,603.94
Diede Construction	\$2,416,217.96

WHEREAS, this project is an American Recovery and Reinvestment Act (ARRA) project and is subject to the Underutilized Disadvantage Business Enterprise (UDBE) rules, and staff has determined that the bid of the low bidder, Granite Construction Company, of Watsonville, did conform to the UDBE requirements; and

WHEREAS, staff recommends awarding the contract for the Lodi Avenue Reconstruction Project, Union Pacific Railroad to Cherokee Lane (ESPL 5154 (036)) to the low bidder, Granite Construction Company, of Watsonville, California.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby award the contract for the Lodi Avenue Reconstruction Project, Union Pacific Railroad to Cherokee Lane (ESPL 5154 (036)) to the low bidder, Granite Construction Company, of Watsonville, California, in the amount of \$2,098,885; and

BE IT FURTHER RESOLVED that funds in the amount of \$2,518,662 be appropriated from Measure K Smart Growth funds and American Recovery and Reinvestment Act (ARRA) funds.

Dated: October 21, 2009

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held October 21, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

2009-_____



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Execute an Option Agreement to Purchase Real Property Pursuant to the Terms of the Purchase and Development Agreement with Eden Development, Inc. Regarding Senior Housing Project at 2245 Tienda Drive.

MEETING DATE: October 21, 2009

PREPARED BY: Community Development Department

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute an Option Agreement to Purchase Real Property pursuant to the terms of an attached Purchase and Development Agreement with Eden Development, Inc. regarding a Senior Housing Project at 2245 Tienda Drive.

BACKGROUND INFORMATION: On April 1, 2009, the City Council authorized the City Manager to negotiate with Eden Housing, Inc. for an agreement to develop an affordable senior housing project at the property identified as 2245 Tienda Drive.

On August 5, 2009, the City Council subsequently authorized the City Manager to execute an Exclusive Right to Negotiate (ERN) Agreement with Eden Housing. The ERN also served as the document to demonstrate the requisite site control in their application to the State of California Department of Housing and Community Development (HCD) for HOME funding.

The Option Agreement for Eden Development's purchase of the subject property at 2245 Tienda Drive for the proposed development of affordable senior housing is the next stage in the negotiation process. This Option Agreement also serves as the documentation to demonstrate requisite site control for Eden's application to the U.S. Department of Housing and Urban Development (HUD) 202 Program, which provides funding specifically for affordable senior housing development.

The Purchase and Development Agreement sets the terms and conditions for the eventual sale of the property to Eden Development, Inc., as well as the terms and conditions of the loan and subsequent use and development of the property. The Agreement requires 49% of the units to be affordable. However, the terms of the federal assistance will require the entire development to be affordable. The purchase price of \$630,000.00 is based upon the most recent fair market appraisal of the land.

APPROVED: _____
Blair King, City Manager

FISCAL IMPACT: The Agreement requires a deposit of \$6,300.00.

FUNDING AVAILABLE: N/A

Konradt Bartlam
Community Development Director

KB/jw

Attachments

OPTION AGREEMENT TO PURCHASE REAL PROPERTY

This Option Agreement to Purchase Real Property (the "Agreement") dated as of _____, 2009, is entered into by the City of Lodi, a California municipal corporation (the "Optionor"), and Eden Development, Inc., a California nonprofit public benefit corporation (the "Optionee").

A. Optionor owns the unimproved parcel consisting of approximately 3.39 acres located at 2245 Tienda Drive in the City of Lodi, more particularly described in Exhibit A, attached hereto and incorporated herein (the "Property").

B. Optionee intends to purchase the Property from Optionor in order to construct, own in fee title, and operate on the Property two (2) affordable rental housing development projects that are age restricted for seniors (the "Senior Project").

C. Optionee is not prepared at this time to purchase the Property, therefore Optionee desires to obtain, and Optionor wishes to grant to Optionee, an option to purchase the Property on the terms and conditions set forth below.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Optionee and Optionor agree as follows:

1. Grant of Option to Purchase. Optionor hereby grants to Optionee, and Optionee hereby accepts, the exclusive right to purchase the Property (the "Option") on the following terms and conditions, set forth in this Agreement.

2. Purchase Price. Optionor and Optionee acknowledge and agree that the purchase price for the Property shall be Six Hundred And Thirty Thousand Dollars (\$630,000.00), as set forth in the Purchase and Development Agreement, attached hereto as Exhibit B (the "Purchase Agreement").

3. Option Consideration. Upon execution of this Agreement, Optionee shall deposit one percent (1%) of the purchase price totaling Six Thousand, Three Hundred Dollars (\$6,300.00) as an earnest money deposit (the "Deposit") with the Optionor. The Deposit, together with interest at the Optionor's earned rate, shall be applied to the purchase price upon closing. The Deposit shall be returned to Optionee if through no fault of Optionee, Optionee fails to obtain financing set forth in Section 6, below.

4. Term of Option. The term of the Option (the "Option Term") shall commence on the date first written above and shall terminate at 6:00 P.M. on April 15, 2010. The Option Term shall be renewable by Optionee on a month-to-month basis, consistent with Section 5, below.

5. Exercise of Option; Extension of Option. At any time during the Option Term or extended Option Term, Optionee may extend or exercise the Option by delivering written notice to Optionor that it intends to extend or exercise the Option (the "Notice"). Optionee and Optionor shall close escrow in accordance with the terms and provisions of the Purchase Agreement.

6. Further Actions. Optionee and Optionor each shall take such further action and execute such other documents as may be necessary to accomplish the purposes of this Agreement. This Agreement shall terminate and have no effect if Optionee is not awarded a Reservation of a Section 202 Capital Grant by the U.S. Department of Housing and Urban Senior Project prior to _____.

7. City Approvals. Optionee shall be responsible for obtaining all approvals required by Optionor for the Senior Project in accordance with Optionor's standard application process for discretionary land use entitlements, including payment for all of Optionor's costs of processing such approvals. If the City Council of the Optionor is unable for any reason to adopt or approve the certification of environmental documents required for the Senior Project pursuant to NEPA, CEQA or to rezone the Property for the Senior Project, Optionee shall have the right to terminate this Agreement. Nothing set forth herein shall be construed as a grant of any such approvals, or as an obligation on the part of Optionor to grant such approvals.

8. Memorandum of Option Agreement. The Parties shall execute and record a Memorandum of this Agreement in the form attached as Exhibit C, hereto, giving notice of this Agreement.

The parties have executed this Agreement as of the date opposite the signatures below.

Optionee:

Eden Development, Inc.,
a California nonprofit public benefit corporation

By: _____
Linda Mandolini,
Executive Director

Date: _____, 2009

Optionor:

City of Lodi,
a California municipal corporation

By: _____
Blair King, City Manager

Date: _____, 2009

Approved as to Form:

By: _____
D. Stephen Schwabauer, City Attorney

EXHIBIT A

Legal Description of the Property

Real property in the City of LODI, County of SAN JOAQUIN, State of CALIFORNIA, described as follows:

PARCEL 1 AS SHOWN ON THE PARCEL MAP FILED NOVEMBER 4, 1996, IN BOOK 20 OF PARCEL MAPS, AT PAGE 139, SAN JOAQUIN COUNTY RECORDS.

EXHIBIT B
Purchase and Development Agreement

Exhibit C
Form of Memorandum of Option

**Recording Requested By
And When Recorded Mail To:**
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

With a Copy to and
Mail Tax Statements to:
Eden Development, Inc.
22645 Grand Street
Hayward, CA 94541-5031

FREE RECORDING REQUESTED
(Gov't Code Section 6103)

**MEMORANDUM OF OPTION AGREEMENT
TO PURCHASE REAL PROPERTY**

By this Memorandum of Option Agreement to Purchase Real Property made _____, 20__ made concurrently with the Option Agreement to Purchase Real Property ("Agreement") between the same parties covering the same property, more particularly described as the City of Lodi, a California municipal corporation and Eden Development, Inc., a California nonprofit public benefit corporation (individually "Party" and collectively, "Parties") hereby agree the real property commonly known as approximately 3.39 acres located at 2245 Tienda Drive in the City of Lodi("Property"), which Property is more particularly described in Exhibit A, attached hereto, shall be held, maintained and operated pursuant to the terms of the Agreement and the Exhibits attached, thereto.

This Memorandum may be executed in multiple originals, each of which is deemed an original, and may be signed in Counterparts.

IN WITNESS WHEREOF, the parties hereto have entered into this Memorandum as of the date set forth above.

Eden Development, Inc.,
a California nonprofit public benefit corporation

By: _____
Linda Mandolini,
Executive Director

Date: _____, 2009

City of Lodi,
a California municipal corporation

By: _____
Blair King, City Manager

Date: _____, 2009

Approved as to Form:

By: _____
D. Stephen Schwabauer, City Attorney

PURCHASE AND DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF LODI

AND

EDEN DEVELOPMENT, INC.

PURCHASE AND DEVELOPMENT AGREEMENT
(Lodi Senior Housing, 2245 Tienda Drive, Lodi, CA 95242)

This Purchase and Development Agreement (the "Agreement") is entered into as of _____, _____ (the "Effective Date"), by and between the City of Lodi, a California municipal corporation of the State of California (the "Seller") and Eden Development, Inc., a California nonprofit public benefit corporation (the "Buyer"), with reference to the following facts:

RECITALS

A. The Seller owns that unimproved 3.39-acre parcel of real property located at 2245 Tienda Drive in Lodi, more particularly described in Exhibit A, attached hereto and incorporated herein (the "Property").

B. The Seller has determined that the desired future use of the Property shall be an affordable residential development that is age restricted for seniors. Accordingly, the Seller issued a Request for Qualifications ("RFQ") inviting submissions from developers interested in developing the Property with affordable housing for seniors with restrictions compatible with the requirements of the City's available funding sources: Community Development Block Grant Program ("CDBG") and Home Investment Partnership Act ("HOME") financing.

C. Buyer is a nonprofit affordable housing developer with extensive experience in constructing, owning and operating senior rental housing developments affordable to very low to lower income households.

D. In response to the Seller's RFQ, the Buyer submitted its proposal to construct, own and operate on the Property rental housing affordable to very low and lower income senior households (the "Senior Project"). On April 1, 2009, the Seller's City Council selected Eden as the Buyer for the Property and directed staff to proceed with the preparation of an Exclusive Right to Negotiate Agreement ("ERN") for the negotiation of a Purchase Agreement or a Disposition Development and Loan Agreement, the terms and conditions of which would govern the conveyance of the Property to the Buyer for the purpose of the development of the Senior Project by the Buyer.

E. On August 5, 2009, the City Council voted to unanimously approve the ERN, attached hereto as Exhibit B.

F. The purpose of this Agreement is to set forth Buyer's rights and obligations to purchase and develop the Property in accordance with the terms of this Agreement.

G. This Agreement sets forth the terms and conditions by which the Seller shall sell and make a loan or loans to the Buyer of CDBG and HOME funds.

H. This Agreement does not authorize the granting of the Land Use Approvals or the construction of the Development, as defined in Section 1.1. Such actions may be

authorized and will become possible only upon subsequent discretionary action of the Seller separate and apart from this Agreement.

I. Notwithstanding anything to the contrary contained herein, the effectiveness of this Agreement, the Seller's obligations hereunder and the construction of the Development, defined in Section 1.1, below, are conditioned upon compliance with the California Environmental Quality Act ("CEQA"). No physical activity, not otherwise exempt from CEQA, shall commence on the Property without CEQA compliance. The City has (i) prepared a Negative Declaration in Compliance with CEQA, (ii) issued a Notice of Intent to Adopt a Negative Declaration, and (iii) established a public review period extending from _____, 2009 through _____, 2009, all as required by law. No comments were received during the public review period (Confirm). The City council adopted the Negative Declaration prior to approving and authorizing the execution of this Agreement.

NOW, THEREFORE, in consideration of the recitals hereof and the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. The following capitalized terms have the meanings set forth in this Section 1.1, wherever used in this Agreement, unless otherwise provided:

1.1.1 "Agreement" means this Purchase and Development Agreement.

1.1.2 "Approved Development Budget" shall mean the proforma development budget, in the format attached as Exhibit C, including sources and uses of funds, as the same may be revised from time to time, and which shall be approved by the Seller prior to the transfer of the Property to Buyer.

1.1.3 "Buyer" means Eden Development, Inc., a California nonprofit public benefit corporation or its approved successors and assigns.

1.1.4 "CDBG" means the Community Development Block Grant program referred to in Recital G.

1.1.5 "CEQA" means the California Environmental Quality Act and its implementing guidelines and regulations.

1.1.6 "County" means the County of San Joaquin, a political subdivision of the State of California.

1.1.7 "Deed of Trust" or "Seller Deed of Trust" means the deed of trust that will encumber the Development to secure repayment of the Loan. The form of the Deed of Trust shall be in substantially the form attached as Exhibit D.

1.1.8 "Default" has the meaning set forth in Section 11.1.

1.1.9 "Development" means the Property and the two (2) senior rental housing development projects and other improvements constructed on the Property.

1.1.10 "Eden Development" means Eden Development, Inc., a California nonprofit public benefit corporation.

1.1.11 "Effective Date" means the date first set forth above.

1.1.12 "Final Plans" mean the final plans, drawings and specifications for the Development which are subject to the approval of the Seller. A copy of the Final Plans shall be maintained on file with the Seller.

1.1.13 "Financing Plan" means the proposal for financing costs of development of the Development as proposed by Buyer and approved by the Seller as of the date of this Agreement. The Financing Plan may be revised from time to time with the approval of Seller. The Financing Plan, in the format attached as Exhibit E, shall be approved by Buyer and Seller prior to the transfer of the Property to Buyer.

1.1.14 "Land Use Approvals" means the permits and approvals necessary for the construction of the Development on the Property, including, but not limited to, necessary general plan and zoning code amendments, overall design and architectural review and approval by the Seller and any other applicable government entity.

1.1.15 "Loan Documents" or "Seller Loan Documents" means this Agreement, the Promissory Note, the Deed of Trust, the Regulatory Agreement, and Assignment of Agreements.

1.1.16 "Loan" means the Seller's loan to the Buyer made pursuant to this Agreement in the initial principal amount of \$1,100,000, which may be increased in accordance with Article 3, below.

1.1.17 "Promissory Note" means the Promissory Note dated as of the date of this Agreement evidencing the Buyer's obligation to repay the Loan, which Promissory Note shall be amended if and when the Loan is increased pursuant to Article 3, below.

1.1.18 "Property" means that certain real property described in Exhibit A.

1.1.19 "Regulatory Agreement" or "Seller Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants between the Seller and the Buyer to be recorded against the Property upon acquisition by the Buyer, which shall regulate the use and occupancy of the Development for not less than Fifty-Five (55) years.

1.1.20 "Seller" means the City of Lodi, a California municipal corporation.

1.1.21 "Term" means the term of the Regulatory Agreement, which shall commence on the Effective Date and shall terminate fifty-five (55) years from the date the final certificate of occupancy is issued following the initial construction of the Development, unless sooner terminated, pursuant to the terms of this Agreement.

1.1.22 "Transfer" has the meaning set forth in Section 10.3, below.

Section 1.2 Exhibits. The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A	Legal Description of the Property
Exhibit B	Exclusive Negotiating Rights Agreement
Exhibit C	Approved Development Budget
Exhibit D	Form of Deed of Trust
Exhibit E	Financing Plan
Exhibit F	Form of Promissory Note
Exhibit G	Predevelopment Budget
Exhibit H	Assignment of Agreements
Exhibit I	Form of Regulatory Agreement
Exhibit J	Seller Insurance Requirements
Exhibit K	Schedule of Performance
Exhibit L	Scope of Development
Exhibit M	Preliminary Site Plan
Exhibit N	HUD-Required Provisions Rider
Exhibit O	Memorandum of Purchase and Development Agreement

ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF THE BUYER

Section 2.1 Representations and Warranties. The Buyer hereby represents and warrants to the Seller as follows:

2.1.1 Organization. The Buyer is a duly organized, validly existing nonprofit public benefit corporation, is in good standing under the laws of the State of California, and has the power and authority to own its property and carry on its business as now being conducted.

2.1.2 Authority of the Buyer. The Buyer has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

2.1.3 Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to

be executed and delivered, pursuant to this Agreement have been or will be executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of the Buyer, and all actions required under the Buyer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

2.1.4 Valid Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Buyer enforceable against it in accordance with their respective terms.

2.1.5 No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency binding on the Buyer, or any provision of the organizational documents of the Buyer, or will conflict with or constitute a breach of or a default under any agreement to which the Buyer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Buyer, other than liens established pursuant hereto.

2.1.6 Compliance With Laws; Consents and Approvals. The construction of the Development will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions as of time of building permit issuance, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

2.1.7 Pending Proceedings. The Buyer is unaware of a known default under any law or regulation or under any order of any court, board, commission or agency, and there are no known claims, actions, suits or proceedings pending or, to the knowledge of the Buyer, threatened against or affecting the Buyer, at law or in equity, before or by any court, board, commission or agency which might, if determined adversely to the Buyer, materially affect the Buyer's ability to perform its obligations contemplated by this Agreement.

2.1.8 Financial Statements. The financial statements of the Buyer and other financial data and information furnished by the Buyer to the Seller fairly present the information contained therein. As of the date of this Agreement, there has not been any adverse, material change in the financial condition of the Buyer from that shown by such financial statements and other data and information.

2.1.9 Taxes. The Buyer and its subsidiaries have filed all federal and other material tax returns and reports required to be filed, and have paid all federal and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their income or their properties otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with generally accepted accounting principles. Buyer has no knowledge of a proposed tax assessment against the Buyer or any of its subsidiaries that could, if made, be reasonably expected to have a material adverse effect upon the assets, liabilities (actual or contingent), operations, condition (financial or otherwise) or prospects of the Buyer and its subsidiaries, taken as a whole, which would be expected to result in a material impairment of the ability of the Buyer to perform under this Agreement.

ARTICLE 3 LOAN PROVISIONS

Section 3.1 Loan.

3.1.1 City-Controlled CDBG and HOME Funds. Subject to satisfaction of the conditions set forth in Sections 3.6, 3.7, and 3.8 as applicable, the Seller shall use a portion of the Seller's CDBG and HOME funds to make and fund a loan to the Buyer in the original principal amount of One Million One Hundred Thousand Dollars (\$1,100,000) (the "Loan") for the purposes set forth in Section 3.3 of this Agreement. The Loan shall be a residual receipts, limited recourse loan evidenced by, and subject to the terms and conditions contained in, a Promissory Note in the form attached hereto as Exhibit F.

3.1.2 State HOME Funds. The Seller and Buyer acknowledge that the Seller intends to apply to the State of California for a loan of HOME Funds in an amount not to exceed Four Million Dollars (\$4,000,000). If the Seller is awarded HOME Funds for the Development, this Agreement will be amended to increase the amount of the original Loan amount. The actual increased Loan amount, if increased, shall be in the amount subsequently and specifically approved by the Seller, and shall be evidenced by an amended and restated Promissory Note. Nothing in this Section shall commit the Seller to approve an increased Loan to the Buyer, over and above the amount set forth in Section 3.1.1, above.

Section 3.2 Interest.

3.2.1 Rate. Subject to the provisions of Section 3.2.2 below, the outstanding principal balance of the Loan shall bear Zero Percent (0%) interest from the date of the Promissory Note evidencing the Loan until the third (3rd) anniversary of the date of the Promissory Note; thereafter, the outstanding balance of the Loan shall bear simple interest at the rate of three percent (3%) per annum until the Loan is paid in full. Notwithstanding the preceding sentence, the Seller shall consider (i) reducing the 3% interest rate or (ii) changing the interest to a contingent interest (i.e., interest shall not

accrue, if and to the extent the interest is not paid current annually), if the Buyer shows that a lower, contingent or other type of interest is necessary to make the Development financially feasible.

3.2.2 Default Rate. In the event of a Default, interest on the Loan shall begin to accrue, as of the date of Default and continue until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law.

Section 3.3 Use of Funds.

3.3.1 Predevelopment Component. The Buyer shall use the Predevelopment Component only for predevelopment activities for the Development, generally set forth in Exhibit G to this Agreement, unless the Seller's City Manager or his/her designee approves in writing a different use of the funds.

3.3.2 Acquisition Component. The Buyer shall use the Acquisition Component for acquisition costs of the Property, which shall include all title, escrow and other closing costs and fees that are necessary for the Buyer to purchase the Property from the Seller, and such other costs related to the Development that the Seller's City Manager or his designee may approve in writing.

3.3.3 Construction Component. The Buyer shall use the Construction Component for construction of the Improvements, construction-related costs like construction management, construction administration, testing and inspection fees, and closing costs related to the construction loan closing, unless the Seller's City Manager or his/her designee approves in writing a different use of the funds. The Parties acknowledge that all fees and costs required for the issuance of building permits may be paid from the Construction Component, notwithstanding the fact that the payment of the fees and costs for the issuance of building permits may be required prior to the Buyer's construction loan closing.

The Buyer shall not use the Loan for any other purpose without the prior written consent of the Seller.

Section 3.4 Security.

3.4.1 Assignment of Agreements. Buyer assigns to the Seller its rights and obligations with respect to certain agreements, plans and specifications, and approvals, pursuant to the terms of the Assignment of Agreements, Plans and Specifications and Approvals ("Assignment of Agreements") attached hereto as Exhibit H. The Buyer shall execute the Assignment of Agreements concurrently with this Agreement. The Assignment of Agreements shall become effective upon an event of Default of the Buyer as defined in Section 11.1, below that remains uncured after expiration of the applicable cure period. The Seller shall not have any obligation under any contracts or agreements assigned pursuant to the Assignment of Plans until it expressly agrees in writing to be bound by such contracts or agreements. Upon an event of Default that has

not been cured pursuant to this Agreement, the Seller may use any of the foregoing assigned documents for any purpose for which the Buyer could have used them for development of the Development subject to the limitations, if any, imposed by the third-party preparer of the assigned documents, or in the case of the assigned documents prepared by the Architect, subject to the terms of the Architect's consent executed by the Architect. The Buyer shall cooperate with the Seller to implement the Assignment of Plans and immediately deposit with the Seller for the Seller's use all the Documents.

3.4.2 Deed of Trust. Concurrently with Buyer's acquisition of title to the Property, the Buyer shall execute and record against the Property the Deed of Trust (in substantially the form attached hereto as Exhibit D) and the Regulatory Agreement (in substantially the form attached hereto as Exhibit I). In accordance with Section 3.5 below the Seller agrees to subordinate the Deed of Trust and the Regulatory Agreement to the lien of the deeds of trust securing the construction loan or loans, permanent loan(s) and refinancing loan(s) approved by the Seller.

Section 3.5 Subordination. The Deed of Trust and Regulatory Agreement shall be subordinated to financing approved by the Seller (in each case, a "Senior Lien"), but only if all of the following conditions are satisfied:

3.5.1 All of the proceeds of the proposed Senior Lien, less any transaction costs, shall be used to provide predevelopment, acquisition, construction and/or permanent financing or refinancing for the Development.

3.5.2 The proposed lender (each, a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation, a recognized affordable housing lending group such as the Housing Partnership Fund, or a public entity that is not affiliated with Buyer or any of Buyer's affiliates, other than as a depositor or a lender.

3.5.3 Buyer shall demonstrate to the Seller's reasonable satisfaction that subordination of the Deed of Trust and/or Regulatory Agreement is necessary to secure adequate acquisition, construction, permanent financing and/or refinancing to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by the Loan Documents. To satisfy this requirement, Buyer shall provide to the Seller, in addition to any other information reasonably required by the Seller, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate predevelopment, acquisition, construction, permanent financing or refinancing to ensure the viability of the Development, and adequate financing for the Development would not be available on similar terms without the proposed subordination.

3.5.4 The subordination agreement(s) shall be in a form reasonably acceptable to the Seller, and shall be structured to minimize the risk that the Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the Senior Lender or other holder of the Senior Lien. To satisfy this requirement, the subordination agreement shall provide the Seller with rights to cure any defaults by Buyer, including:

(i) providing the Seller with copies of any notices of default at the same time and in the same manner as provided to Buyer; and (ii) providing the Seller with a cure period of at least sixty (60) days to cure any default.

3.5.5 The subordination(s) described in this Section may be effective only during the original term of the Senior Loan and/or any extension of its term approved in writing by the Seller, provided, however, that nothing in this Subsection (e) shall prohibit the Seller from approving the refinancing of a Senior Loan.

Upon a determination by the Seller's City Manager that the conditions in this Section have been satisfied, the Seller's City Manager or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

Section 3.6 Predevelopment Disbursement Requirements. The Seller shall disburse the Predevelopment Component to Buyer in one or more monthly disbursements when the following conditions to disbursement have been satisfied:

3.6.1 There exists no Default or any act, failure, omission or condition that would constitute an event of Default under this Agreement, the Promissory Note or Assignment of Agreements; and

3.6.2 The Buyer has delivered to the Seller an executed original of this Agreement, the Promissory Note, and Assignment of Agreements; and

3.6.3 The Buyer has delivered to the Seller of each of the following: (i) copy of Buyer's articles of incorporation and bylaws; (ii) certificate of good standing from the Secretary of State; and (iii) a certified copy of Buyer's resolution authorizing this transaction and the person(s) executing this Agreement and the other Seller Loan Documents; and

3.6.4 The Buyer has delivered to the Seller evidence of insurance coverage in accordance with the requirements set forth in Exhibit J; and

3.6.5 The Buyer has delivered to the Seller Buyer's written requisition specifying the amount and use of the requested funds, accompanied by copies of third-party and Buyer invoices, and such other documentation as the Seller shall reasonably require; and

3.6.6 Following the initial disbursement of the Predevelopment Component, the Seller shall have the right to withhold subsequent disbursements of the Predevelopment Component if it reasonably denies approval, of Buyer's development concept, preliminary development proposal and preliminary financing plan.

Upon satisfaction of these conditions, the Seller shall from time to time disburse the Predevelopment Component of the Loan (or so much thereof as is required), for

items consistent with those shown in Exhibit G. Notwithstanding any other provisions of this Agreement, the Seller shall have no further obligation to disburse any portion of the Loan to the Buyer following: (1) termination of this Agreement; or (ii) notification by the Seller to the Buyer of a Default under the terms of this Agreement that has not been timely cured.

Section 3.7 Acquisition Disbursement Requirements. The Seller shall disburse the Acquisition Component to Buyer when the following conditions to disbursement have been satisfied. The parties contemplate that the Acquisition Component shall be made in one disbursement through escrow:

3.7.1 The Seller has completed its environmental assessment of the Development in accordance with the provisions of CEQA and NEPA, if applicable, and has approved a negative declaration or a mitigated negative declaration in accordance with the provisions of CEQA; and

3.7.2 Buyer's prior satisfaction of the conditions set forth in Section 3.6, above; and

3.7.3 The recording of the Deed of Trust and Regulatory Agreement; and

3.7.4 The issuance by a title company satisfactory to the Seller of an ALTA loan policy of title insurance ("Seller Title Policy") in the amount of the Loan, insuring the Seller that the lien of the Seller Deed of Trust is subject only to such liens, conditions, encumbrances, restrictions, easements and exceptions as the Seller may approve in writing and containing such endorsements as the Seller may reasonably require, with the cost of the Seller Title Policy to be paid by the Buyer; and

3.7.5 The Seller's receipt of a written requisition for disbursement of funds from Buyer specifying the amount and use of the requested funds, which may be satisfied by the title company's estimated settlement statement showing the acquisition price, closing costs and all other amounts due in escrow for Buyer's acquisition of the Property.

Section 3.8 Construction Component. The Seller shall not be obligated to make any disbursements of the Construction Components of the Loan unless the following conditions precedent are satisfied prior to each such disbursement of the Loan, except as set forth in paragraph following item (e) below:

3.8.1 The Buyer's prior satisfaction of the conditions set forth in Section 3.6 and 3.7 above; and

3.8.2 The Buyer has delivered to Seller an updated Approved Development Budget showing that the undisbursed proceeds of the Loan, together with other funds or firm commitments for funds that the Buyer has obtained in connection with the Development, are not less than the amount necessary to pay for construction of the

Development; and

3.8.3 The Buyer has delivered to the Seller copies of the following Development documents: Final plans and specifications for the Development; the general contractor's construction contract that the Buyer has entered for construction of the Development; labor and material (payment) bonds and performance bonds or alternative form of assurance of completion as approved by the Seller, which approval shall not be unreasonably withheld, delayed or conditioned; and

3.8.4 The Buyer's other construction loans are ready to close or have issued commitments to close within thirty (30) days; and

3.8.5 The Seller has received a written draw request from the Buyer, including certification that the condition set forth in Subsection 3.6(a) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Development Budget, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. When a disbursement is requested to pay the general contractor in connection with improvements on the Property, the written request must be accompanied by (i) certification by the Buyer's architect reasonably acceptable to the Seller that the work for which disbursement is requested has been completed; (ii) a copy of the inspection report prepared by the construction lender's inspector, and (iii) lien releases and/or mechanics lien title insurance endorsements reasonably acceptable to the Seller. The Buyer shall deliver to Buyer's other construction lenders copies of all disbursement requests following approval and execution by the Seller.

Notwithstanding the above conditions precedent to the disbursement of the Construction Component, the Seller shall disburse the Construction Component for the following costs and fees upon Buyer meeting the conditions set forth as items (a), (b) and the first sentence of (e) of this Subsection 3.8: Building permit fees, other fees for approvals and other items required to be paid prior to the construction loan closing.

The Seller acknowledges that Buyer's senior construction lenders shall require that the Loan shall be fully disbursed prior to the senior construction lender's disbursement of the senior construction loan.

Section 3.9 No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the Seller shall have no obligation to disburse or authorize the disbursement of any portion of the Loan proceeds following the failure of any of the Buyer's representations and warranties made in this Agreement or in connection with the Loan to be true and correct in all material respects or the occurrence of an Event of Default under this Agreement or any of the Loan Documents, which remains uncured beyond any applicable cure period.

Section 3.10 Termination of Agreement for Infeasibility and Other Specified Reasons. Provided that the Buyer is not in Default under this Agreement, this Agreement may be

terminated by the Buyer under the following circumstances set forth in a-c, below, by giving not less than Thirty (30) days prior written notice of such termination to the Seller.

3.10.1 General Plan is not amended with the new Land Use designation allowing the type development contemplated by this Agreement for the Property; or

3.10.2 The Property is unsuitable for the intended use as set forth in Section 1.1.9; or

3.10.3 The determination by the Buyer in its commercially reasonable discretion that the development costs associated with the construction of the Development make the Development financially infeasible.

The Buyer shall meet with the Seller to discuss Buyer's determination that the Development is financially infeasible and to discuss possible alternate plans acceptable to the Seller.

Following termination under this Section 3.10, neither party shall have any rights or obligations under this Agreement, except that the provisions of Sections 4.7, 4.8.1, 4.9, 6.3.6, 6.3.10, 8.5.3 and 12.4 of this Agreement shall survive such termination and remain in full force and effect. Notwithstanding this Section, Buyer shall be liable for the amount of the loan more particularly set forth in the Promissory Note attached as Exhibit E, except as forgiven in Paragraph 3.11, below.

Section 3.11 Forgiveness of a Portion of the Predevelopment Component in Certain Circumstances The Seller shall forgive up to seventy-five thousand dollars (\$75,000) of the Predevelopment Component of the Loan upon termination of this Agreement pursuant to Section 3.10, above provided that the Buyer takes all actions necessary to implement the Assignment of Agreements and deposits the Documents with the Seller.

ARTICLE 4 DISPOSITION OF THE PROPERTY

The Seller shall convey to Buyer, and Buyer shall accept from the Seller, fee interest in the Property, upon the satisfaction or waiver of all conditions precedent set forth in this Article.

Section 4.1 Purchase Price. The purchase price for the Property shall be Six Hundred Fifty Thousand Dollars (\$650,000) ("Purchase Price") which shall be paid in cash to Seller at the close of escrow.

Section 4.2 Escrow and Closing. This transaction shall be completed through an escrow numbered 54605-918488-09 established with North American Title Company located at 21060 Redwood Road, Suite 110, Castro Valley, CA 94546, Attention: Suzanne Smith, Branch Manager. The Buyer shall have the right to select the company issuing the title policy, notwithstanding North American Title Company acting as the

escrow holder. Each party shall promptly deposit all funds and documents as required by the escrow holder to complete this transaction.

Section 4.3 Costs of Closing and Escrow. The Buyer shall pay all title insurance premiums for policies the Buyer elects to purchase in connection with the lease of the Property and the financing of the Project, and all conveyance and recording fees, transfer taxes, escrow fees and closing costs incurred in connection with the transfer of the Property and the financing of the Project. Property taxes and assessments shall be prorated as of the date of Closing ("Closing Date").

4.3.1 Escrow Instructions; Deposit of Funds; Recordation of Documents. The Seller and Buyer shall provide Escrow Agent with copy of this Agreement, which together with such supplemental instructions as Seller or Buyer may provide and which are consistent with the intent of this Agreement or which are otherwise mutually agreed upon by the Seller and Buyer, shall serve as escrow instructions for the conveyance of Property.

4.3.2 Closing Date. Within the time period set forth in the Schedule of Performance, the Buyer and the Seller shall deposit into escrow executed copies documents necessary to close escrow. On the Closing Date and provided that all conditions precedent to the lease of the Property have been satisfied or waived, the Escrow Agent shall cause the Grant Deed, the Regulatory Agreement and the Deed of Trust to be recorded in the Official Records of San Joaquin County.

4.3.3 Closing Documents.

4.3.3.1 Seller Documents. Seller shall execute in Escrow, or deliver to Escrow Holder for delivery to Buyer at the Close of Escrow, each of the following:

- (a) Grant Deed executed by Seller; and
- (b) Regulatory Agreement as provided in this Agreement; and
- (c) Memorandum of this Agreement.

4.3.3.2 Buyer Documents. Buyer shall execute in escrow, or deliver to Escrow Holder for delivery to Seller at the Close of Escrow, each of the following:

- (a) Promissory Note and Deed of Trust; and
- (b) Regulatory Agreement as provided in this Agreement; and
- (c) Memorandum of this Agreement; and
- (d) The amount the title and escrow costs and expenses and prorations required by this Agreement; and

(e) Any other document required by this Agreement which is to be recorded upon the acquisition of the Property by Buyer.

Section 4.4 Seller Pre-Disposition Requirements. The provisions of this Section 4.4, below, set forth the conditions precedent to Seller's obligation to convey the Property to Buyer.

4.4.1 No Default. There shall exist no conditions, event or act which would constitute a material breach or default under this Agreement, the Promissory Note or Assignment of Agreements, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

4.4.2 Preliminary Financing Plan. The Buyer shall submit to the Seller for its review and approval its preliminary plan for the construction and permanent financing of the Project (the "Preliminary Financing Plan"). The Preliminary Financing Plan shall indicate all sources of funds necessary to pay, when due, the estimated costs of Project development, including, without limitation, hard and soft construction costs, and shall include development and operating proformas which set out the Buyer's preliminary plan for financing the cost of development, construction and operation of the Project. The parties acknowledge that the Preliminary Financing Plan is subject to change from time to time based on the funding sources, Project costs and other factors. Each such revision to the Preliminary Financing Plan shall be subject to Seller approval.

4.4.3 Execution and Recordation of Documents. Buyer shall have executed, acknowledged and delivered into Escrow the Promissory Note and Deed of Trust and Regulatory Agreement.

4.4.4 CEQA; NEPA. The Seller has completed its environmental assessment of the Development in accordance with the provisions of the California Environmental Quality Act ("CEQA") and has approved a negative declaration in accordance with the provisions of CEQA. If HOME Funds are to be loaned to the Buyer, the Seller shall have fulfilled the requirements of NEPA.

Section 4.5 Buyer's Pre-Disposition Requirements. This Section 4.5 sets forth the conditions precedent to Buyer's obligation to purchase the Property from the Seller.

4.5.1 No Default. Seller shall not be in default under the terms of this Agreement, and all representations and warranties of Seller contained herein shall be true and correct in all material respects.

4.5.2 Title Policy. The Title Company (defined above in Section 4.2) is prepared to issue to Buyer, at Buyer's cost, an ALTA policy of title insurance, insuring Buyer's leasehold interest in the Property, subject only to (i) any lien for taxes accrued subsequent to the conveyance of the Property; (ii) assessments, conditions, covenants, restrictions or easements of record; (iii) utility easements to service the Property which

do not interfere with its existing or intended use; and (iv) such other title exceptions that Buyer shall have approved in its reasonable discretion.

4.5.3 Changed Conditions. There have been no changed conditions with respect to the permitted uses or condition of the Property which materially and adversely affect intended use of the Property or substantially increases the Buyer's Project costs.

Section 4.6 Condition of the Property.

4.6.1 Inspections. The Buyer acknowledges and agrees that: (i) the Buyer shall inspect the Property and the improvements located thereon, and shall examine the legal, environmental, zoning, land use, seismic, title, survey and physical characteristics and condition thereof; (ii) by acquiring title to the Property, the Buyer shall be deemed to have approved of all such characteristics and conditions; (iii) the Property and the improvements thereon are to be conveyed to, and accepted by the Buyer in their present condition "AS IS," "WHERE IS" AND WITH ALL FAULTS with no warranty expressed or implied regarding the condition of the soil, its geology, or the presence of known or unknown faults or Hazardous Materials, and no patent or latent defect or deficiency in the condition of the Property or the improvements thereon whether or not known or discovered, shall affect the rights of either the Seller or Buyer hereunder. The Buyer shall rely solely upon its own independent investigation concerning the physical condition of the Property and its compliance with applicable statutes, ordinances, rules and regulations. The Seller shall have no responsibility for site preparation, demolition, or any other removal or replacement of any improvements on the Property. Within Thirty (30) days of the Effective Date of this Agreement, the Seller shall provide copies of any documents in their possession, reports, studies, investigations (environmental or otherwise) and other documents in the possession and control of the Seller, including all contracts and other documentation in connection with the Seller's site clearance and demolition work, if any, on the Property during the Seller's ownership of the Property. Nothing in this Agreement, including this Section 4.6.1, shall limit, waive or relieve the Seller from any legal duty which the Seller may have to disclose any known defect.

4.6.2 Suitable for Intended Use. If following conveyance of the Property, the condition of the Property is not in all respects entirely suitable for the uses to which the Property will be put pursuant to this Agreement, Buyer may terminate this Agreement without fault pursuant to Section 3.10 provided that the Buyer gives the Seller thirty (30) days prior written notice of the termination. If the Buyer elects to proceed under this Agreement, it shall be the sole responsibility and obligation of Buyer to correct any soil, subsurface or structural conditions, demolish any improvements, and otherwise put the Property in a condition suitable for the Project to be constructed pursuant to this Agreement. The Buyer hereby waives any right to seek reimbursement from the Seller for costs Buyer incurs in connection with the correction of any physical condition on the Property, except to the extent such costs are related to Hazardous Materials known to Seller but not disclosed to Buyer.

4.6.3 Other Obligations.

4.6.3.1 It shall be the sole responsibility of the Buyer, at the Buyer's sole expense, to investigate and determine the soil conditions of the Property and the suitability of such soil conditions for the construction of the Project by the Buyer. If the soil conditions are not in all respects entirely suitable for the use or uses to which the Property will be put, then it is the sole responsibility and obligation of the Buyer to take such action as may be necessary to place the soil conditions of the Property in a condition suitable for development of the Property.

4.6.3.2 The Seller agrees that it shall not charge Buyer a fee to process the General Plan amendment and land use designation change for the Property.

4.6.3.3 The Seller shall use its due diligence and best efforts to prohibit the dumping of soil and/or other debris on the Property by any adjacent property owners or others, and if such dumping occurs have the debris removed and, in the case of soil, tested for contamination prior to removal from the Property.

4.6.3.4 Seller agrees to cooperate with and assist Buyer in a lot split of the approximately 3.39 acre Property, which shall be completed prior to the Closing Date. Buyer shall pay for all costs and expenses for the lot split. Seller's sole responsibility in connection with the lot split shall be to execute documents as the owner of the Property. The purpose of the lot split is to divide the Property into a southern parcel consisting of approximately 1.69 acres and a northern parcel consisting of approximately 1.7 acres. Buyer will first develop the southern parcel as an affordable rental housing project for very low to low income seniors. Buyer also intends to develop the northern parcel as an affordable rental housing project for very low to low income seniors.

Section 4.7 Access. Prior to conveyance of Property by the Seller, representatives of the Buyer shall have the right of access to the Property at all reasonable times, upon not less than two (2) business days written notice to the Seller, for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. While any of the activities described in this Section are taking place, the Buyer shall maintain the insurance coverage's described in Section 8.10 and indemnify and hold the Seller harmless from any injury or damages arising out of any activity pursuant to this paragraph. The Buyer shall have access to all data and information on the Property available to the Seller, but without warranty or representation by the Seller as to the completeness, correctness or validity of such data and information, except as otherwise set forth in this Agreement.

Section 4.8 Indemnity, Hold Harmless and Waiver.

4.8.1 Buyer Indemnity. Notwithstanding Section 4.8.2, below, the Buyer agrees, from and after the date of conveyance of the Property under this Agreement, to defend, indemnify, protect and hold harmless the Seller and their officers, beneficiaries, employees, agents, attorneys, representatives, legal successors and assigns (“Indemnitees”) from, regarding and against any and all liabilities, obligations, orders, decrees, judgments, liens, demands, actions, Environmental Response Actions, claims, losses, damages, fines, penalties, expenses, Environmental Response Costs or costs of any kind or nature whatsoever, together with fees (including, without limitation, reasonable attorneys’ fees and experts’ and consultants’ fees), whenever arising, unless caused in whole or in part by the negligence of any of the Indemnitees, resulting from or in connection with the construction of the Development by the Buyer, the general contractor or any subcontractor or supplier of or to the Development, the Buyer’s occupancy or use of the Property or the Buyer’s performance or non-performance under or with respect to this Agreement or the actual or claimed generation, storage, handling, transportation, use, presence, placement, migration and/or release of Hazardous Materials, at, on, in, beneath or from the Property (collectively referred to as “Contamination”). The Buyer’s defense, indemnification, protection and hold harmless obligations herein shall include, without limitation, the duty to respond to any governmental inquiry, investigation, claim or demand regarding the Contamination, at the Buyer’s sole cost. If the Buyer discovers Contamination or other materials subject to legal requirements or corrective action, the Buyer shall immediately notify the Seller of the same. Buyer’s indemnity obligations under this paragraph shall not apply to (i) any Contamination caused by the Seller during the Seller’s ownership of the Property, (ii) the Seller’s or Seller’s failure to disclose any known condition which the Seller is required to give to any transferee of real property, (iii) any placement of soil or other debris on the Property by adjacent property owners or others during the Seller’s ownership of the Property, and (iv) liability of the Seller, not as the owner of the Property but as the owner of any adjacent property for Contamination originating or migrating from adjacent property owned by the Seller.

4.8.2 CEQA Lawsuit. In the event a CEQA lawsuit is brought which relates to this Agreement and/or the Development, the Parties shall meet and confer about whether to proceed with the Development.

4.8.3 Waiver. The Buyer hereby waives all rights, causes of action and claims the Buyer has or may have in the future against the Indemnitees arising out of or in connection with any Hazardous Materials, at, on, in, beneath or from the Property, unless the presence of such Hazardous Materials at, on, in, beneath or from the Property is caused in whole or in part by any of the Indemnitees, including (i) any Contamination caused by the Seller during the Seller’s ownership of the Property, (ii) the Seller’s or Seller’s failure to disclose any known condition which the Seller is required to give to any transferee of real property, (iii) any placement of soil or other debris on the Property by adjacent property owners or others during the Seller’s ownership of the Property, and (iv) liability of the Seller, not as the owner of the Property but as the owner of any adjacent property for Contamination originating or migrating from adjacent property owned by the Seller.

4.8.4 Materiality. The Buyer acknowledges and agrees that the defense, indemnification, protection and hold harmless obligations of the Buyer for the benefit of the Seller set forth in this Agreement are a material element of the consideration to the Seller for the performance of its obligations under this Agreement, and that the Seller would not have entered into this Agreement unless the Buyer's obligations were as provided for herein. The Buyer further acknowledges and agrees that the paragraph which extends representations, warranties, indemnifications, and/or covenants of the Buyer to the benefit of the Seller shall not be satisfied, waived or otherwise extinguished by Seller's issuance of any Certification of Completion under Section 6.3.9 of this Agreement.

Section 4.9 Commissions. Each party represents and warrants to the other party that no broker or finder or other real estate agent is entitled to any commission, finder's fee or other compensation resulting from any action on its part. The Buyer and Seller each agree to indemnify the other and defend and hold harmless the other party from and against any loss, cost, or expense, including attorneys fees, incurred by such party, and against any claims, causes of action or the like brought by any broker, finder or similar agent for a commission or fee on account of this Agreement.

ARTICLE 5 PREDEVELOPMENT ACTIVITIES

This Article 5 sets forth various predevelopment obligations and activities that the Buyer shall seek diligently and in good faith to perform and achieve prior to commencement of construction of the Development. The tasks described below shall be completed no later than the dates to be set forth in a Schedule of Performance in the format attached to this Agreement as Exhibit K, once approved by Buyer and Seller, subject to Force Majeure. The Schedule of Performance may be modified by the parties from time to time by attaching an updated Schedule of Performance that is dated and executed by the Buyer and by the City Manager on behalf of the Seller without formal amendment of this Agreement.

Section 5.1 CEQA Documentation. Within the time frame set forth in the Schedule, the Buyer shall prepare and submit to the Seller such plans, specifications, drawings, and other information, as specified by the Seller, are reasonably necessary for the Seller to perform the environmental review process required by CEQA. The Buyer shall provide the Seller any updated documentation of the Project in order to facilitate the Seller's performance of the CEQA review process.

Section 5.2 CEQA Review. Following execution of this Agreement and within the time frames set forth in the Schedule of Performance, the Seller, shall diligently complete any required environmental review of the Project in accordance with CEQA, subject to any exemption for which the Project may qualify. The Buyer acknowledges that the environmental review process under CEQA will involve preparation and consideration of additional information as well as consideration of input from interested organizations

and individuals; that approval or disapproval of the Project following completion of the environmental review process is within the sole, complete, unfettered and absolute discretion of the Seller without limitation by or consideration of the terms of this Agreement; and that the Seller makes no representation regarding the ability or willingness of the Seller to approve development of the Project at the conclusion of the environmental review process required by CEQA, or regarding the imposition of any mitigation measures as conditions of any approval that may be imposed on the Project. The parties recognize that if as a result of the environmental review process the Project is not approved for development, both the Seller and the Buyer each have an independent right to terminate this Agreement. In the event the either party elects to terminate this Agreement pursuant to this paragraph, neither party shall have any further obligations under this agreement, except that the provisions of Sections 4.7, 4.8.1, 4.9, 6.3.6, 6.3.10, 8.5.3 and 12.4 of this Agreement shall survive such termination and remain in full force and effect. In addition, the Buyer acknowledges that any required approvals by any other local, state or federal agency may require additional environmental review, and that any approval by the Seller shall not bind any other local, state or federal agency to approve the Project or to impose mitigation measures which are consistent with the terms of this Agreement or with the terms of any mitigation measures required by the Seller pursuant to the Seller's environmental review. The Seller agrees to cooperate with the Buyer to obtain all necessary approvals by providing all information and studies in the possession and control of the Seller.

Nothing in this Agreement or otherwise shall bind or otherwise affect the Seller's discretion in:

5.2.1 The preparation of any CEQA review document in accordance with CEQA and normal public agency land use entitlement procedures;

5.2.2 Approving or rejecting such CEQA review in accordance with applicable CEQA standards;

5.2.3 Making or declining to make any findings necessary under CEQA to grant the Land Use Approvals and the proposed development of the Project contemplated by this Agreement and the Buyer's application for the Land Use Approvals; or

5.2.4 Imposing such mitigation measure(s) as condition(s) of the Land Approvals as the Seller deems appropriate under CEQA as a result of its consideration of the CEQA review documents.

Section 5.3 Preliminary Site Plan. The Buyer shall develop the Property and construct the Project in accordance with the Scope of Development, which shall be attached hereto as Exhibit L, when approved by Seller. The Parties agree that the Property and Improvements shall be developed as generally established in the Preliminary Site Plan as set forth on Exhibit M attached or to be attached hereto as the same may be updated from time to time with the approval of the Seller. Any material changes to the Preliminary Site Plan shall be subject to the approval of the Seller and shall be within the limitations of the

Scope of Development and consistent with the overall plan for the development of the Property as provided in this Agreement. Neither party shall unreasonably withhold or delay consent to any material changes in the Preliminary Site Plan.

Section 5.4 Related Documentation. In addition to the Site Plan, the Buyer shall prepare all construction plans, drawings and related documents required to be submitted for approval by the Seller (or other governing body) for the construction of the Project. Seller's staff and the Buyer shall hold regular monthly progress meetings to coordinate the preparation of, submission to and review of all such documents, drawings and plans. The Seller and the Buyer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents receives prompt and speedy consideration.

Section 5.5 Land Use Approvals. The Buyer shall exercise diligent good faith efforts to obtain all Additional Land Use Approvals necessary for the Development within the time set forth in the Schedule of Performance. The Buyer acknowledges that execution of this Agreement by the Seller does not constitute approval by the Seller of any required permits, applications, allocations, or maps, and in no way limits the discretion of the Seller in the permit, allocation and approval process.

Section 5.6 Funding Sources.

5.6.1 Tax-Exempt Bond Applications. Within the time set forth in the Schedule of Performance, the Buyer shall submit a timely and complete application to CDLAC for a preliminary allocation of tax-exempt bonds; provided, however, Buyer shall not be required to submit an application for which an allocation would be received anytime after September of the application year.

5.6.2 Tax Credit Applications. Within the time set forth in the Schedule of Performance (subject to the limitations set forth in Section 5.6.1, above regarding submission for a bond allocation from CDLAC) , the Buyer shall submit a timely and complete application to TCAC for a preliminary reservation of 4% tax credits.

5.6.3 HUD 202 Capital Advance. Within the time set forth in the Schedule of Performance, the Buyer shall submit a timely and complete application for a HUD 202 Capital Advance Reservation to finance the Development.

5.6.4 Other Funding Sources. The Buyer shall submit timely and complete applications for the Other Funding Sources within the time set forth in the Schedule of Performance. The Buyer shall use good faith efforts to maximize the procurement of other sources of project funding so as to minimize the amount of the Loan.

Section 5.7 Financing Plan. Within the time set forth in the Schedule of Performance, the Buyer shall submit for Seller approval a Financing Plan (the "Financing Plan") containing the following:

5.7.1 An updated development budget (the "Development Budget") showing a "sources and uses" breakdown of the costs of constructing the Development; and

5.7.2 An operating proforma for the first Thirty (30) years of operation of the Development including funding for the provision of supportive services. If the Development does not have a rental subsidy committed, the Financing Plan shall demonstrate that the target population can pay the proposed rents; and

5.7.3 Copies of all required funding commitments for construction and permanent financing for the Development, including a preliminary tax credit reservation and an executed commitment letter from an equity investor acceptable to the Seller; and

5.7.4 Any other information that is reasonably necessary to the Seller in determining that the Buyer has the financial capability to pay all costs of constructing and operating the Development.

ARTICLE 6 CONSTRUCTION OF THE IMPROVEMENTS

Section 6.1 Commencement of Construction. The Buyer shall cause the commencement of construction of the Improvements no later than the date set forth in the Schedule of Performance, subject to Force Majeure.

Section 6.2 Completion of Construction. The Buyer shall diligently prosecute construction of the Improvements to completion, and shall cause the completion of the construction of the Improvements no later than the date set forth in the Schedule of Performance, subject to Force Majeure. Upon completion of construction Buyer shall promptly apply for a final certificate of occupancy for the Development.

Section 6.3 Construction Obligations.

6.3.1 Construction Plans Must Be Approved; Construction in Accordance with Plans and Approvals. The Buyer shall not commence construction of the Development until the Buyer has received all required permits from the Seller Building Department. The Buyer shall construct the Development in accordance with the approved Construction Plans and all other permits and approvals granted by the Seller pertaining to development of the Development. The Buyer shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Development. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Development shall be performed by licensed contractors, engineers or architects, as applicable.

6.3.2 Change in Construction Plans. If the Buyer desires to make any material change in the Construction Plans, the Buyer shall submit the proposed changes to the

Seller for approval, which approval shall not be unreasonably withheld or delayed if the Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement, the Scope of Development, the Development approvals and the Conditions of Approval. As used in the preceding sentence, "material change" means (i) any change for which approval of the Seller is required under the Seller's building approval process, (ii) any structural change, (iii) any change to the exterior of buildings, elevation, number of units, or increase or decrease of the square footage of the community building to the Development by more than 10%, or (iv) any single change order in excess of \$50,000 or \$250,000 in the aggregate. Unless such proposed change is rejected within three (3) business days, Seller shall be deemed to have approved such change. If rejected within such time period, the previously approved Construction Plans shall continue to remain in full force and effect. This section shall not apply to any approvals required by the Seller Building Department in connection with any building, grading or other permits issued for the Development.

Any change in the Construction Plans required in order to comply with applicable law shall be deemed approved, so long as such changes do not substantially, nor materially, change the architecture, design, function, use, or other amenities of the Development as shown on the latest approved Construction Plans.

6.3.3 Defects in Plans. The Seller shall not be responsible to the Buyer or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans.

6.3.4 Performance and Payment Bonds. The Buyer shall deliver to the Seller copies of payment bonds in an amount equal to Fifty Percent (50%) and performance bonds in an amount equal to One Hundred Percent (100%) of the scheduled cost of the construction of the Improvements (the "Construction Bonds") for the construction of the Improvements. Such bonds shall (i) be in a form reasonably acceptably to the Seller, (ii) be issued by a surety licensed to do business in California and reasonably acceptable to the Seller, and (iii) name the Seller as a co-obligee. In lieu of such performance and payment bonds, the Buyer may submit evidence satisfactory to the Seller of the Buyer's ability to commence and complete construction of the Development in the form of a completion guaranty in a form and from a guarantor acceptable to Seller. Such evidence must be submitted in approvable form in sufficient time to allow the Seller to review and approve the information prior to the start of construction.

6.3.5 Construction Period Reporting. During the period of construction, but not more frequently than once a month, the Buyer shall submit to the Seller a written progress report of the construction when and as requested by the Seller. The report shall be in the form of a construction draw report generally submitted by general contractors with such additional detail as may reasonably be required by the Seller and shall include a reasonable number of construction photographs taken since the last report submitted by the Buyer.

6.3.6 Seller Right of Access. For the purposes of assuring compliance with this Agreement, representatives of the Seller shall have the reasonable right of access to the Property without charges or fees and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the Development. Such representatives of the Seller shall be those who are so identified in writing by the Seller's City Manager. The Seller shall indemnify the Buyer and hold it harmless from any damage caused (including any reasonable damages or costs incurred by any wrongful delays caused by the Seller) or liability arising out of this right to access.

The Buyer acknowledges that the Seller is under no obligation, and Seller neither undertakes nor assumes any responsibility or duty, to Buyer or to any third party to in any manner review, supervise, or inspect the progress of construction or the operations of the Development. Buyer and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers and all other matters relating to the construction and operation of the Development. Any review or inspection undertaken by the Seller is solely for the purpose of determining whether Buyer is properly discharging its obligations to Seller, and shall not be relied upon by Buyer or any third party as a warranty or representation by the Seller as to the quality of the design or construction of the Improvements or otherwise.

6.3.7 Prevailing Wages. The Buyer and all the Buyer's subcontractors shall comply with the Davis-Bacon Act, 40 U.S.C. §§3141 et seq., California Health and Safety Code Section 33422.1, California Labor Code Section 1770 et seq., and all regulations adopted pursuant thereto (referred to herein as, "Prevailing Wage Laws"), and be responsible for carrying out the requirements of such provisions, if and to the extent the Prevailing Wage Laws are applicable to this Development. The Buyer shall, and hereby agrees to, unconditionally indemnify, reimburse, defend, protect and hold harmless the Seller and their elective and appointive boards, commissions, officers, agents, attorneys, consultants and employees, and all of their respective successors and assigns, from and against any and all claims, demands, suits and actions at law or in equity, and losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief, and costs and damages of every kind, nature and description (including but not limited to attorneys' fees and court costs; with counsel reasonably acceptable to the Seller), and administrative, enforcement or judicial proceedings, whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Development, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to California Labor Code Section 1770 et seq. and the Prevailing Wage Laws, or any act or omission of the Buyer related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such claims, demands, suits, actions, losses, liabilities, expenses,

penalties, fines, orders, judgments, injunctive or other relief, costs, damages, or administrative, enforcement or judicial proceedings. It is further agreed that the Seller does not, and shall not, waive any rights against the Buyer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by the Seller, or the deposit with the Seller by the Buyer, of any of the insurance policies described in this Agreement.

6.3.8 Equal Opportunity in Contracting Construction. During the construction of the Development, the Buyer and all of the Buyer's subcontractors shall not discriminate on the basis of race, religion, sex, or national origin in the hiring, firing, promoting or demoting of any person engaged in the construction work and shall require its contractors and subcontractors to refrain from discrimination on such basis.

6.3.9 Certificate of Completion. Promptly after completion of all construction and development of the Development, the Seller shall furnish the Buyer with a final Certificate of Completion upon written request therefore by the Buyer. Buyer agrees not to submit such written request until after receipt by Buyer of the certificate of occupancy from the Seller. The final Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction of the Development in accordance with the provisions of this Agreement. Such Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder of San Joaquin County.

A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Buyer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the Development.

6.3.10 Compliance with Laws. The Buyer shall carry out the construction of the Development in conformity with all applicable state, local and federal laws, ordinances, rules and regulations, including all applicable state and federal labor laws and standards, the Seller zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the Seller's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq..

6.3.11 Liens and Stop Notices. Until the recording of the Certificate of Completion, the Buyer shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of the Buyer. If a claim of a lien or stop notice is given or recorded affecting the Development, the Buyer shall within thirty (30) days of such recording or service: (a) pay and discharge the same; or (b) effect the release thereof by recording and delivering to the party entitled thereto a surety bond in sufficient form and amount or provide other assurance satisfactory to Seller that the claim of lien or stop notice will be paid or discharged.

6.3.12 Right of Seller to Satisfy Liens on the Property. After the conveyance of the Property, if the Buyer fails to satisfy or discharge any lien or stop notice on the Property pursuant to Section 6.3.11 above, the Seller shall have the right, but not the obligation, to satisfy any such liens or stop notices at Buyer's expense and without further notice to Buyer. In such event the Buyer shall be liable for and shall immediately reimburse Seller for such paid lien or stop notice. Alternatively, the Seller may require Buyer to immediately deposit with Seller the amount necessary to satisfy such lien or claim pending resolution thereof. The Seller may use such deposit to satisfy any claim or lien that is adversely determined against Buyer. Buyer shall file a valid notice of cessation or notice of completion upon cessation of construction of the Improvements for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property or the Improvements. The Seller may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the Seller deems necessary or desirable to protect its interest in the Property and the Improvements.

ARTICLE 7 USE OF THE PROPERTY

Section 7.1 Uses. The Buyer covenants and agrees for itself, its successors and assigns, that the Buyer and its successors and assignees shall devote the Property to the uses specified in this Agreement, and that for the term of the Regulatory Agreement, the Property shall be used as an affordable housing development in accordance with the terms and conditions thereof.

Section 7.2 Affordable Housing. For a term of Fifty-Five (55) years commencing upon the issuance of a final certificate of occupancy for the Improvements, the City shall not require that more than forty-nine percent (49%) of the units on the Property be used solely for an affordable housing project in which residential units shall be available at Affordable Housing Rent to eligible very-low income senior or elderly households pursuant to and in accordance with the Regulatory Agreement.

Section 7.3 Regulatory Agreement. As required by Seller's available funding sources the Buyer and the Seller will record a Regulatory Agreement substantially in the form attached to this Agreement as Exhibit I (the "Regulatory Agreement"). The Regulatory Agreement will restrict rental of each Affordable Unit to an affordable level. The Regulatory Agreement shall contain such rights to other mechanisms as Seller shall determine are necessary to insure that the Affordable Units all remain affordable. The parties acknowledge that blank information relating to the unit breakdown by size and affordability in the Regulatory Agreement need to be completed subject to the Seller's approval. In the event the Seller and Buyer are unable for any reason to agree upon the information to complete the Regulatory Agreement by the time set forth in the Schedule for Performance, either party may terminate this Agreement. The Seller agrees to execute, and record at Buyer's cost, subordination agreements to subordinate the Regulatory Agreement to Buyer's construction and/or permanent loans for the

Project if (i) such construction and/or permanent financing is provided by (a) the Department of Housing and Community Development ("HCD"), the California Housing Financing Seller ("CalHFA"), HUD, or other public senior lender which requires by statute or regulation that regulatory agreements with local public entities be subordinated, or (b) in the case of tax-exempt bond financing, subordination of the Regulatory Agreement is required by such financing, or (ii) Buyer demonstrates to the satisfaction of the Seller that, compared to financing available to Buyer if Regulatory Agreement is subordinated, financing without such subordination will be offered on less favorable terms. In all cases, the Seller shall be entitled to notice and cure provisions.

ARTICLE 8 ONGOING OBLIGATIONS

Section 8.1 Marketing Plan. No later than three (3) months prior to the projected date of the completion of the construction of the Development, the Buyer shall submit to the Seller its plan for marketing the Development to income-eligible senior households as required pursuant to the Regulatory Agreement, including information on affirmative marketing efforts and compliance with fair housing laws, including but limited to the information required under 24 CFR 92.351(a) (the "Marketing Plan").

Section 8.2 Financial Accountings and Post-Completion Audits. No later than ninety (90) calendar days following completion of construction of the Development, the Buyer shall provide to Seller a financial accounting of all sources and uses of funds for the Development. No later than one hundred fifty (150) calendar days following completion of construction of the Development, the Buyer shall submit an audited financial report showing the sources and uses of all funds utilized for the Development, as well as a copy of form 8609 that the Buyer is required to submit to TCAC.

Section 8.3 Records. The Buyer shall keep and maintain at the Development, or elsewhere with the Seller's written consent, full, complete and appropriate books, record and accounts relating to the Development, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail the Buyer's compliance with the terms and provisions of this Agreement. Books, records and accounts relating to the Buyer's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Agreement. All such books, records, and accounts shall be open to and available for inspection and copying by the HUD, the Seller, its auditors or other authorized representatives at reasonable intervals during normal business hours. The Buyer shall permit any duly authorized representative of the HUD or the Seller to inspect and copy such records. Copies of all tax returns and other reports that Buyer may be required to furnish to any governmental Seller shall at all reasonable times be open for inspection by the Seller at the place that the books, records and accounts of the Buyer are kept. Such records shall include all invoices, receipts, and other documents related to expenditures from the Seller Loan funds and must be kept accurate and current. The Buyer shall maintain complete, accurate, and current records

pertaining to the Development for a period of not less than five (5) years after the creation of such records for all other expenditures in compliance with all HUD records and accounting requirements including but not limited to those set forth in Subpart K of 24 CFR 570 and 24 CFR 92.508. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Loan is pending at the end of the record retention period stated herein, then the Buyer shall retain such records until such action and all related issues are resolved. Such records shall include but not be limited to:

8.3.1 Records providing a full description of the activities undertaken with the use of the HOME Funds and CDBG Funds; Records demonstrating that each activity undertaken meets one of the national objectives of the CDBG program set forth in 24 CFR 570.208;

8.3.2 Records demonstrating compliance with the HUD property standards and lead-based paint requirements;

8.3.3 Records required to determine the eligibility of activities under CDBG Regulations set forth in 24 CFR 570 et seq.;

8.3.4 Records demonstrating compliance with the affordability and income requirements for tenants;

8.3.5 Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements, as applicable;

8.3.6 Financial records as required by 24 CFR 92.505, 24 CFR 570.502, and OMB Circular A-110 (24 CFR 84);

8.3.7 Records demonstrating compliance with applicable relocation requirements which must be retained for at least five (5) years after the date by which persons displaced from the property have received final payments;

8.3.8 Records demonstrating that tenant leases comply with the HOME Requirements set forth in 24 CFR 92 et seq.; and

8.3.9 Records demonstrating compliance with Section 3 of the Housing and Urban Development Act of 1968 and other applicable labor requirements listed in Section 6.3.7 above, including certified payrolls from the Buyer's general contractor evidencing that applicable prevailing wages have been paid.

The Seller shall notify the Buyer of any records it deems insufficient. The Buyer shall have Twenty-One (21) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the Seller in such notice, or if a period longer than Twenty-One (21) days is reasonably necessary to correct the deficiency, then the

Buyer shall begin to correct the deficiency within twenty-one (21) days and correct the deficiency as soon as reasonably possible.

Section 8.4 Audits. The Buyer shall make available for examination at reasonable intervals and during normal business hours to Seller all books, accounts, reports, files, and other papers or property with respect to all matters covered by this Agreement, and shall permit Seller to audit, examine, and make excerpts or transcripts from such records. Seller may make audits of any conditions relating to this Agreement.

Section 8.5 Hazardous Materials.

8.5.1 Upon acquisition of the Property, the Buyer shall keep and maintain the Development in compliance with, and shall not cause or permit the Development to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under or about the Development including, but not limited to, soil and ground water conditions. The Buyer shall not use, generate, manufacture, store or dispose of on, under, or about the Development or transport to or from the Development any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except such of the foregoing as may be used in construction of the Development or customarily kept and used in and about residential property of this type.

8.5.2 The Buyer shall immediately advise the Seller in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Buyer or the Development pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); (ii) all claims made or threatened by any third party against the Buyer or the Development relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iii) the Buyer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Development that could cause the Development or any part thereof to be classified as "border-zone property" under the provision of California Health and Safety Code, Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Development under any Hazardous Materials Law.

8.5.3 The Seller shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by the Buyer. The Buyer shall defend, indemnify, and hold harmless the Seller and the

Seller and their council members, board members, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Development including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Development and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by the Seller in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees. These obligations to indemnify shall survive termination of this Agreement. Buyer's indemnity obligations under this paragraph shall not apply to (i) any Contamination caused by the Seller during the Seller's ownership of the Property, (ii) the Seller's or Seller's failure to disclose any known condition which the Seller is required to give to any transferee of real property, (iii) any placement of soil or other debris on the Property by adjacent property owners or others during the Seller's ownership of the Property, and (iv) liability of the Seller, not as the owner of the Property but as the owner of any adjacent property for Contamination originating or migrating from adjacent property owned by the Seller.

8.5.4 Without the Seller's prior written consent, which shall not be unreasonably withheld, the Buyer shall not take any remedial action in response to the presence of any Hazardous Materials on, under or about the Development, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in the Seller's reasonable judgment, impair the value of the Seller's security hereunder; provided, however, that the Seller's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Development either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain the Seller's consent before taking such action, provided that in such event the Buyer shall notify the Seller as soon as practicable of any action so taken. The Seller agrees not to withhold its consent, where such consent is required hereunder, if either (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) the Buyer will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) the Buyer establishes to the reasonable satisfaction of the Seller that there is no reasonable alternative to such remedial action which would result in less impairment of the Seller's security hereunder; or (iv) the action has been agreed to by the Seller.

8.5.5 The Buyer hereby acknowledges and agrees that (i) this Section 8.5 is intended as the Seller's written request for information (and the Buyer's response) concerning the environmental condition of the Development as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Agreement (together with any indemnity obligation applicable to a breach of any such representation and warranty) with respect to the environmental condition of the

Development is intended by the Parties to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

8.5.6 In the event that any portion of the Development is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Seller's or the trustee's rights and remedies under the Deed of Trust, the Seller may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Development and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Buyer to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Seller right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Buyer shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of Hazardous Materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Development and the Buyer knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Seller in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Development is environmentally impaired, plus interest thereon at the rate specified in the Note until paid, shall be added to the indebtedness secured by the Deed of Trust and shall be due and payable to the Seller upon its demand made at any time following the conclusion of such action.

Section 8.6 Maintenance and Damage.

8.6.1 During the course of both construction and operation of the Development, the Buyer shall maintain the Development in good repair and in a neat, clean and orderly condition. If there arises a condition in contravention of this requirement, and if the Buyer has not cured such condition within thirty (30) days after receiving a notice from the Seller of such a condition, then in addition to any other rights available to the Seller, the Seller shall have the right to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Development.

8.6.2 Subject to the requirements of senior lenders, and if economically feasible in the Seller's reasonable judgment after consultation with the Buyer, if any improvement now or in the future on the Development is damaged or destroyed, then the Buyer shall, at its cost and expense, diligently undertake to repair or restore such improvement consistent with the plans and specifications approved by the Seller with such changes as have been approved by the Seller. Such work or repair shall be

commenced no later than the later of one hundred twenty (120) days, or such longer period approved by the Seller in writing, after the damage or loss occurs or thirty (30) days following receipt of the insurance proceeds, and shall be complete within one (1) year thereafter. Any insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs or restoration and, if such insurance proceeds shall be insufficient for such purpose, then the Buyer shall make up the deficiency.

Section 8.7 Fees and Taxes. The Buyer shall be solely responsible for payment of all fees, assessments, taxes, charges, and levies imposed by any public authority or utility company with respect to the Development to the extent owned by the Buyer, and shall pay such charges prior to delinquency. However, the Buyer shall not be required to pay and discharge any such charge so long as (a) the legality thereof is being contested diligently and in good faith and by appropriate proceedings, and (b) if requested by the Seller, the Buyer deposits with the Seller any funds or other forms of assurance that the Seller in good faith from time to time determines appropriate to protect the Seller from the consequences of the contest being unsuccessful. The parties acknowledge that Buyer will apply for a welfare exemption from real property taxes.

Section 8.8 Notice of Litigation. The Buyer shall promptly notify the Seller in writing of any litigation known to the Buyer affecting the Buyer or the Property and of any claims or disputes that involve a material risk of litigation.

Section 8.9 Non-Discrimination. The Buyer covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, familial status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development, nor shall the Buyer or any person claiming under or through the Buyer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Development.

Section 8.10 Insurance Requirements. The Buyer shall maintain the insurance coverage set forth in Exhibit J throughout the term of this Agreement.

Section 8.11 CDBG and HOME Requirements. The Buyer shall comply with all applicable laws and regulations governing the use of the CDBG Funds as set forth in 24 CFR 570 et seq. The Buyer shall comply with all applicable laws and regulations governing the use of the HOME Funds as set forth in 24 CFR 92 et seq. if the Seller makes a loan to the Buyer using HOME Funds. In the event of any conflict between this Agreement and applicable laws and regulations governing the use of the Loan funds, the applicable laws and regulations shall govern. During the first twenty (20) years of the Term, these requirements shall be federal requirements, implemented by the Seller; thereafter, these requirements shall be deemed local Seller requirements.

The laws and regulations governing the use of the Loan funds include (but are

not limited to) the following:

8.11.1 Environmental and Historic Preservation. 24 CFR 58 et seq., which prescribes procedures for compliance with the National Environmental Policy Act of 1969 (42 USC 4321-4361), and the additional laws and authorities listed at 24 CFR 58.5.

8.11.2 Applicability of OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102, Revised, A-110, A-122, and A-133.

8.11.3 Debarred, Suspended or Ineligible Contractors. The prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 CFR Part 24.

8.11.4 Civil Rights, Housing and Community Development, and Age Discrimination Acts. The Fair Housing Act (42 USC 3601 et seq.) and implementing regulations at 24 CFR 100 et seq.; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973 (29 USC 794 et seq.); the Age Discrimination Act of 1975 (42 USC 6101 et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 CFR 107 et seq.; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; and Executive Order 12138 as amended by Executive Order 12608.

8.11.5 Lead-Based Paint. The requirement of the Lead-Based Paint Poisoning Prevention Act, as amended (42 USC 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 USC 4851 et seq.), and implementing regulations at 24 CFR 35 et seq.

8.11.6 Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601 et seq.) and implementing regulations at 49 CFR 24 et seq.; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 CFR 42 et seq.; 24 CFR 92.353; and California Government Code 7260 et seq. and implementing regulations at 25 California Code of Regulations 6000 et seq. These requirements do not supplant the additional relocation requirements listed above in Section 8.3.7.

8.11.7 Discrimination against the Disabled. The requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program, the requirements of the Architectural Barriers Act of 1968 (42 USC 4151-4157) and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 USC 12131 et seq.), and federal regulations issued pursuant thereto.

8.11.8 Clean Air and Water Acts. The Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Seller with respect thereto, at 40 CFR 1500 et seq., as amended from time to time.

8.11.9 Uniform Administrative Requirements – HOME. The provisions of 24 CFR 92.505 regarding cost and auditing requirements.

8.11.10 Uniform Administrative Requirements - CDBG. The provisions of 24 CFR 570.502 regarding cost and auditing requirements.

8.11.11 Training Opportunities. The requirements of Section 3 of the Housing and Urban Development Act of 1968 ("Section 3"), as amended, 12 USC 1701(u) requiring that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. The Buyer agrees to include the following language in all subcontracts executed under this Agreement:

8.11.11.1 The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC Section 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

8.11.11.2 The parties to this contract agree to comply with HUD's regulations in 24 CFR 135 et seq., which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

8.11.11.3 The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause; and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference; shall set forth minimum number and job titles subject to hire; availability of apprenticeship and training positions; the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

8.11.11.4 The contractor agrees to include this Section 3 clause in

every subcontract subject to compliance with regulations in 24 CFR 135 et seq., and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR 135 et seq. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR 135 et seq.

8.11.11.5 The contractor will certify that any vacant employment positions, including training positions, that are filled (i) after the contractor is selected but before the contract is executed, and (ii) with persons other than those to whom the regulations of 24 CFR 135 et seq. require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR 135 et seq.

8.11.11.6 Noncompliance with HUD's regulations in 24 CFR 135 et seq. may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

8.11.11.7 With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC 450(e)) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

8.11.12 Labor Standards. The applicable labor requirements set forth in 24 CFR 92.354. The prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 USC 3141-3148); the Copeland "Anti-Kickback" Act (40 USC 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act (40 USC 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1.5 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and 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.

8.11.13 Drug Free Workplace. The requirements of the Drug Free Workplace Act of 1988 (P.L. 100-690) and implementing regulations at 24 CFR Part 24.

8.11.14 Anti-Lobbying; Disclosure Requirements. The disclosure requirements and prohibitions of 31 USC 1352 et seq. and implementing regulations at 24 CFR 87 et seq.

8.11.15 Historic Preservation. The historic preservation requirements set

forth in the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.) and the procedures set forth in 36 CFR 800 et seq.

8.11.16 Religious Organizations. If the Buyer is a religious organization, as defined by the CDBG and/or HOME requirements, the Buyer shall comply with all conditions prescribed by HUD for the use of CDBG and/or HOME funds by religious organizations, including the First Amendment of the United States Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 CFR 570.200(j) and 24 CFR 92.257.

8.11.17 HUD Regulations. Any other HUD regulations present or as may be amended, added, or waived in the future pertaining to the Seller Loan funds, including but not limited to HUD regulations as may be promulgated regarding subrecipients.

8.11.18 Anti-Lobbying Certification. The Buyer certifies, to the best of the Buyer's knowledge or belief, that:

8.11.18.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any Seller, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

8.11.18.2 No funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Seller, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and no more than One Hundred Thousand Dollars (\$100,000) for such failure.

ARTICLE 9 CONDITIONS AFFECTING THIRD PARTY INTERESTS IN THE PROPERTY

Section 9.1 Security Financing; Rights of Holders.

9.1.1 No Encumbrances Except Mortgages, Deeds of Trust or Other Financing for the Project. Mortgages, deeds of trust, or any other form of conveyance required for any reasonable method of financing are permitted, but only for the purpose of securing loans of funds to be used for financing or refinancing the construction, reconstruction, rehabilitation of the Project and any other expenditures necessary and appropriate to develop, own and operate the Property in accordance with the provisions of this Agreement. The Buyer shall notify the Seller in advance of any mortgage, deed of trust, or other form of conveyance for financing unless incorporated in the Financing Plan. Except as permitted in the Financing Plan approved by the Seller, the Buyer shall not enter into any such conveyance for financing without the prior written approval of the Seller and shall promptly notify the Seller of any mortgage, deed of trust, sale and lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto whether by voluntary act of the Buyer or otherwise unless incorporated in the Financing Plan. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development. The Seller agrees to enter into a subordination agreement as requested by Buyer's lender on terms reasonably acceptable to the Seller and lender to subordinate this Agreement to the security instruments of lender's loan.

9.1.2 Holder Not Obligated to Construct Project. The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Property to any uses or to construct any improvements thereon other than those uses provided for or authorized by this Agreement.

No Mortgagee (including any Mortgagee who obtains title to Buyer's leasehold interest in the Property or any part thereof as a result of foreclosure proceedings or transfer in lieu of foreclosure) shall be obligated by the provisions of this Agreement to construct the improvements unless Mortgagee expressly assumes such obligation by written notice to Seller. Whether or not a Mortgagee elects to assume Buyer's obligation to construct the improvements, nothing in this Agreement shall be construed to permit such Mortgagee to construct any improvements other than the improvements authorized under this Agreement. If the Mortgagee elects to assume Buyer's obligation to construct the improvements, Mortgagee shall not be bound by the Schedule of Performance, provided that, upon assuming such obligation, Mortgagee and Seller shall execute a new Schedule of Performance and Mortgagee shall complete the Improvements in accordance with the new schedule of performance. If, after acquiring Buyer's interest in the Property, Mortgagee elects not to assume Buyer's obligation to complete the improvements, Mortgagee shall so notify Seller within sixty (60) days after Mortgagee's acquisition of the Buyer's interest in the Property, and Mortgagee shall use good faith efforts to sell such interest within six (6) months after delivery of such notice to a buyer who will construct the improvements. In the event that Buyer receives a Section 202 Capital Grant from HUD, if and for so long as the Property is subject to a HUD 202 Use Agreement, Regulatory Agreement, and/or Deed of Trust, this

Agreement, shall be subject to the HUD-Required Provisions Rider attached hereto as Exhibit N.

9.1.3 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure. Whenever the Seller shall deliver any notice or demand to the Buyer with respect to any breach or default by the Buyer in completion of construction of the Project, the Seller shall at the same time deliver a copy of such notice or demand to each holder of record of any security interest authorized by this Agreement who has previously made a written request to the Seller therefore. Each such holder shall (insofar as the rights of the Seller are concerned) have the right, at its option, within 30 days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Buyer under this paragraph shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Buyer under this paragraph. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the Project or construction already made) without first having expressly assumed the Buyer's obligations to the Seller by written agreement satisfactory to the Seller. The holder in that event must agree to complete, in the manner provided in this Agreement, the Project to which the lien of such holder relates and submit evidence satisfactory to the Seller that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such Project shall be entitled, upon written request made to the Seller, to a Certificate of Completion from the Seller.

9.1.4 Failure of Holder to Complete Improvements. In any case where, six (6) months after a default by the Buyer in completion of construction of the Improvements, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon the Property has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the Seller may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest. If the Buyer's interest in the Property has vested in the holder, the Seller, if it so desires, shall be entitled to the conveyance of such interest in the Property from the holder to the Seller upon payment to the holder of an amount equal to the sum of the following:

9.1.4.1 The unpaid security interest debt at the time the leasehold interest became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

9.1.4.2 All expenses with respect to the reconveyance;

9.1.4.3 The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Property and Project;

9.1.4.4 The costs of any authorized improvements made by such holder;
and

9.1.4.5 An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the debt and had the debt continued in existence to the date of payment by the Seller.

In the event that Buyer receives a Section 202 Capital Grant from HUD, if and for so long as the Property is subject to a HUD 202 Use Agreement, Regulatory Agreement, and/or Deed of Trust, this Agreement, shall be subject to the HUD-Required Provisions Rider attached hereto as Exhibit N.

9.1.5 Right of Seller to Cure Security Interest Default. In the event of a default or breach by the Buyer of a mortgage, deed of trust or other security interest with respect to the Property prior to completion of the Project and the holder has not exercised its option to complete the Project, the Seller may cure the default prior to completion of any foreclosure. In such event, the Seller shall be entitled to reimbursement from the Buyer of all costs and expenses incurred by the Seller in curing the default. The Seller shall also be entitled to a lien upon the Buyer's interest in the Property to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to develop the Property as authorized herein.

ARTICLE 10 CHANGES IN BUYER

Section 10.1 Changes only Pursuant to this Agreement. The qualifications, experience and expertise of the Buyer are of particular concern to the Seller. It is because of these qualifications, experience and expertise that the Seller has entered into this Agreement. No voluntary or involuntary successor in interest to the Buyer shall acquire any rights or powers under this Agreement, other than pursuant to a Transfer permitted in Section 10.3. Any attempt to assign this Agreement or transfer any interest of the Buyer under this Agreement without the prior written consent of the Seller shall be null and void and shall confer no rights or privileges upon the purported assign.

Section 10.2 Prohibition Against Transfer of Property and Assignment of Agreement Prior To Completion. Prior to the recording of the Notice of Completion, the Buyer shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance, assignment or lease ("Transfer") of the whole or any part of the Property or the buildings or structures thereon or this Agreement without the prior written approval of the Seller which Seller may withhold in its sole and absolute discretion.

If the Buyer proposes a Transfer of the Property or a portion thereof, other than as authorized in Section 10.3, the proposed transferee shall have the qualifications and financial resources necessary and adequate as may be reasonably determined by the Seller to fulfill the obligations undertaken in this Agreement by the Buyer. Any transferee, by instrument in writing satisfactory to the Seller and in form recordable among the land records, for itself and its successors and assigns, and for the benefit of the Seller shall expressly assume all of the obligations of the Buyer under this Agreement relating to the Property and agree to be subject to all the conditions and restrictions to which the Buyer is subject. There shall be submitted to the Seller for review all instruments and other legal documents proposed to affect any such Transfer; and if approved by the Seller its approval shall be indicated to the Buyer in writing. This Section 10.2 shall not be deemed to prevent the granting of easements, rights of way, licenses or permits to facilitate the development of the Property.

In the absence of specific written agreement by the Seller, no Transfer by the Buyer shall be deemed to relieve the Buyer or any other party from any obligations under this Agreement.

Section 10.3 Permitted Transfers With Prior Approval; Seller Pre-Approved Transfers.

10.3.1 Except as permitted under Subsections 10.3.2, 10.3.3, 10.3.4 and 10.3.5, any Transfer shall be permitted only after (1) the Seller, in its reasonable discretion, has delivered to the Buyer its prior written approval of such Transfer, and (2) the transferee has assumed the Buyer's obligations under this Agreement by signing an assignment assumption and release agreement, in a form prepared by the Seller, and such other reasonable documentation as the Seller may reasonably require to evidence such transferee's assumption of the Buyer's duties and obligations under the Loan Documents.

10.3.2 Buyer anticipates syndicating the low income housing tax credits that will be generated by the Development, which syndication will require (i) formation of a limited partnership, the general partner of which shall be a wholly-controlled affiliate of Buyer (the "Partnership" or the "Borrower") and the initial limited partner shall be Buyer or a wholly-controlled affiliate of Buyer and (ii) a subsequent transfer of the limited partner interest in Borrower to the initial investor limited partner(s). The Seller hereby approves the initial Transfer of the limited partner interest in Borrower, provided that (i) the amended and restated partnership agreement is submitted to the Seller for review and approval; and (ii) the partnership documents do not conflict with the Loan Documents.

10.3.3 The Seller hereby approves future Transfers of the investor limited partner(s) interest(s) in the Partnership provided that: (i) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the amended partnership agreement approved by the Seller; and (ii) in subsequent Transfers, a wholly-owned or wholly-controlled affiliate of the initial investor limited

partner retains a membership or partnership interest and/or serves as a managing member or managing general partner of the successor limited partner.

10.3.4 The Seller hereby approves a Transfer of the Property from the Borrower to Eden Housing Inc. ("Eden") or wholly-controlled affiliate of Eden, and an assumption of the Seller Loan by such transferee at or before the end of the fifteen (15)-year compliance period as described in Section 42(i)(1) of the Internal Revenue Code, pursuant to an option agreement as described or to be described in the Partnership agreement (the "Option Agreement"), provided that the transferee expressly assumes the obligations of the Partnership under the Loan Documents, utilizing a form of assignment and assumption agreement to be provided by the Seller.

10.3.5 In the event the general partner of the Borrower is removed by the investor limited partner of the Borrower for cause following default under the partnership agreement, the Seller hereby approves the Transfer of the general partner interest to a 501(c)(3) tax exempt nonprofit corporation selected by the limited partner and approved by the Seller, which approval shall not be withheld unreasonably.

ARTICLE 11 DEFAULT AND REMEDIES

Section 11.1 Events of Default. Each of the following shall constitute a "Default" by the Buyer under this Agreement:

11.1.1 Failure to Obtain Approvals. Failure of the Buyer to diligently and in good faith cause satisfaction of any of the conditions set forth in Article 3.

11.1.2 Failure to Make Payment. Failure of the Buyer to repay the principal and any interest on the Seller Loan that is due and payable to the Seller pursuant to the Loan Documents following written notice by the Seller of such failure and ten (10) days opportunity to cure.

11.1.3 Failure to Construct. Notwithstanding Sec 3.10(c), failure of the Buyer to commence and prosecute to completion, construction of the Development within the time frames set forth in Schedule of Performance.

11.1.4 Breach of Covenants. Other than the failures addressed above in Subsections 11.1.1, 11.1.2 and 11.1.3, failure of the Buyer to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Seller to the Buyer or, if the breach cannot be cured within thirty (30) days, the Buyer shall not be in breach so long as the Buyer is diligently undertaking to cure such breach and such breach is cured within sixty (60) days; provided, however, that if a different period or notice requirement is specified under any other provision of this Article 11, the specific provisions shall control.

11.1.5 Default Under Other Loans. A default is declared under any Approved Financing by the lender of such Approved Financing (subject to applicable notice and cure).

11.1.6 Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Buyer to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Buyer or seeking any arrangement for the Buyer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Buyer in bankruptcy or insolvency or for any of their properties, (iv) directing the winding up or liquidation of the Buyer, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or (v) the Buyer shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the Seller, the indebtedness evidenced by the Note.

11.1.7 Assignment; Attachment. The Buyer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this Subsection shall act to accelerate automatically, without the need for any action by the Seller, the indebtedness evidenced by the Note.

11.1.8 Suspension; Dissolution. The Buyer shall have voluntarily suspended its business or the dissolution of the Buyer.

11.1.9 Liens on Property and the Development. There shall be filed any claim of lien (other than liens approved in writing by the Seller) against the Development, or any part thereof, or any interest or right made appurtenant thereto, or the service of any notice to withhold proceeds of the Loan and the continued maintenance of said claim of lien or notice to withhold for a period of twenty (20) days without discharge or satisfaction thereof or provision therefore (including, without limitation, the posting of bonds) satisfactory to the Seller.

11.1.10 Condemnation. The condemnation, seizure, or appropriation of all or the substantial part of the Property and the Development, except that condemnation by the Seller or the Seller shall cause the Seller Loan to accelerate but shall not be a Default.

11.1.11 Unauthorized Transfer. Any Transfer other than as permitted by Article 10.

11.1.12 Representation or Warranty Incorrect. Any representation or warranty of the Buyer contained in this Agreement, or in any application, financial statement, certificate, or report submitted to the Seller in connection with any of the Loan Documents, proves to have been incorrect in any material and adverse respect when made.

11.1.13 Applicability to General Partner. In the event the Buyer is a partnership, the occurrence of any of the events set forth in Subsection 11.1.6, Subsection 11.1.7 or Subsection 11.1.8 in relation to the general partner of the Buyer.

Section 11.2 Remedies. The occurrence of any Default hereunder following the expiration of all applicable notice and cure periods will, either at the option of the Seller or automatically where so specified, relieve the Seller of any obligation to make or continue the Seller Loan and shall give the Seller the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

11.2.1 Acceleration of Note. Subject to the non-recourse provision in the Promissory Note and Section 3.11 above, the Seller shall have the right to cause all indebtedness of the Buyer to the Seller under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. The Buyer waives all right to presentment, demand, protest or notice of protest or dishonor. The Seller may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the Seller as a creditor and secured party under the law including the Uniform Commercial Code, including foreclosure under the Deed of Trust. The Buyer shall be liable to pay the Seller on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the Seller in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

11.2.2 Assignment Agreement. The Seller may exercise all rights under the Assignment Agreement. The Buyer shall promptly deliver to the Seller copies of all plans and specifications for the Development, all permits and approvals obtained in connection with the Development, and all applications for permits and approvals not yet obtained but needed in connection with the Development.

11.2.3 Specific Performance. The Seller shall have the right to mandamus or other suit, action or proceeding at law or in equity to require the Buyer to perform its obligations and covenants under the Loan Documents or to enjoin acts or things which may be unlawful or in violation of the provisions of the Loan Documents.

11.2.4 Special Remedy for Breach of Use Requirement. Pursuant to 24 CFR 570.503(b)(7)(ii), if after acquisition of the Property, the Buyer changes the planned use of the Property to a non-CDBG eligible use, or if after completion of construction of the Improvements, the Buyer ceases to use the Development as required by this

agreement, the Seller shall have the right to require the Buyer to pay the Seller an amount equal to the current market value of the Development (as determined by appraisal) less any portion of that value attributable to non-CDBG Funds used for the development of the Development (based on a pro rata allocation of funds used by Buyer in its development of the Development). Funds recovered from Buyer pursuant to this Subsection shall be credited against amounts outstanding under the Note.

11.2.5 Right of Contest. The Buyer shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Seller or the rights of the Seller hereunder.

11.2.6 Remedies Cumulative. Subject to the non-recourse provisions contained in the Promissory Note, no right, power, or remedy given to the Seller by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Seller by the terms of any such instrument, or by any statute or otherwise against the Buyer and any other person. Neither the failure nor any delay on the part of the Seller to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the Seller of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

ARTICLE 12 GENERAL PROVISIONS

Section 12.1 Relationship of Parties.

12.1.1 Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the Seller and the Buyer or the Buyer's agents, employees or contractors, and the Buyer shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement for the development of the Development. In regards to the development of the Development, the Buyer shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding and all other laws and regulations governing such matters, and shall include requirements in each contract that contractors shall be solely responsible for similar matters relating to their employees. The Buyer agrees to be solely responsible for its own acts and those of its agents and employees.

12.1.2 The Architect has been selected by the Buyer as the architect for the Development, and the Buyer may, from time to time, select other consultants and vendors for the Development. Notwithstanding the preceding paragraph, the Seller shall have the right to provide input regarding the selection and, if necessary, the

replacement of such other consultants or vendors employed by the Buyer to perform the construction contemplated by this Agreement, and shall have the right to provide input regarding the replacement of the previously selected Architect, if necessary. The Buyer shall consider in good faith such input from the Seller, and shall confer with the Seller, upon request, regarding such selection and replacement decisions.

Section 12.2 No Claims. Nothing contained in this Agreement shall create or justify any claim against the Seller, by any person the Buyer may have employed or with whom the Buyer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the construction of the Development.

Section 12.3 Amendments. No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the parties.

Section 12.4 Indemnification. Except as caused by the Seller's willful misconduct, the Buyer agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Seller) the Seller and its respective council members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of the performance or non-performance of the obligations under this Agreement by the Buyer Parties, the purchase and ownership of the Property by the Buyer, the development, marketing, rental, operation and management of the Development by the Buyer Parties, or any documents executed by the Buyer in connection with the Development. The provisions of this Section 12.4 shall survive termination of this Agreement. The "Buyer Parties" shall mean the Buyer and its general partner, agents and representatives. Notwithstanding the foregoing, Section 4.8.2 shall apply.

Section 12.5 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the Seller shall be personally liable to the Buyer Parties or their successors, in the event of any Default or breach by the Seller, or for any amount which may become due to the Buyer Parties or their successors or on any obligation under the terms of this Agreement. No director, officer, employee or agent of the Buyer Parties shall be personally liable to the Seller in the event of any Default or breach by the Buyer, or for any amount which may become due to the Seller or on any obligation under the terms of this Agreement.

Section 12.6 No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

Section 12.7 Action by the Seller. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, extension of time, waiver of condition, termination, or other action by the Seller is required or permitted under this Agreement, such action may be given, made, or taken by the Seller's City Manager or his/her designee without further approval by the Seller's City Council, and any such action shall be in writing. The amount of the Loan may not be increased and

the intended uses of the property may not be changed, without approval of the Seller's City Council.

Section 12.8 Waivers. Any waiver by the Seller of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Seller to take action on any breach or default of the Buyer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to the Buyer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Seller to any act or omission by the Buyer shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the Seller's written consent to future waivers.

Section 12.9 Notices, Demands and Communications. Formal notices, demands, and communications between the Seller and the Buyer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, or faxed with a copy mailed within one business day of facsimile transmission, emailed with a copy mailed within one business day of emailed transmission to the principal office of the Seller and the Buyer as follows:

Seller:
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910
Attention: City Manager

With a copy to: The City Attorney and Housing Manager

Buyer:
Eden Development, Inc.
22645 Grand Street
Hayward, California 94541-5031
Attention: Executive Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt for delivery or refusal of delivery.

Section 12.10 Parties Bound. Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, legal representatives, successors and assigns.

Section 12.11 Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

Section 12.12 Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 12.13 Future Seller Actions. The parties acknowledge and agree that this Agreement does not constitute Seller approval of the Land Use Approvals or construction of the Development. The Seller retains full discretion to approve or disapprove the Land Use Approvals and construction of the Development; and

Section 12.14 Counterparts; Multiple Originals. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute this Agreement.

Section 12.15 Force Majeure. In addition to specific provisions of this Agreement, performance by either party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of Buyer or Buyer's inability to finance the construction of the Development) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) business days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten business (10) days of receipt of the notice. In no event shall the Seller be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 12.16 Time is of the Essence. Time is of the essence in this Agreement. Any reference to days means calendar days, unless otherwise specifically stated.

Section 12.17 Integration Clause. This Agreement, including all exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. This Agreement shall not be amended or modified except by a written agreement executed by each of the parties hereto.

Section 12.18 Law Governing. This Agreement shall in all respects be governed by and construed under the law of the State of California. Litigation arising out of or connected with this Agreement shall be instituted and maintained in the courts of San Joaquin County in the State of California, and the parties consent to jurisdiction over

their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

Section 12.19 Ambiguity. The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

Section 12.20 Gender. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identifications of the person or persons, firm or firms, corporation or corporations may require.

Section 12.21 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 12.22 Investor Limited Partner Provisions. If and when the Buyer transfers the Property and assigns the Loan to a limited partnership in accordance with Section 10.3 to qualify for low income housing tax credit financing, the Seller agrees to the following provisions for the benefit of Buyer's investor limited partner:

12.22.1 The Seller will give the limited partner a copy of any written notice (at the limited partner's address set forth in the Regulatory Agreement) that the Seller gives to Buyer under this Agreement, the Regulatory Agreement and the other Seller Loan Documents;

12.22.2 The Seller will give the limited partner Ten (10) days after the limited partner's receipt of such notice to cure a non-payment of any sum due under the Seller Loan Documents;

12.22.3 The Seller will give the limited partner Thirty (30) days after the limited partner's receipt of such notice to cure any other default under this Agreement, the Regulatory Agreement and other Seller Loan Documents;

12.22.4 If a default is incapable of being cured within Thirty (30) days, the Seller will give the limited partner an additional Ninety (90) days to cure such default provided the limited partner has commenced to cure such default and is diligently proceeding to cure such default through the end of such period;

12.22.5 If the limited partner makes any such payment or otherwise cures such default, the Seller will accept such action as curing such default as if such payment or cure were made by Buyer;

12.22.6 The Seller will permit the limited partner to transfer the limited partner's interest to any person or entity at any time provided that, if at the time of such transfer the limited partner has not made 100% of the capital contributions the limited partner is

required to make to Buyer, the limited partner shall remain liable to Buyer for such capital contributions;

12.22.7 The Seller will permit the limited partner to remove the general partner of Buyer in accordance with the Partnership Agreement, provided that the substitute general partner is reasonably acceptable to Seller; and

12.22.8 The Seller will permit insurance and condemnation proceeds to be used to rebuild the Development provided that (i) sufficient funds are provided from other sources to effectively rebuild the Development to a lawful multifamily housing complex, and (ii) subject to the rights of any senior lenders, Seller shall hold all such proceeds and disburse them based on the progress of construction, subject to such additional reasonable conditions as Seller may impose

Section 12.23 HUD Required Provisions. If the Buyer receives a Section 202 Capital Grant from HUD and the Property and Buyer are subject to the HUD Use Agreement and HUD Regulatory Agreement, then upon the recordation of the HUD Use Agreement and HUD Regulatory Agreement against the Property, the Seller and Buyer agree to comply with the provisions contained in the HUD-Required Provisions Rider attached hereto as Exhibit N.

Section 12.24 Memorandum of Purchase and Development Agreement. The Parties shall execute and record a Memorandum of this Agreement in the form attached as Exhibit O hereto, giving notice of this Agreement.

[signature page to follow]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year shown below the name of each of the parties.

Eden Development, Inc., a California nonprofit public
benefit corporation

By: _____
Linda Mandolini, Executive Director

City of Lodi, a municipal corporation

By: _____
Its: City Manager

Approved as to Form:

City Attorney

Attest:

City Clerk

EXHIBIT A

Legal Description of the Property

Real property in the City of LODI, County of SAN JOAQUIN, State of CALIFORNIA, described as follows:

PARCEL 1 AS SHOWN ON THE PARCEL MAP FILED NOVEMBER 4, 1996, IN BOOK 20 OF PARCEL MAPS, AT PAGE 139, SAN JOAQUIN COUNTY RECORDS.

EXHIBIT B
Exclusive Negotiating Rights Agreement

EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT

This Exclusive Right to Negotiate Agreement ("**Agreement**") is entered into effective as of 8/5, 2009 ("**Effective Date**"), by and between the City of Lodi, a municipal corporation ("**City**") and Eden Development, Inc., a California nonprofit public benefit corporation ("**Eden**"). City and Eden are referred to collectively as the "**Parties**."

RECITALS

A. The City owns that unimproved parcel consisting of approximately 3.39 acres located at 2245 Tienda Drive in the City of Lodi, more particularly described in Exhibit A attached hereto (the "**Property**").

B. The City has determined that the desired future use of the Property shall be an affordable rental residential development that is age restricted for seniors. Accordingly, the City issued a Request for Qualifications ("**RFQ**") inviting submissions from developers interested in developing the Property with affordable rental housing for seniors with restrictions compatible with the financing requirements of the Community Development Block Grant Program ("**CDBG**"), the Home Investment Partnership Act ("**HOME**") and the Department of Housing and Urban Development ("**HUD**") Section 202 Supportive Housing for the Elderly Program ("**HUD 202**").

C. In response to the City's RFQ, Eden submitted its qualifications to construct, own and operate rental housing affordable to very low and low income senior households at the Property (the "**Senior Project**"). On April 1, 2009, the City Council selected Eden as the developer for the Property and directed staff to proceed with the preparation of this Agreement for the exclusive right to negotiate an agreement whose terms and conditions would govern the conveyance of the Property to Eden for the development of the Senior Project, by Eden.

D. In reliance on the City Council's selection of Eden as the developer of the Property, Eden will commence its due diligence and predevelopment activities for the acquisition of the Property and development of the Senior Project, including submitting applications for project financing, which include but are not limited to CDBG, HOME and HUD 202 funds.

E. Until such time that the appropriate environmental assessment of the Senior Project is complete in accordance with the provisions of the California Environmental Quality Act ("**CEQA**") and the National Environmental Policy Act ("**NEPA**"), an Option to Purchase and Purchase Agreement ("**Purchase Agreement**") or a Disposition Development and Loan Agreement ("**DDLA**") cannot be entered into by the Parties. This Agreement is expressly conditioned on a subsequent determination to proceed with, modify or cancel the Senior Project based on the required environmental review, pursuant to CEQA and NEPA requirements.

F. The purpose of this Agreement is to set forth the Parties' common understanding that Eden shall have the exclusive right to negotiate a Purchase Agreement or a DDLA to develop the Property, and that for the term set forth in this Agreement, the City shall not discuss or negotiate development opportunities or rights with respect to the Property with any other person or

entity other than Eden, and that the Parties shall enter into a Purchase Agreement or DDLA, to be negotiated, upon environmental approval of the Senior Project.

G. As more fully set forth in this Agreement, the Parties acknowledge and agree that this Agreement does not grant Eden the right to acquire the Property or construct the Senior Project, nor does it obligate Eden to any activities or costs to acquire the Property or construct the Senior Project

H. In addition to the purpose set forth in Recital F, this Agreement provides evidence of the Parties intention regarding Eden's site control of the Property for the future acquisition and development of the Property, to induce potential project lenders to accept Eden's applications for project financing for the Senior Project.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Disposition, Development and Loan Agreement. The Parties shall use their best efforts to successfully negotiate a Purchase Agreement or DDLA which shall describe the terms and conditions governing disposition of the Property for the development of the Senior Project. The Parties agree that a Purchase Agreement or DDLA shall include, without limitation, the following terms; provided however, nothing herein is intended to or shall limit the City's discretionary authority to approve, deny or condition specific land use entitlements for the Senior Project based on the required environmental review.

1.1. Senior Project.

1.1.1. Development Concept. The concept for the Senior Project includes the development of up to Ninety (90) rental housing units serving low-income seniors. The concept of "aging in place" (i.e., making sure that seniors can live independently even as they become frail), will be integral to the Senior Project. Accessibility will also be a priority. The Senior Project will have an elevator, include community spaces, laundry facilities and management offices, and all units will be fully adaptable and/or accessible.

1.1.2. Affordability Requirements. Upon conveyance of the Property to Eden, the Property will be subject to a recorded regulatory agreement between Eden and the City that will require Forty Nine Percent (49%) of the rental units be offered for rent and occupancy by very low and low income senior households at an affordable rent for a term of not less than Fifty Five (55) years.

1.2. Financial Terms.

1.2.1. Purchase Price. The purchase price for the Property shall be Six Hundred Thirty Dollars (\$630,000), as is substantiated by a qualified appraisal dated July 2, 2009.

1.2.2. Financing.

1.2.2.1. City CDBG and/or HOME Loan to Eden. Eden shall apply to the City for a CDBG and HOME loan of funds which have been set aside by the City in the amount of \$1,100,000.00, to finance the closing cost for Eden's acquisition of

the Property, with the balance of the loan proceeds used to finance predevelopment costs for the Senior Project. The City loan to Eden shall have, at a minimum, the following terms: be a nonrecourse loan secured by the Property; repaid on a residual receipts basis; shall bear interest at a simple rate not to exceed 3% per annum and shall be contingent (i.e., no accrual of interest if the interest is not paid current annually) if necessary to make the Senior Project financially feasible; and shall mature 55 years from the final certificate of occupancy issued for the Senior Project.

1.2.2.2. State HOME Funds. On or before August 14, 2009, Eden shall apply to the State of California ("State") for a State HOME grant of funds in the approximate amount of \$2, 800,000.00 to finance pre-development and development costs.

1.2.2.3. HUD Section 202 Funds. On or around September, 2009, Eden shall apply for HUD 202 funds in response to HUD's 2009 Notice of Funding Availability ("NOFA"). If the Senior Project is not selected for 2009 funding, Eden shall submit for HUD 202 financing in 2010 and 2011.

1.3 City Approvals. Eden shall be responsible for obtaining all approvals required by City for the Senior Project in accordance with City's standard application process for discretionary land use entitlements, including payment for all of City's costs of processing such approvals. Nothing set forth herein shall be construed as a grant of any such approvals, or as an obligation on the part of City to grant such approvals.

2. Purchase Agreement or DDLA Acknowledgments. The Parties agree that they shall use good faith efforts to seek City Council approval of a Purchase Agreement or DDLA by April 30, 2010. Eden expressly acknowledges that a Purchase Agreement or DDLA resulting from negotiations contemplated by this Agreement shall become effective only if a Purchase Agreement or DDLA is approved by the City Council following notice and hearing as required by applicable law and compliance with all other requirements of law, including without limitation CEQA and NEPA requirements. Without limiting the generality of the foregoing, this Agreement does not impose a binding obligation on the City to convey the Property to Eden, nor does it obligate the City to grant any approvals or authorizations required for the Senior Project. The Parties acknowledge that approval and execution of a Purchase Agreement or DDLA may precede formal approval and adoption of entitlements necessary for the development of the Senior Project, and the Parties agree that a Purchase Agreement or DDLA will provide that conveyance of the Property will be expressly contingent upon City Council approval, as applicable, of all discretionary entitlements required for the Senior Project.

3. Eden's Exclusive Right to Negotiate with City: Term. For a period of two (2) years commencing on the Effective Date (the "Term"), the City agrees that it will not, during the Term of this Agreement, directly or indirectly, through any officer, employee, agent, or otherwise, solicit, the submission of bids, offers or proposals by any person or entity with respect to the acquisition of any interest in the Property or the development of the Property, and the City shall not engage any broker, financial adviser or consultant to initiate or encourage proposals or offers from other parties with respect to the disposition or development of the Property or any portion thereof.

4. Eden's Studies; Right of Entry. During the Term, Eden shall use its best efforts to prepare, at Eden's expense, any studies, surveys, plans, specifications and reports ("Eden's Studies") Eden deems necessary or desirable in Eden's sole discretion, to determine the suitability of the Property for the Senior Project. Such studies may include, without limitation, title investigation, relocation plans, marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses and design studies. Eden shall be responsible for obtaining the City's advance written permission from the City Manager or his designee for access to the Property as may be necessary to prepare Eden's Studies. In connection with entry onto the Property, Eden shall and hereby agrees to indemnify, defend (with counsel approved by the City) and hold harmless the Indemnities (defined in Section 11) from and against all Claims (defined in Section 11) resulting from or arising in connection with entry upon the Property by Eden or Eden's agents, employees, consultants, contractors or subcontractors.
 - 4.1. Right of Entry Agreement; Copies of Reports/Tests. The City may require Eden to execute a right of entry agreement satisfactory to the City prior to entry onto the Property. The City Manager or his designee shall have authority to sign such agreement without further approval of the Council. Eden's inspection, examination, survey and review of the Property shall be at Eden's sole expense. Eden shall provide the City with copies of all reports and test results within ten (10) days following completion of such reports and testing, whether or not such reports and test results are completed prior to or after the expiration or earlier termination of this Agreement.
 - 4.2. Property Condition. Eden shall repair, restore and return the Property to its condition immediately preceding Eden's entry thereon at Eden's sole expense. Eden shall at all times keep the Property free and clear of all liens and encumbrances affecting title to the Property. Eden's indemnification obligations, obligations to provide reports and test results, and obligations to discharge liens that attach to the Property as set forth in Section 11 shall survive the expiration or earlier termination of this Agreement.
5. The City's Reports and Studies. Within fifteen (15) days following the Effective Date, the City shall make available to Eden for review or copying, at Eden's expense, all non-privileged studies, non-confidential surveys, plans, specifications, reports, and other documents concerning the physical condition of the Property that the City has in its possession or control.
6. Relationship of Parties. The Parties agree that nothing in this Agreement is intended to or shall be deemed or interpreted to create among them the relationship of buyer and seller, or of partners or joint venturers.
7. Confidentiality; Dissemination of Information. During the Term, each Party shall obtain the consent of the other Party prior to issuing or permitting any of its officers, employees or agents to issue any press release or other information to the press with respect to this Agreement; provided however, no Party shall be prohibited from supplying any information to its representatives, agents, attorneys, advisors, financing sources and others to the extent necessary to accomplish the activities contemplated hereby so long as such representatives, agents, attorneys, advisors, financing sources and others are made aware of the terms of this Section. Nothing contained in this Agreement shall prevent any Party at any time from

complying with the California Public Records Act, furnishing any required information to any governmental entity or authority pursuant to a legal requirement or from complying with its legal or contractual obligations.

8. Termination.

8.1. Mutual Consent. This Agreement may be terminated at any time by mutual written consent of the Parties.

8.2. City's Right to Terminate. The City shall have the right to terminate this Agreement upon its good faith and reasonable determination that Eden is not proceeding diligently and in good faith to carry out its obligations pursuant to this Agreement. The City shall exercise such right by providing at least thirty (30) days' advance written notice to Eden which notice shall describe the nature of Eden's default hereunder. Notwithstanding the foregoing, if Eden commences to cure such default within such thirty (30) day period and diligently prosecutes such cure to completion within the earliest feasible time, but not later than thirty (30) days following the date of the notice, this Agreement shall remain in effect.

8.3. Eden's Right to Terminate.

8.3.1. Financial or Physical Infeasibility. Eden shall have the right to terminate this Agreement, effective upon thirty (30) days' written notice to the City that Eden has determined the Senior Project is financially or physically infeasible and the City has reviewed and agreed, in its reasonable discretion, with Eden's determination.

8.3.2. Environmental and/or Entitlement Infeasibility. If the City Council is unable for any reason to adopt or approve the certification of environmental documents required for the Senior Project pursuant to NEPA, CEQA or to rezone the Property for the Senior Project, Eden shall have the right to terminate this Agreement and the City shall reimburse Eden for its actual out-of-pocket costs paid to third parties for predevelopment activities in connection with the proposed development of Property, provided the amount to be reimbursed shall not exceed Fifty Thousand Dollars (\$50,000.00).

9. Effect of Termination or Expiration of the Term. Upon termination as provided herein, or upon the expiration of the Term (and any extensions thereof) without the Parties having successfully negotiated a Purchase Agreement or DDLA, this Agreement shall be void, and there shall be no further liability or obligation on the part of any of the Parties or their respective officers, employees, agents or other representatives; provided however, the provisions of Section 4.2, Section 7, Section 8.3.2 and Section 11, shall survive such termination.

10. Notices. Each notice, demand or other document required to be given hereunder ("Notice") shall be in writing and shall be delivered personally (including messenger or courier service with evidence of receipt) or sent by the United States Postal Service ("USPS"), certified mail, return receipt requested, with proper postage prepaid, addressed to the parties at the respective addresses set forth below. Each Notice shall be effective upon being so deposited, but the time

period in which a response to any such Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof.

If to the City: City of Lodi Community Development Department
221 W. Pine Street
Lodi, CA 95240
Attention: Joseph Wood, Neighborhood Services Manager

If to Eden: Eden Development, Inc.
22645 Grand Street
Hayward, CA 94541-5031
Attention: Executive Director

Copy to: D. Stephen Schwabauer, City Attorney
City of Lodi
221 W. Pine Street
Lodi, CA 95240

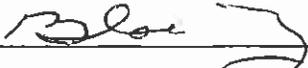
11. Indemnification. Eden hereby covenants to indemnify, hold harmless and defend the City and their respective elected and appointed officials, officers, agents, representatives and employees (all of the foregoing, collectively the "Indemnities") from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) (all of the foregoing, collectively the "Claims") arising out of any act of negligence, misfeasance or willful misconduct of Eden in connection with this Agreement or the activities contemplated hereby. Eden shall have no indemnification obligation with respect to the negligence, misfeasance or willful misconduct of the City or for any Claims arising from the presence of any hazardous materials on the Property prior to conveyance of the Property to Eden. Eden's indemnification obligations set forth in this Section 11, shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, in the event a CEQA or NEPA lawsuit is brought which relates to this Agreement, and a Purchase Agreement or DDLA to be negotiated, and/or the Senior Project, the Parties shall meet and confer about whether to proceed with the Senior Project. If the parties are unable to agree, either party may terminate this Agreement without further obligation.
12. Severability. If any term or provision of this Agreement or the application thereof shall, to any extent, be held to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.
13. Amendments; Counterparts. This Agreement may be amended only by a written instrument executed by the Parties or their successors in interest. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall

constitute one agreement.

14. Successors and Assigns; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided however, that Eden shall not transfer or assign any of its rights hereunder by operation of law or otherwise without the prior written consent of the City, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns. The Parties acknowledge that Eden shall have the right to have a Purchase Agreement or DDLA entered into by, or assigned to, a limited partnership in which the general partner is a wholly-controlled affiliate of Eden.
15. Captions. The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.
16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of law.

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

CITY OF LODI
a California municipal corporation

By: 
Blair King, City Manager

APPROVED AS TO FORM:

By: 
D. Stephen Schwabauer, City Attorney

ATTEST:
By: 
Randi Johl, City Clerk

EDEN DEVELOPMENT, INC.,
a California nonprofit public benefit corporation

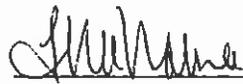
By: 
Name: Terese McNamee
Its: Chief Financial Officer and Acting Executive Director

EXHIBIT A

Legal Description of the Property

Real property in the City of LODI, County of SAN JOAQUIN, State of CALIFORNIA, described as follows:

PARCEL 1 AS SHOWN ON THE PARCEL MAP FILED NOVEMBER 4, 1996, IN BOOK 20 OF PARCEL MAPS, AT PAGE 139, SAN JOAQUIN COUNTY RECORDS.

EXHIBIT C
Approved Development Budget

Roget Park Senior Housing
Estimated Acquisition and Predevelopment Budget

Date

6/15/09

SOURCES of FUNDS	Acq./Predev.
Predevelopment Loan	\$ -
Other Predevelopment Loan Eden LOC	\$ -
CDBG funds	\$ 1,100,000
HOME funds (GAP)	\$ 658,793
HUD Capital Advance	\$ -
Tax Exempt Construction Loan	\$ -
FHLB - AHP	\$ -
LH Tax Credit-LP Capital Contribution	\$ -
LH Tax Credit-GP Capital Contribution	\$ -
Permanent Financing	\$ -
Permanent Financing - 2nd Mortgage	\$ -
Deferred Developer Fee	\$ -
TOTAL SOURCES	\$ 1,758,793

By 6-30-10
 Est 5-2010

Surplus/(Deficit)

HUD app - 8/09
 100% CD - 4/10
 Site Acquisition - 6/10
 Permit Submittal - 10/10
 CD/AC submit - 7/11
 Construction Close - 12/11

USES of FUNDS	Acq./Predev.	Jul 03-Jun 10	Jul 10-Jun 11	Jul 11-Dec 11
LAND & IMPROVEMENTS:				
Land Cost	\$ 650,000	\$ 650,000	\$ -	\$ -
Extensions	\$ -	\$ -	\$ -	\$ -
Permanent Relocation	\$ -	\$ -	\$ -	\$ -
Demolition	\$ -	\$ -	\$ -	\$ -
Environmental Remediation	\$ -	\$ -	\$ -	\$ -
Site Maintenance (i.e. Security, Clean-Up)	\$ 5,000	\$ -	\$ 2,500	\$ 2,500
Site Value Beyond Cost	\$ -	\$ -	\$ -	\$ -
Title & Escrow - Land Acquisition	\$ 10,000	\$ 10,000	\$ -	\$ -
Legal - Land Acquisition	\$ 5,000	\$ 5,000	\$ -	\$ -
Total Land & Improvements	\$ 670,000	\$ 665,000	\$ 2,500	\$ 2,500
DESIGN & CONSULTING:				
Architect	\$ 610,000	\$ 324,000	\$ 292,000	\$ -
Joint Trench Utility Design	\$ 16,300	\$ 8,150	\$ 8,150	\$ -
Construction Estimating/Management Services	\$ 10,000	\$ 5,000	\$ 5,000	\$ -
Engineering Reports (i.e. Topo, Noise, Soils, Traffic, Biology)	\$ 50,000	\$ 50,000	\$ -	\$ -
Environmental	\$ 20,000	\$ 20,000	\$ -	\$ -
Testing & Inspection	\$ -	\$ -	\$ -	\$ -
Total Design & Consulting	\$ 712,300	\$ 407,150	\$ 305,150	\$ -
CONSTRUCTION:				
Off-Site Improvements	\$ -	\$ -	\$ -	\$ -
On-Site Improvements	\$ -	\$ -	\$ -	\$ -
Commercial/Childcare Construction	\$ -	\$ -	\$ -	\$ -
Retail/Tenant Improvements	\$ -	\$ -	\$ -	\$ -
Unit Construction	\$ -	\$ -	\$ -	\$ -
Podium/Garage	\$ -	\$ -	\$ -	\$ -
General Requirements	\$ -	\$ -	\$ -	\$ -
GC Contingency	\$ -	\$ -	\$ -	\$ -
Contractor Overhead & Profit	\$ -	\$ -	\$ -	\$ -
Contractors Bond & Insurance	\$ -	\$ -	\$ -	\$ -
Prncng Escalation/Design Contingency	\$ -	\$ -	\$ -	\$ -
Furniture, Fixtures & Equipment (common area)	\$ -	\$ -	\$ -	\$ -
Construction Contingency	\$ -	\$ -	\$ -	\$ -
Total Construction	\$ -	\$ -	\$ -	\$ -
INDIRECT COSTS:				
Permits & Fees (not incl. building permit and related fees)	\$ 200,000	\$ 50,000	\$ 100,000	\$ 50,000
Legal Fees - Constr. Loan Closing	\$ -	\$ -	\$ -	\$ -
Legal Fees - Perm. Loan Closing	\$ -	\$ -	\$ -	\$ -
Legal Fees - Organization	\$ 8,000	\$ 8,000	\$ -	\$ -
Audit Fees	\$ -	\$ -	\$ -	\$ -
Sponsor Administration	\$ 50,000	\$ 50,000	\$ -	\$ -
Appraisal	\$ 3,500	\$ 3,500	\$ -	\$ -
Market Study	\$ 9,500	\$ 9,500	\$ -	\$ -
Rent/Up Marketing	\$ -	\$ -	\$ -	\$ -
Reserves	\$ -	\$ -	\$ -	\$ -
Marketing & Bond Reserves	\$ -	\$ -	\$ -	\$ -
Initial Services Reserve	\$ -	\$ -	\$ -	\$ -
Operating Reserves	\$ -	\$ -	\$ -	\$ -
MHP Interest Reserve	\$ -	\$ -	\$ -	\$ -
Partnership Management	\$ -	\$ -	\$ -	\$ -
Investor Services Fee Reserve	\$ -	\$ -	\$ -	\$ -
HUD MCI	\$ -	\$ -	\$ -	\$ -
Soft Costs Contingency	\$ 35,000	\$ 11,667	\$ 11,667	\$ 11,667
Total Indirect Costs	\$ 304,000	\$ 130,667	\$ 111,667	\$ 61,667
FINANCE & CARRYING COSTS:				
Liability/GDC Insurance	\$ -	\$ -	\$ -	\$ -
Real Estate Taxes	\$ -	\$ -	\$ -	\$ -
Predevelopment Loan Interest (includes land carry)	\$ -	\$ -	\$ -	\$ -
Costs of Issuance (Bonds)	\$ -	\$ -	\$ -	\$ -
Construction Loan Fees & Expenses	\$ -	\$ -	\$ -	\$ -
Construction Loan Interest	\$ -	\$ -	\$ -	\$ -
Permanent Financing Fees & Expenses	\$ -	\$ -	\$ -	\$ -
Title & Escrow - Construction Loan	\$ -	\$ -	\$ -	\$ -
Title & Escrow - Permanent Loan	\$ -	\$ -	\$ -	\$ -
Lender-Appraisal, Legal & Consulting (Inspections incl)	\$ 8,000	\$ -	\$ -	\$ 8,000
Total Finance & Carry Costs	\$ 8,000	\$ -	\$ -	\$ 8,000
TAX CREDITS/SYNDICATION EXPENSES:				
TCAC Application Fee	\$ 2,000	\$ -	\$ 2,000	\$ -
TCAC Reservation Fee	\$ 9,582	\$ -	\$ 9,582	\$ -
TCAC Performance Deposit	\$ -	\$ -	\$ -	\$ -
TCAC Performance Deposit Refund	\$ -	\$ -	\$ -	\$ -
TCAC Monitoring Fee	\$ -	\$ -	\$ -	\$ -
CDLAC Performance Deposit	\$ 47,910	\$ -	\$ 47,910	\$ -
CDLAC Performance Deposit Refund	\$ -	\$ -	\$ -	\$ -
Syndication Consultant	\$ 5,000	\$ -	\$ 5,000	\$ -
Syndication Legal Fees	\$ -	\$ -	\$ -	\$ -
Syndication-Investor Legal	\$ -	\$ -	\$ -	\$ -
Syndication Other - Bridge Loan Fees	\$ -	\$ -	\$ -	\$ -
Syndication Other - Bridge Loan/Dev Fee Interest	\$ -	\$ -	\$ -	\$ -
Total TCAC/Syndication	\$ 64,492	\$ -	\$ 64,492	\$ -
TOTAL DEVELOPMENT EXPENSES	\$ 1,758,793	\$ 1,202,817	\$ 483,869	\$ 72,167

EXHIBIT D
Form of Deed of Trust

FORM OF CITY DEED OF TRUST

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Exempt from recording fees pursuant to Gov. Code Sec. 6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST AND ASSIGNMENT OF RENTS

A.P.N. _____

THIS DEED OF TRUST (this "Deed of Trust") is made as of _____, [REDACTED], between _____, L.P., a California limited partnership ("Trustor"), FIRST AMERICAN TITLE INSURANCE COMPANY as "Trustee," and the CITY OF [REDACTED], a chartered city ("Beneficiary"). Trustor is the fee owner of the Property described below.

This Deed of Trust witnesseth:

That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, that certain real property in [REDACTED] County, California, described as:

See Exhibit A, attached hereto and incorporated herein by this reference.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power, and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits; and together with all buildings and improvements of every kind and description now or hereafter erected or placed thereon, and all fixtures, including but not limited to all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bath tubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, cabinets, refrigerating plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed to be permanently affixed to and a part of the realty; and

Together with all building materials and equipment now or hereafter delivered to the premises and intended to be installed therein; and

Together with all articles of personal property owned by the Trustor now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the lands described which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to the building or buildings in any manner. All of the foregoing, together with the real property, is herein referred to as the "Property."

To have and to hold the Property, together with appurtenances to the Trustee, its or its successors and assigns forever.

For the Purpose of Securing:

- (a) Performance of each agreement of Trustor herein contained.
- (b) Payment of the indebtedness evidenced by that certain promissory note (the "Note") of even date herewith, and any extension or renewal thereof, in the stated principal sum of \$ [REDACTED], executed by Trustor in favor of Beneficiary or order.
- (c) Payment of such further sums as the then record owner of the Property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.
- (d) Performance by Trustor of all of Trustor's obligations arising under that certain Regulatory Agreement (the "Regulatory Agreement") dated and recorded concurrently herewith between Trustor and Beneficiary.
- (e) Performance of each obligation of Trustor set forth in that certain Acquisition and Development Agreement (the "Agreement") dated as of _____, [REDACTED] entered into by and between Trustor's predecessors-in-interest and Beneficiary.

To Protect the Security of This Deed of Trust, Trustor Agrees:

- (1) That it shall faithfully perform each and every covenant contained in the Note, Regulatory Agreement, and the Agreement.
- (2) That it will not permit or suffer the use of any of the Property for any purpose other than the use described in the Regulatory Agreement and the Agreement as they may be amended from time to time.
- (3) To keep the Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the Property, or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use

of the Property may be reasonably necessary, the specific enumerations herein not excluding the general.

(4) To provide, maintain and deliver to Beneficiary fire and extended coverage insurance with endorsements for vandalism, malicious mischief, and special extended perils, in the full replacement value of the improvements (excluding footings and foundations with no co-insurance penalty provision), and with endorsements for increases in costs due to changes in code and inflation, and any other insurance requested by Beneficiary, and with loss payable to Beneficiary, and any other insurance required by the Agreement. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Beneficiary shall have the right to pay any insurance premiums when due should Trustor fail to make them, and all such payments made by the Beneficiary shall be added to the principal sum secured hereby. Beneficiary shall release all insurance or condemnation proceeds to Trustor to be used to reconstruct the Project on the Property provided that such Beneficiary determines that such restoration, repair or rebuilding is economically feasible.

(5) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.

(6) To pay: at least ten (10) calendar days before delinquency all taxes and assessments affecting the Property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on the Property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

(7) Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes with written notice to Trustor; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees.

(8) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby, any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time the statement is made.

(9) The Trustor further covenants that it will not voluntarily create, suffer, or permit to be created against the Property any lien or liens except as authorized by Beneficiary and further that it will keep and maintain the Property free from the claims of all persons supplying labor or materials which will enter into the construction of any and all buildings now being erected or to be erected on the Property, or will cause the release of or will provide a bond against any such liens within ten (10) days of Trustor's receipt of notice of the lien or liens.

(10) That any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys it receives in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(11) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(12) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of the Property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(13) That upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven by Beneficiary, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." In addition, upon Beneficiary's satisfaction that the subdivision process for the creation of commercial condominiums for the ground level commercial/retail spaces on the Property in accordance with state law has been completed, Beneficiary shall make written request to Trustee for the partial reconveyance of the portion of the Property consisting of those condominiums, and the encumbrance of this Deed of Trust shall be reconveyed without warranty as to that portion of the Property only.

(14) That Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents, income and profits of the property encumbered hereby, and hereby give to and confer upon Beneficiary the right, power and authority to collect such rent, income, and profits, and Trustor irrevocably appoints Beneficiary Trustor's true and lawful attorney at the option of Beneficiary, at any time, to give receipts, releases and satisfactions and to sue, either in the name of Trustor or in the name of Beneficiary, for all income, and apply the same to the indebtedness secured hereby; provided, however, so long as no default by Trustor in the payment of any indebtedness secured hereby shall exist and be continuing, Trustor shall have the right to collect all rent, income and profits from the Property and to retain, use and enjoy the same. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the

indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of the Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(15) That upon default by Trustor in payment of any indebtedness secured hereby, or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and election to cause to be sold the Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at the sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(16) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title estate, rights, powers and duties. The instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

(17) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Note, whether or not

named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(18) That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any Deed of Trust or of any action or proceeding in which either Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

(19) If Trustor shall die or sell, convey, hypothecate, transfer, encumber or alienate the Property, or any part thereof, or any interest therein, or shall be divested of title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, or if Trustor shall fail to make any payments due under the Note, or fail to perform any other obligation under this Deed of Trust, the Note, the Regulatory Agreement, or the Agreement, or any other deed of trust encumbering the Property or the promissory note or other agreement secured thereby, then Beneficiary shall have the right, at its option, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any note evidencing the same, immediately due and payable.

(20) That Trustor shall promptly pay when due the payments of interest, principal, and all other charges accruing under any superior or prior trust deed, mortgage, or other instrument encumbering the Property. Upon any breach of the Agreement, Beneficiary shall have the right to declare all sums secured hereby immediately due and payable. Beneficiary shall have the right, but not the obligation, to cure any defaults on any superior or prior deed of trust or promissory note secured thereby and upon curing such default Trustor shall immediately reimburse Beneficiary for all costs and expenses incurred thereby, together with interest thereon at the maximum legal rate permitted to be charged by non-exempt lenders under the State of California, and Trustor's failure to pay such amount on demand shall be a breach hereof. Trustor's breach or default of any covenant or condition of any superior or prior trust deed, mortgage or other instrument encumbering the Property shall be a default under this Deed of Trust.

(21) That the improvements now existing or to be constructed upon the Property, and all plans and specifications, comply with all municipal ordinances and regulations and all other regulations made or promulgated, now or hereafter, by lawful authority, and that the same will upon completion comply with all such municipal ordinances and regulations and with the rules of the applicable fire rating or inspection organization, bureau, association or office.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at the following address: _____

Signature of Trustor _____, L.P.
a California limited partnership

By: _____
Name: _____
Title: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT E
Financing Plan

Tienda Drive Senior Housing
SOURCES AND USES OF FUNDS

SOURCES of FUNDS	TOTAL	Acq./Predev.	Construction	Permanent	% of Total	Per Unit	Assumptions	TERMS	
Predevelopment Loan		\$ 722,170	\$ (722,170)	\$ -	0.00%	\$ -	5.00%	24 months	
Other Predevelopment Loan - Eskin LLC					0.00%	\$ -	5.00%	12	
City of Loan (CDBG/HOME Note)	\$ 1,100,000	\$ 1,100,000						REVENUE is CDBG. 8415 9434 HOME	
State HOME Loan	\$ 4,600,000		\$ 4,000,000	\$ -	23.24%	\$ 50,000		Loan - 55 yr deferred loan @ 3% simple	
HUD Capital Advance	\$ 5,011,110			\$ 5,011,110	34.34%	\$ 73,880			
Tax Exempt Construction Loan			\$ 8,070,355	\$ (8,070,355)	0.00%	\$ -	5.50%	Construction Loan @	
FMLB - AYP	\$ 790,000		\$ 790,000	\$ -	4.59%	\$ 9,875		Loan - 10 year forgiven @ 0%	
LH Tax Credit LP Capital Contribution	\$ 4,590,850		\$ 1,147,665	\$ 3,443,094	26.67%	\$ 57,363	.70 cents		
LH Tax Credit LP Capital Contribution	\$ 822,998			\$ 822,998	4.78%	\$ 10,267			
Permanent Financing					0.00%	\$ -			
Permanent Escrow - 200 Mortgage					0.00%	\$ -			
Deferred Developer Fee					0.00%	\$ -			
TOTAL SOURCES	\$ 17,214,773	\$ 1,822,170	\$ 13,284,845	\$ 2,108,764	93.81%	\$ 201,435			
Surplus/(Deficit)		0	0	0					
USES of FUNDS	TOTAL	Acq./Predev.	Construction	Permanent	Base Eligible	Cost/Unit	Cost/SpI	Assumptions	Comments
LAND & IMPROVEMENTS:									
Land Cost	\$ 650,000	\$ 650,000	\$ -	\$ -	\$ -	\$ 7,875	\$ 9		
Extensions									
Permanent Relocation									
Demolition									
Environmental Remediation									
Site Maintenance (ie Security Clean-Up)	\$ 5,000	\$ 5,000			\$ 5,000	\$ 63	\$ 0		
Site Value Beyond Cost									
Title & Escrow - Land Acquisition	\$ 10,000	\$ 10,000				\$ 125	\$ 0		
Legal - Land Acquisition	\$ 5,000	\$ 5,000				\$ 63	\$ 0		
Total Land & Improvements	\$ 650,000	\$ 650,000	\$ -	\$ -	\$ 5,000	\$ 8,125	\$ 9		
DESIGN & CONSULTING:									
Architect (Civil included by HUD)	\$ 770,000	\$ 616,000	\$ 154,000	\$ -	\$ 770,000	\$ 9,675	\$ 11		
Joint Trench Utility Design	\$ 16,300	\$ 16,300	\$ -	\$ -	\$ 16,300	\$ 204	\$ 0		
Construction Estimating/Management Services	\$ 75,000	\$ 10,000	\$ 65,000	\$ -	\$ 75,000	\$ 938	\$ 1		
Engineering Reports (ie Topo Noise Soils Traffic Biology)	\$ 50,000	\$ 50,000	\$ -	\$ -	\$ 50,000	\$ 625	\$ 0		
Environmental	\$ 20,000	\$ 20,000	\$ -	\$ -	\$ 20,000	\$ 250	\$ 0		
Testing & Inspection	\$ 100,000	\$ -	\$ 100,000	\$ -	\$ 100,000	\$ 1,250	\$ 1		
Total Design & Consulting	\$ 1,031,300	\$ 712,300	\$ 319,000	\$ -	\$ 1,031,300	\$ 12,891	\$ 14		
CONSTRUCTION:									
Off-Site Improvements									
On-Site Improvements	\$ 1,301,637		\$ 1,301,637	\$ -	\$ 650,919	\$ 10,273	\$ 18	\$ 400,000	Brown Estimate 7 31 00
Commercial/Childcare Construction							\$ 180		
Retail/Tenant Improvements							\$ 95		Prevailing Wage/Davis Bacon Yes
Unit Construction	\$ 5,465,887		\$ 5,465,887	\$ -	\$ 5,465,887	\$ 88,324	\$ 75	\$ 130	
Podium/Garage							\$ 70		
General Requirements	\$ 547,881		\$ 547,881	\$ -	\$ 547,881	\$ 6,840	\$ 8	0%	Brown Estimate 7 31 00
GC Contingency	\$ 206,100		\$ 206,100	\$ -	\$ 206,100	\$ 2,576	\$ 3	0%	Brown Estimate 7 31 00
Contractor Overhead & Profit	\$ 410,837		\$ 410,837	\$ -	\$ 410,837	\$ 5,135	\$ 6	0.50%	Brown Estimate 7 31 00
Contractors Bond & Insurance	\$ 51,884		\$ 51,884	\$ -	\$ 51,884	\$ 640	\$ 1	0.50%	Brown Estimate 7 31 10
Pricing Escalation Design Contingency	\$ 998,053		\$ 998,053	\$ -	\$ 998,053	\$ 12,470	\$ 14	0.50%	
Furniture - Fixtures & Equipment (common area)	\$ 80,000		\$ 80,000	\$ -	\$ 80,000	\$ 1,000	\$ 1		
Construction Contingency	\$ 453,124		\$ 453,124	\$ -	\$ 453,124	\$ 5,664	\$ 6	5.00%	
Total Construction	\$ 9,515,803	\$ -	\$ 9,515,803	\$ -	\$ 8,884,685	\$ 118,945	\$ 131	180	per NRSF excl contingency & F&E
INDIRECT COSTS:									
Permits & Fees	\$ 2,268,032	\$ 228,803	\$ 2,041,229	\$ -	\$ 2,268,032	\$ 29,350	\$ 31	0.50%	per unit estimate or per fee schedule if complete
Legal Fees - Constr. Loan Closing	\$ 30,000		\$ 30,000	\$ -	\$ 30,000	\$ 375	\$ 0		
Legal Fees - Perm. Loan Closing	\$ 25,000			\$ 25,000	\$ 25,000	\$ 313	\$ 0		
Legal Fees - Organization	\$ 6,000	\$ 6,000			\$ 6,000	\$ 75	\$ 0		
Audit Fees	\$ 20,000			\$ 20,000		\$ 250	\$ 0		
Sponsor Administration	\$ 1,937,998	\$ 50,000	\$ 1,500,000	\$ 1,737,998	\$ 1,937,998	\$ 24,225	\$ 27		
Appraisal	\$ 3,500	\$ 3,500				\$ 44	\$ 0		re-certify the appraisal
Market Study	\$ 9,500	\$ 9,500			\$ 9,500	\$ 119	\$ 0		
Ramp Up Marketing	\$ 80,000		\$ 80,000			\$ 1,000	\$ 1	1000	
Reserves									
Marketing & Bond Reserves									
Initial Services Reserve	\$ 100,000		\$ 100,000			\$ 1,250	\$ 1	1%	
Operating Reserve	\$ 80,704			\$ 80,704		\$ 1,000	\$ 1		
Replacement Reserves	\$ 37,406			\$ 37,406		\$ 468	\$ 1	0.600%	
Partnership Management	\$ 101,472			\$ 101,472		\$ 1,268	\$ 1		
Investor Asset Management Fee Reserve	\$ 41,783			\$ 41,783		\$ 522	\$ 1		
HUD MCI	\$ 10,000			\$ 10,000		\$ 125	\$ 0		
Soft Costs Contingency	\$ 100,216	\$ 35,000	\$ 65,216		\$ 100,216	\$ 1,253	\$ 1	2%	
Total Indirect Costs	\$ 4,851,815	\$ 330,803	\$ 2,468,448	\$ 2,054,364	\$ 4,376,749	\$ 60,645	\$ 67		
FINANCE & CARRYING COSTS:									
Liability/COC Insurance	\$ 116,587		\$ 116,587	\$ -	\$ 116,587	\$ 1,457	\$ 2	0.50%	
Real Estate Taxes	\$ 7,056		\$ 7,056	\$ -	\$ 7,056	\$ 88	\$ 0	1.50%	assumes 2 yrs plus 1 yr during constr. reimb - per
Predevelopment Loan Interest (includes land carry)	\$ 75,828	\$ 75,828			\$ 75,828	\$ 948	\$ 1		
Costs of Issuance (Bonds)	\$ 164,325		\$ 164,325			\$ 2,054	\$ 2		
Construction Loan Fees & Expenses	\$ 40,352		\$ 40,352		\$ 40,352	\$ 504	\$ 1	0.50%	
Construction Loan Interest	\$ 536,342		\$ 536,342		\$ 240,429	\$ 6,704	\$ 7	50% AOB	
Permanent Financing Fees & Expenses								0.0%	
Title & Escrow - Construction Loan	\$ 30,000		\$ 30,000		\$ 30,000	\$ 375	\$ 0		
Title & Escrow - Permanent Loan	\$ 15,000			\$ 15,000	\$ 188	\$ 0			
Lender-Appraisal Legal & Consulting (Inspections incl)	\$ 55,000	\$ 8,000	\$ 47,000		\$ 55,000	\$ 688	\$ 1		
Total Finance & Carry Costs	\$ 1,040,491	\$ 83,828	\$ 941,663	\$ 15,000	\$ 580,253	\$ 13,068	\$ 14		
TAX CREDIT/INDICATION EXPENSES:									
TCAC Application Fee	\$ 2,000	\$ 2,000				\$ 25	\$ 0		
TCAC Reservation Fee	\$ 6,374		\$ 6,374			\$ 80	\$ 0	1%	of annual tax credit allocation
TCAC Performance Deposit								4%	of annual tax credit allocation
TCAC Performance Deposit Refund									
TCAC Monitoring Fee	\$ 32,390			\$ 32,390		\$ 405	\$ 0	410	per unit (not including manager's unit)
CDLAC Performance Deposit	\$ 31,870	\$ 31,870				\$ 398	\$ 0	0.5%	of bond allocation
CDLAC Performance Deposit Refund	\$ (31,870)		\$ (31,870)			\$ (398)	\$ (0)		
Syndication Consultant	\$ 45,000	\$ 5,000	\$ 35,000	\$ 5,000		\$ 563	\$ 1		
Syndication Legal Fees	\$ 40,000		\$ 40,000			\$ 500	\$ 1		
Syndication-Investor Legal									
Syndication Other - Bridge Loan Fees									
Syndication Other - Bridge Loan Dev Fee Interest									
Total TCAC/Syndication	\$ 125,764	\$ 45,244	\$ 43,130	\$ 37,390	\$ -	\$ 1,572	\$ 2		
TOTAL DEVELOPMENT EXPENSES	\$ 17,214,773	\$ 1,822,170	\$ 13,284,845	\$ 2,108,764	\$ 14,897,567	\$ 218,188	\$ 237		

EXHIBIT F
Promissory Note

PROMISSORY NOTE

[\$1,100,000]

Lodi, California

_____, 20__

FOR VALUE RECEIVED, Eden Development, Inc., a California nonprofit public benefit corporation ("Borrower"), promises to pay to the City of Lodi, a municipal corporation ("Seller"), in lawful money of the United States of America, the principal sum of One Million One Hundred Thousand Dollars (\$1,100,000) or so much thereof as may be advanced by Seller pursuant to the Purchase and Development Agreement referred to below, together with interest on the outstanding principal balance at the rate of three percent (3%) simple interest per annum, commencing upon the earlier of three (3) years from the date of this Note or the date of the permanent loan closing for the Development. Interest shall be calculated on the basis of a year of 360 days, and charged for the actual number of days elapsed.

1. PURCHASE AND DEVELOPMENT AGREEMENT. This Promissory Note ("Note") has been executed and delivered pursuant to and in accordance with that Purchase and Development Agreement executed by and between Borrower and Seller dated as of _____, 2009 ("Agreement"), which is incorporated by this reference herein. Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

2. REPAYMENT

2.1. PAYMENTS; MATURITY DATE. This Promissory Note shall be paid only on a residual receipts basis from the Residual Receipts (as defined and calculated below) generated by the Development. Payments shall be credited first to any unpaid late charges and other costs and fees then due, then to accrued interest, and then to principal. No amount due under this Promissory Note shall become subject to any rights, offset, deduction or counterclaim on the part of Borrower. The entire outstanding principal balance of this Promissory Note, together with interest accrued thereon and any other sums accrued hereunder shall be payable in full on the earlier of (a) the fifty-fifth (55th) anniversary of the date upon which City of Lodi issues a final certificate of occupancy for the Development or (b) [_____] ("Maturity Date").

2.2. ANNUAL PAYMENTS FROM RESIDUAL RECEIPTS. By no later than June 1 of each year following the issuance of a final certificate of occupancy for the Development, Borrower shall pay to Seller fifty percent (50%) of all Residual Receipts generated by the Development during the previous calendar year to reduce the indebtedness owed under this Promissory Note. No later than May 1 of each year following the issuance of a final certificate of occupancy for the Development, Borrower shall provide to Seller Borrower's calculation of Residual Receipts for the previous calendar year, accompanied by such supporting documentation as Seller may reasonably request, including without limitation, an independent audit prepared for the Development by a certified public accountant in accordance with generally accepted accounting principles. No later than November 15 of each year following issuance of the final certificate of occupancy for the Development, Borrower shall provide to Seller a projected budget for the following calendar year which shall include an estimate of Residual Receipts.

Notwithstanding any contrary provision set forth herein, including without limitation, the definition of Residual Receipts, if and for so long as the Property is encumbered by a HUD Use Agreement or HUD Regulatory Agreement executed by or in favor of the U.S. Department of Housing and Urban Development ("HUD") in connection with a Section 202 Capital Grant, the HUD-required provisions set forth in any Rider to the Agreement, shall govern.

2.2.1. "Residual Receipts" shall mean for each calendar year during the term of this Promissory Note, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below) for the Development. Residual Receipts shall also include net cash proceeds realized from any refinancing of the Development, less fees and closing costs reasonably incurred in connection with such refinancing, and any Seller-approved uses of the net cash proceeds of the refinancing.

2.2.2. "Gross Revenue" shall mean for each calendar year during the term of this Promissory Note, all revenue, income, receipts and other consideration actually received by Borrower from the operation and leasing of the Development. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; proceeds from vending and laundry room machines; the proceeds of business interruption or similar insurance; the proceeds of casualty insurance; and condemnation awards for a taking of part or all of the Development for a temporary period. Gross Revenue shall include any release of funds from replacement and other reserve accounts to Borrower other than for costs associated with the Development. Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances.

2.2.3. "Annual Operating Expenses" shall mean for each calendar year during term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Development to the extent that they are consistent with an annual independent audit performed by a certified public accountant using generally accepted accounting principles: property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or Residual Receipts of the Development) on loans which have been approved by the Seller and which are secured by deeds of trust senior in priority to the Seller Deed of Trust ("Approved Senior Loans"); property management fees and reimbursements in amounts in accordance with industry standards for similar residential projects; property management staff salaries; premiums for property damage, liability and other insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Development; organizational costs (e.g., annual franchise tax payments) and costs associated with accounting, tax preparation and legal fees of Borrower incurred in the ordinary course of business; expenses for security services; advertising and marketing costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services and activities; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements and for tenant services in the amount reasonably required the lender of an Approved Senior Loan or by Borrower with the written approval of Seller; partnership management fees payable to the general partner of Buyer in the maximum aggregate sum of \$25,000 per year payable only for so long as Buyer is a limited partnership; an asset management fee not to exceed \$10,000 per year, increasing by 3% per year annually after the first three years (plus any accrued but unpaid amount for prior

years) payable to the investor limited partner of Buyer; any previously unpaid portion of the developer fee (without interest) due Eden Housing, Inc.; cash deposits into operating reserves in the amount (if any) required by the lender of an Approved Senior Loan or reasonably required by Borrower and approved in writing by Seller; other ordinary and reasonable operating expenses; and extraordinary operating costs approved in writing by the Seller. Payments to Borrower, its partners or affiliates in excess of the limitations set forth in this Section shall not be counted toward Annual Operating Expenses for the purpose of calculating Residual Receipts.

Notwithstanding the above, if HUD Section 202 financing is used the parties agree to amend this Promissory Note to specifically provide that Borrower shall be entitled to pay Eden Housing, Inc. its full developer fee without deferment and that the following reserve accounts shall be funded prior to the Development's permanent loan closing in the amounts necessary to capitalize the monthly or annual payments by the lender of an Approved Senior Loan, or by Borrower and approved by the Seller in its reasonable discretion: operating; tenant services; partnership management fee; investor asset management fee; and bond issuer fees and other bond-related fees, if any. The parties acknowledge that Development costs not allowed by HUD to be paid prior to HUD's determination of Residual Receipts or residual receipts must be capitalized and placed in reserve accounts for the benefit of the Development. Interest earned on the above reserves shall become a part of each reserve and used only for the purpose for which each reserve is established.

2.2.4. EXCLUSIONS FROM ANNUAL OPERATING EXPENSES. Annual Operating Expenses shall exclude the following: developer fees and interest on any deferred developer fees (except as permitted pursuant to Section 2.2.3); contributions to Development operating reserves (except as permitted pursuant to Section 2.2.3); debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Seller Deed of Trust; depreciation, amortization, depletion or other non-cash expenses; expenses paid for with disbursements from any reserve account; distributions to partners; any amount paid to Borrower, any general partner of Borrower, or any entity controlled by the persons or entities in control of Borrower or any general partner of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses in accordance with the limitations set forth in Section 2.2.3 above even if paid to an affiliate of Borrower or a partner of Borrower, if any: fees paid to a property management agent or resident services agent, partnership management fees, and asset management fees.

2.3. DUE ON SALE; ASSIGNMENT. The entire unpaid principal balance and all interest and other sums accrued hereunder shall be due and payable upon the Transfer (as defined in Section 10.2 of the Agreement) without Seller consent, of all or any part of the Development or any interest therein other than a Transfer permitted without Seller consent pursuant to the Agreement. Without limiting the generality of the foregoing, this Promissory Note shall not be assigned without Seller's prior written consent, which consent may be granted or denied in Seller's sole discretion; provided however, this Promissory Note may be assigned in connection with a permitted Transfer described in Section 10.3 of the Agreement.

3. PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Promissory Note. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal.

4. MANNER OF PAYMENT. All payments of principal and interest on this Promissory Note shall be made to Seller at 221 West Pine Street, Lodi, CA 95240 or such other place as Seller shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by Seller in writing.

5. DEFAULT; DEFAULT RATE. If Borrower does not pay the above payments within the 30 calendar days of the date due, Borrower will be in default under this Promissory Note. During the time that any default exists under this Promissory Note, interest shall automatically be increased upon written notice to the default rate of the lesser of ten percent (10%), compounded annually, or the highest rate permitted by law (the "Default Rate"). When Borrower is no longer in default, the Default Rate shall no longer apply and the interest rate shall once again be the non-default rate. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Promissory Note or prevent the Seller from exercising any of its other rights or remedies.

6. SECURITY; REMEDIES. Prior to Borrower's acquisition of the Property described in Exhibit A to the Agreement, this Promissory Note is secured by that Assignment of Agreements executed by the Borrower for the benefit of the Seller. From and after the time the Borrower acquires title to the Property this Promissory Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Deed of Trust") executed by Borrower for the benefit of Seller and encumbering the Property in San Joaquin County. Upon the failure of the Borrower to perform or observe any provision of this Promissory Note or Deed of Trust, at the option of the Seller and with thirty (30) days' prior written notice, the entire unpaid principal and interest, if any, owing on this Promissory Note shall become immediately due and payable, and the Seller may exercise its rights or remedies hereunder or thereunder. This Promissory Note is executed and delivered in the State of California and shall be governed by the laws of the State of California.

7. WAIVER; COSTS. Borrower waives presentment, demand, protest, notices of dishonor and of protest, and all defenses and pleas on the ground of any extension or extensions of the time of payment or of any due date under this Promissory Note, in whole or in part, whether before or after maturity and with or without notice. The Borrower hereby agrees to pay court costs and expenses, which may be incurred by the Seller, in the enforcement of this Promissory Note.

8. TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Promissory Note.

9. NONRECOURSE. The nonrecourse provision set forth in this Section 9 shall apply from and after the Borrower acquires title to the Property described in the Agreement and records the Deed of Trust for the benefit of the Seller.

(a) Except as set forth in paragraph (b) below, the Borrower shall not have any direct or indirect personal liability for payment of the principal of, or interest on, the Loan, and the sole recourse of the Seller with respect to the principal of, or interest on, the Promissory Note shall be to the property described in the Deed of Trust; provided, however, that nothing contained in

the foregoing limitation of liability shall (a) limit or impair the enforcement against all such security for the Promissory Note of all the rights and remedies of the Seller thereunder, or (b) be deemed in any way to impair the right of the Seller to assert the unpaid principal amount of the Promissory Note as demand for money within the meaning and intent of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto.

(b) The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the Promissory Note, except as hereafter set forth. Nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the Seller under Sections 4.7, 4.8.1, 4.9, 6.3.10, .8.5.3 and 12.4 of the Agreement, or liability for (i) fraud or willful misrepresentation; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by Borrower other than in accordance with the Deed of Trust; and (iv) the misappropriation of any proceeds of the loan or under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property.

10. HUD-Required Provisions Rider.

During the term of the HUD 202 Capital Advance, the Seller agrees to comply with the provisions set forth in the HUD-Required Provisions Rider attached hereto and incorporated into this Agreement, as Attachment A.

IN WITNESS WHEREOF, Borrower has executed and delivered this Promissory Note as of the date first written above.

BORROWER

Eden Development, Inc.,
a California nonprofit public benefit corporation

By: _____

ATTACHMENT A
HUD-REQUIRED PROVISIONS RIDER

For value received, the undersigned agree that the following provisions shall be incorporated into and made a part of the following documents as amended (the "Junior Loan Documents") relating to the property commonly known as _____ Senior Housing (the "Project"): That certain Purchase and Development Agreement dated _____, 2009 ("Agreement") and memorandum thereof recorded _____ as series no. _____ of San Joaquin County by the City of Lodi (the "Lender") and Eden Development, Inc., its successors and assigns (the "Borrower"); that Regulatory Agreement recorded _____ as series no. _____ (the "Lender Regulatory Agreement"); that Promissory Note dated as of _____, 2009 secured by that certain Deed of Trust recorded _____ as series no. _____.

In the event of any conflict, inconsistency or ambiguity between the provisions of this Rider and the provisions of the Junior Loan Documents, the provisions of this Rider shall control. All capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the Junior Loan Documents. As used in this Rider, the term "HUD Loan Documents" shall mean the following documents relating to the HUD Section 202 Capital Advance for the Project (HUD Project No. 121-EE___-NP-WAH).

- A. Deed of Trust recorded concurrently herewith on the Property among Borrower as trustor, North American Title Company as trustee and Eden Development, Inc. as beneficiary, which beneficial interest will be assigned to HUD by that collateral assignment at closing (the "HUD Deed of Trust");
- B. Regulatory Agreement between Borrower and HUD recorded currently herewith on the Property ("HUD Regulatory Agreement");
- C. Capital Advance Program Use Agreement between Borrower and HUD recorded concurrently herewith on the Property (the "HUD Use Agreement"), incorporated by reference in the HUD Deed of Trust;
- D. HUD Security Agreement between Borrower as the debtor and Eden Development, Inc. as the secured party, which interest shall be assigned to HUD by that collateral assignment (the "HUD Security Agreement");
- E. HUD Project Rental Assistance Contract (the "PRAC"); and
- F. Other HUD Capital Advance documents.

1. Term of Rider. Notwithstanding anything else in this Rider to the contrary, the provisions of this Rider shall be and remain in effect only so long as any of the HUD Loan Documents are in effect; thereafter, this Rider and its requirements shall be deemed no longer in effect.

2. Subordination. The covenants contained in the Junior Loan Documents shall be subordinate to the rights of HUD under the HUD Loan Documents, and to the HUD rules and regulations pertaining thereto; and furthermore, the Junior Loan Documents shall not be enforceable against the HUD Secretary, his or her successors and assigns, should the HUD Secretary acquire title to the Project by power of sale, foreclosure, or by deed-in-lieu of foreclosure. In addition, so long as the HUD Loan Documents are in effect, in the event that there are any conflicts between the terms and conditions in the Junior Loan Documents and the terms and conditions of the HUD Loan Documents and HUD rules and regulations pertaining thereto, the HUD Loan Documents and HUD rules and regulations shall prevail. No default may be declared under the Junior Loan Documents without prior written HUD consent.

3. HUD Rules. During the time period in which Section 202 or the PRAC regulations apply to the Project, rents approved by HUD pursuant to the Section 202 program and the PRAC shall be deemed to be in compliance with the Lender Regulatory Agreement, and compliance by the Borrower with the Section 202 Regulations and the PRAC with respect to continued occupancy by households whose incomes exceed the eligible income limitations in Section 2 of the Lender Regulatory Agreement, or other matters set forth in the Lender Regulatory Agreement, shall be deemed to be in compliance with the requirements of the Junior Loan Documents. Nothing in the Junior Loan Documents shall in any way limit, interfere or conflict with the rights of HUD with respect to development, operation and management of the Project; nor can the Junior Loan Documents in any way jeopardize the continued operation of the project on terms at least as favorable to existing as well as future tenants.

4. Maturity Date. The Junior Note may not mature, and may not bear a maturity date, prior to the date on which the HUD Note matures. The term of the Junior Loan Documents shall be extended if the Junior Note matures, there are no residual receipts or non-Project funds available for repayment and the HUD Mortgage has not been retired in full or if HUD grants a deferment of amortization or forbearance that results in an extended maturity of the HUD Loan Documents.

5. Residual Receipts. As long as HUD, its successors or assigns, is the holder of the HUD Documents, any payments due from Project income from the Section 202 units under the Junior Loan Documents, or any prepayments made with Project income from the Section 202 units, shall be payable only from residual receipts of the Project, as that term is defined in the HUD Regulatory Agreement between HUD and the Borrower, and subject to the availability of residual receipts in accordance with the provision of said HUD Regulatory Agreement. No payments or prepayments using residual receipts can be made without HUD approval. Borrowers may make payments or prepayments at any time without HUD approval using funds that do not come from Project income from

the Section 202 units. The restrictions on payment imposed by this paragraph shall not excuse any default caused by the failure of the makers to pay the indebtedness evidenced by the Lender's junior Note.

6. Indemnification. Enforcement by the Lender of any indemnification provisions in the Junior Loan Documents will not and shall not result in any monetary claim against the Project, the HUD Capital Advance proceeds, any reserve or deposit required by HUD in connection with the HUD Capital Advance, or the rents or other income from the Section 202 units in the Project other than residual receipts authorized for release by HUD, without the prior written consent of HUD, but Lender shall have the right to add any amounts due the Lender pursuant to indemnification provisions in the Junior Loan Documents to the principal amount of the Loan and the Note and interest shall accrue thereon commencing on the date indemnification payments are due. In addition, any indemnification provisions shall not be enforceable against the HUD Secretary, his or her successors and assigns, should the HUD Secretary acquire title to the Project by power of sale, foreclosure, or by deed-in-lieu of foreclosure.

7. Transfer. Approval by HUD of a Transfer of Physical Assets (as defined in Handbook 4350.1, REV-1, Chapter 13) ("TPA") shall constitute approval of the transfer by the Lender, and the Borrower shall deliver to the Lender at the same time as its delivery to HUD, any application for HUD's approval of a proposed transfer. Also, the Borrower shall require the transferee to expressly assume the Borrower's obligations under the Junior Loan Documents; provided, however, HUD shall not be required to enforce the requirements of this sentence and if Borrower and any transferee fail to include such assumption in transfer documents, such failure shall not affect the validity of the transfer. The Lender shall have the right to specifically enforce the requirement that any transferee assume the Borrower's obligations under the Junior Loan Documents. In the absence of such written assumption, no transfer shall be deemed to relieve the transferor from any obligations under the Junior Loan Documents.

8. Default under Junior Loan Documents. The Lender shall not declare a default under the Junior Loan Documents unless it has received the prior written approval of HUD, and the right of the Lender to accelerate the Junior Note during the term of the HUD Loan Documents shall be enforceable only with the prior written approval of HUD.

9. Receiver. The Lender, for itself, its successors and assigns, further covenants and agrees that in the event of the appointment of a receiver in any action by the Lender, its successors and assigns, to foreclose the Lender's junior Deed of Trust, no rents, revenue or other income of the Project collected by the receiver or by the mortgagee-in-possession shall be utilized for the payment of interest, principal, or any other charges due and payable under the Lender's junior Deed of Trust, except from Residual Receipts, if any, as the term is defined in the HUD Regulatory Agreement. The appointment of a receiver shall require approval by the Secretary of HUD, and pursuant to HUD regulations, as long as the Lender is beneficiary under the Deed of Trust, the Lender cannot be mortgagee-in-possession. In the event of the appointment, by any court, of any person, other than HUD, the Lender, as a receiver or a mortgagee or party

in possession, or in the event of any enforcement of any assignment of leases, rents, issues, profits, or contracts contained in the Junior Loan Documents, with or without court action, no rents, revenue or other income of the Project collected by the receiver, person in possession or person pursuing enforcement as aforesaid, shall be utilized for the payment of interest, principal or any other amount due and payable under the provisions of the Junior Loan Documents, except from Residual Receipts in accordance with the HUD Regulatory Agreement. The receiver, person in possession or person pursuing enforcement shall operate the Project in accordance with all provisions of the HUD Documents.

10. Deed-in-Lieu of Foreclosure. In the event that HUD acquires title to the Project by deed-in-lieu of foreclosure, the lien of the Lender's junior Deed of Trust will automatically terminate subject to the conditions as hereinafter described. HUD may cure a default under the HUD Deed of Trust prior to conveyance by deed-in-lieu of foreclosure. HUD shall give written notice to the Lender of a proposed tender of title in the event HUD decides to accept a deed-in-lieu of foreclosure. HUD will only give such written notice if, at the time of the placing of the subordinate lien against the Property, HUD receives a copy of an endorsement to the title policy of the Borrower or Lender which indicates that (a) the Lender's junior Deed of Trust has been recorded, and (b) HUD is required to give notice of any proposed election or tender of a deed-in-lieu of foreclosure. Such notice shall be given at the address stated in the Lender's junior Deed of Trust or such other addresses as later on provided to HUD by written notice, and designated by the Lender as its legal business address. The Lender shall have thirty (30) days to cure the default after notice of intent to accept a deed-in-lieu of foreclosure is mailed.

11. Borrower's Notice to City. Notwithstanding the requirements set forth in Paragraph 10 above, in the event that Borrower contemplates executing a deed-in-lieu of foreclosure, Borrower shall first give the Lender thirty (30) days prior written notice; provided, however, that the failure of the Borrower to give said notice shall have no effect on the right of HUD to accept a deed-in-lieu of foreclosure.

12. Sale, Transfer or Assignment of the Junior Note. The Lender's junior Note is non-negotiable and may not be sold, transferred, assigned or pledged by the Lender except with the prior approval of HUD.

13. Amendment. No amendment to the Junior Loan Documents made after the date of this Rider shall have any force or affect until and unless such amendment is approved in writing by HUD.

[signature page to follow]

IN WITNESS WHEREOF, the undersigned have executed this Rider as follows:

EDEN DEVELOPMENT, INC. a California Nonprofit Public Benefit Corporation

CITY OF LODI
By: _____

By: _____

Name: _____
City Manager

EXHIBIT G

Budget for Predevelopment Component

In accordance with Section 3.3.1 of the Agreement, the proceeds of the Predevelopment Component may be used only for the following predevelopment costs or activities, unless the Seller's City Manager or his designee approves in writing a different use of the funds:

- Architectural
- Appraisal
- City Planning Fees
- Civil Engineering
- Construction Cost Estimating
- Engineering Reports
- Environmental (Phase I, II, etc.) Reports
- Financial Consulting
- Hydrology & Drainage
- Joint Trench Utility Design
- Legal
- Market Study
- Noise & Vibration Study
- Permits & Fees
- Predevelopment Interest
- Site Maintenance
- Soils Reports
- Survey
- Sponsor administration/buyer fee
- TCAC Fees
- Traffic and other studies

EXHIBIT H
ASSIGNMENT OF AGREEMENTS, PLANS AND SPECIFICATIONS, AND APPROVALS

EDEN DEVELOPMENT, INC.

FOR VALUE RECEIVED, the undersigned, Eden Development, Inc., a California nonprofit public benefit corporation (the "Buyer"), hereby assigns and transfers to the Seller of Lodi, a municipal corporation (the "Seller"), all of its right, title and interest in and to:

(1) All architectural, design, engineering, and construction contracts and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively "Agreements"), heretofore or hereafter entered into by any Contractor (as defined below) relating to the Property (identified in the Purchase and Development Agreement defined below)

(2) All studies and analyses, surveys, plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions and addenda thereto (collectively "Studies, Plans and Specifications") heretofore or hereafter prepared by any Contractor (as defined below); and

(3) All land use approvals, building permits, and other governmental approvals of any nature obtained for the Development (collectively, the "Land Use Approvals").

This Assignment is made pursuant to the terms of the Purchase and Development Agreement, dated as of _____, 2009 entered into between the Buyer and the Seller (the "Purchase and Development Agreement" or "Agreement"). Capitalized terms used but not defined in this Assignment shall have the meanings set forth in the Agreement.

For purposes of this Assignment, the term "Contractor" means any consultant, architect, construction contractor, engineer or other person or entity entering into Agreements with the Buyer and/or preparing Studies, Plans and Specifications for the Buyer with respect to the Development.

The Buyer hereby irrevocably appoints the Seller as its attorney-in-fact (which Seller is coupled with an interest) to, upon the occurrence of a Default by Buyer (after notice and opportunity to cure) or an event which, with notice or the passage of time or both would constitute a Default (after notice and opportunity to cure) under and as defined in Article 11 of the Agreement, demand, receive, and enforce any and all of the Buyer's rights with respect to the Studies, Plans and Specifications, Agreements and Land Use Approvals, and perform any and all acts in the name of the Buyer or in the name of the Seller with the same force and effect as if performed by the Buyer in the absence of this Assignment.

The Buyer represents and warrants to the Seller that no previous assignment(s) of its rights or interest in or to the Studies, Plans and Specifications, Agreements, and/or Land Use Approvals, has or have been made, and the Buyer agrees not to assign, sell, pledge, transfer, mortgage, or hypothecate its rights or interest therein (without prior written approval of the Seller Manager) so long as the Seller holds or retains any security interest under the Agreement.

This Assignment is made to secure: (1) payment to the Seller of all sums now or hereafter owing under the Promissory Note dated as of the date hereof made by the Buyer to the Seller, and any and all additional advances, modifications, extensions, renewals and amendments thereof; and (2) payment and performance by the Buyer of all its obligations under the Agreement.

This Assignment shall be governed by the laws of the State of California, except to the extent that Federal laws preempt the laws of the State of California, and the Buyer consents to the jurisdiction of any federal or State Court within the State of California having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of the Buyer and the Seller; provided, however, this shall not be construed and is not intended to waive the restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation or encumbrance by the Buyer contained in the Agreement.

Executed by the Buyer on _____, 2009.

BUYER

EDEN DEVELOPMENT, INC., a California nonprofit
public benefit corporation

By: _____

ARCHITECT'S/ENGINEER'S CONSENT

The undersigned architect and/or engineer (collectively referred to as "Architect") hereby consents to the foregoing Assignment of Agreements, Plans and Specifications, and Approvals ("Assignment"), of which this Architect's/Engineer's Consent ("Consent") is a part, and acknowledges that there presently exists no unpaid claims presently due to the Architect except as disclosed to the Seller with a copy to Architect arising out of the preparation and delivery of the Plans and Specification to the Buyer and/or the performance of the Architect's obligations under the Agreements, as the term "Agreements" is defined in the Assignment.

Architect agrees that if, at any time, the Seller shall become the owner of said Property, or, pursuant to its rights under the Agreement, elects to undertake or cause the completion of construction of the Development on any of the Property, in accordance with the Plans and Specifications, and gives Architect written notice of such election; then so long as the Architect has received, receives or continues to receive the compensations called for under the Agreements, the Seller may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Agreements for the benefit and account of the Seller in the same manner as if performed for the benefit or account of the Buyer in the absence of this Assignment.

Architect further agrees that, in the event of a breach by the Buyer of the Agreements, or any agreement entered into with Architect in connection with the Plans and Specifications, so long as the Buyer's interest in the Agreements and Plans and Specifications is assigned to the Seller, Architect will give written notice to the Seller at the address shown below of such breach. The Seller shall have thirty (30) days from the receipt of such written notice of Default to remedy or cure said Default; provided, however, nothing herein shall require the Seller to cure said Default or to undertake completion of construction of the Improvements.

Architect warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment or the Predevelopment Loan Agreement, as applicable.

Executed by the Architect on _____, 20__

Address of Seller:
City of Lodi
Community Development Dept.
221 W. Pine Street, Lodi, CA 945240
(P.O. Box 3006, Lodi, CA 95241-1910)
Attention: Manager,
Neighborhood Services Division
Community Improvement

Address of Architect:

Architect: _____

By: _____

Its: _____

EXHIBIT I
Form of Regulatory Agreement

EXHIBIT I

RECORDING REQUESTED BY &
AFTER RECORDING, MAIL TO:

City of Lodi
221 West Pine Street
Lodi, CA 95240
Attention: City Manager

No fee for recording pursuant to
Government Code Section 27383

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(Lodi Senior Housing, 2245 Tienda Drive, Lodi, CA 95242)

This Agreement is entered into as of _____, by and between the City of Lodi, a California municipal corporation of the State of California (the "City") and Eden Development, Inc., a California nonprofit public benefit corporation (the "Owner"), in connection with the following facts:

A. Pursuant to the Development Agreement (as defined below) between the City and Borrower, the City will provide to Borrower a loan in the amount of One Million One Hundred Thousand Dollars (\$1,100,000) to acquire that parcel of real property located at 2245 Tienda Drive in Lodi, as more particularly described in Exhibit A attached here to (the "Property") and for predevelopment costs associated with the development thereon. Borrower intends to construct, own and operate on the Property _____ () units of rental housing for rental to very low-income senior households and one resident manager's unit. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Development Agreement.

B. _____ Dollars (\$ _____) of the City Loan is funded with HOME Investment Partnership Program funds received by the City from HUD pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. Section 12705, et seq) and _____ Dollars (\$ _____) is funded with Community Development Block Grant funds, received by the City from HUD pursuant to Title I of the Housing and Community Development Act of 1974 (42 USC 5301, et seq.).

C. The City has agreed to make the City Loan to Borrower on the condition that the Development be maintained and operated in accordance with restrictions concerning affordability, operation, and maintenance of the Development, as specified in this Agreement and the Development Agreement.

Therefore, in consideration of the City Loan and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to ensure that the Property will be used

and the Development operated in accordance with these conditions and restrictions, the City and Borrower agree as follows:

I.
DEFINITIONS

1.1 Definitions.

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

1. "Actual Household Size" shall mean the actual number of persons in the applicable household.

2. "Adjusted Income" shall mean the total anticipated annual income of all persons in a household as calculated in accordance with 24 C.F.R. Section 92.203(b)(1).

3. "Assumed Household Size" shall mean the following assumed household sizes to be utilized to calculate permissible Rents hereunder: one bedroom, two persons; two bedrooms, three persons; and three bedrooms, four persons, except that if any federal statutes or regulations require use of alternate household size assumptions in calculating rents, such federally-mandated household size assumptions shall be used instead of the assumptions provided below. In the event Borrower receives funding under the State of California Multifamily Housing Program ("MHP"), the assumed household sizes utilized under the MHP Program may be utilized instead of the assumed sizes provided in this subsection.

4. "Borrower" means Eden Development, Inc., a California nonprofit public benefit corporation or its successor-in-interest, assignee or transferee.

5. "CDBG" shall mean the Community Development Block Grant Program, operated pursuant to Title I of the Housing and Community Development Act of 1974 (42 USC 5301, et seq.).

6. "CDBG Regulations" shall mean the regulations governing the use of the CDBG Funds as set forth in 24 CFR 570 et seq.

7. "Certificate Notice" shall mean the document to be recorded by Borrower upon issuance of the final certificate of occupancy by the City of Lodi for the Development, which recites the date of issuance of the final certificate of occupancy for the purposes of determining the Term of this Agreement.

8. "City" shall mean the City of Lodi.

9. "City HOME-Assisted Units" shall mean the _____ () Units designated as assisted with HOME funds.

10. "City Deed of Trust" shall mean the deed of trust dated _____ by and among Borrower, as trustor, North American Title Company, as trustee and the City, as beneficiary, recorded on the Property which secures repayment of the City Loan and the performance of the Development Agreement and this Agreement.

11. "City Loan" shall mean all funds loaned to Borrower by City pursuant to the Development Agreement.

12. "City Note" shall mean the promissory note from the Borrower to the City, dated _____, evidencing the City Loan.

13. "Development" shall mean the Property and the _____ () residential units to be developed on the Property, as well as any additional improvements, and all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist.

14. "HOME" shall mean the HOME Investment Partnership Act Program pursuant to the Cranston-Gonzales National Housing Act of 1990, as amended.

15. "HOME Regulations" shall mean the regulations governing the use of HOME Funds as set forth in 24 CFR 92 et seq.

16. "HOME Reporting Term" shall mean the period beginning on the date of this Agreement and ending on the twentieth (20th) anniversary of the date of this Agreement.

17. "HUD" shall mean the United States Department of Housing and Urban Development.

18. "HUD 202 Capital Advance" means a capital advance provided by HUD to the Borrower for construction and/or permanent financing for the Development pursuant to Section 202 of the Housing Act of 1959, as amended.

19. "Development Agreement" shall mean the HOME Development Agreement entered into by and between the City and Borrower, dated _____.

20. "Low Income Household" shall mean a household with an Adjusted Income that does not exceed the qualifying limit for a low-income family under the HOME Program as defined in 24 C.F.R. Section 92.2.

21. "Median Income" shall mean the median gross yearly income, adjusted for Actual Household Size as specified herein, in the County of San Joaquin, California, as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, City shall provide Borrower with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD.

22. "Rent" shall mean the total of monthly payments by a Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including

parking; any separately charged fees or service charges assessed by Borrower which are required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Borrower, and paid by the Tenant.

23. "Section 202" means Section 202 of the Housing Act of 1959, as amended.

24. "Tenant" shall mean a household legally occupying a Unit.

25. "Term" shall mean the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the date fifty-five (55) years from the date the City issues a final certificate of occupancy for the Development as set forth in the Certificate Notice.

26. "Unit" shall mean one of the _____ () rental units included in the Development, excluding the one (1) resident manager's unit.

27. "Very Low Income Household" shall mean a Tenant with an Adjusted Income that does not exceed fifty percent (50%) of Median Income, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than fifty percent (50%) of Median Income on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes, as set forth in 24 CFR 92.2.

"Very Low Income Rent" shall mean the maximum allowable rent for a Very Low Income Unit pursuant to Section 2.2(a) below.

"Very Low Income Units" shall mean the Units which, pursuant to Section 2.1(a) below, are required to be occupied by Very Low Income Households.

II.

AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirements.

1. Very Low Income Units. The City under this Agreement shall not require more than forty-nine percent (49%) of the Units shall be rented to and occupied by or, if vacant, available for occupancy by Very Low Income Households.

2. City HOME-Assisted Units. Of the Very Low Income Units referred to in the preceding paragraph, _____ () Units shall be designated as the City HOME-Assisted Units, which includes _____ () one bedroom units and _____ () two bedroom units.

3. Intermingling of Units. The City HOME-Assisted Units and City-required Very Low Income Units shall be intermingled throughout the Development and be of comparable quality to all other Units on the Property. Tenants in all Units shall have equal access to and enjoyment of all common facilities in the Development.

4. Senior Occupancy. The Borrower has elected to operate the Development as a senior housing development and as such to require all Units in the Development, except for the resident manager's unit, if used as such, to be occupied or held available for occupancy by households containing "elderly" residents as defined in the Section 202 program requirements. The Development shall be operated at all times in compliance with the provisions of the Section 202 program requirements, and to the extent applicable: (a) the Unruh Act, including but not limited to California Civil Code Sections 51.2, 51.3 and 51.4 which relate to the requirements for lawful senior housing; (b) the United States Fair Housing Act, as amended, 42 U.S.C. Section 3607(b) and 24 CFR 100.304, which relate to lawful senior housing; (c) the California Fair Employment and Housing Act, Government Code Section 12900 et seq., which relates to lawful senior housing; and (d) any other applicable law or regulation. Borrower shall develop and implement appropriate age verification procedures to ensure compliance with the requirements of this Section.

5. Other Applicable Laws. The Development shall be operated at all times in compliance with the provisions of all other applicable laws, including without limitation: (i) Section 504 of the Rehabilitation Act of 1973; and (ii) any other applicable law or regulation (including the Americans With Disabilities Act, to the extent applicable to the Development).

2.2 Allowable Rent.

1. Very Low Income Rent for City HOME-Assisted Units. Subject to the provisions of Section 2.3 below, the Rent paid by Tenants of the Very Low Income Units shall not exceed the maximum rent published by HUD for a Very Low Income Household for the applicable bedroom size as set forth in 24 CFR 92.252(b) (also known as "Low HOME Rent").

2. Very Low Income Rent for City-Required Very Low Income Units. Subject to the provisions of Section 2.4 below, the Rent (including the Utility Allowance) paid by Tenants of the Very Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Median Income, adjusted for Assumed Household Size.

3. No Additional Fees. The Borrower shall not charge any fee, other than Rent, to any resident of the Units for any housing or other services provided by Borrower pursuant to the Loan Documents.

2.3 Increase in Income of Tenants of City HOME-Assisted Units

1. Increase to Low Income Limit. In the event that, upon recertification of the income of a Tenant of a City HOME-Assisted Unit, the Borrower determines that a former Very Low Income Household's Adjusted Income has increased and exceeds the qualifying income for a Very Low Income Household but does not exceed the qualifying limit for a Low Income Household, the Tenant may continue to occupy the Unit, and, upon expiration of such

Tenant's lease, and upon sixty (60) days written notice to the Tenant, the Borrower may increase the Tenant's Rent to the maximum rent published by HUD for a Low Income Household for the applicable bedroom size as set forth in 24 C.F.R. 92.252(a)(also known as "High HOME Rent"). The Borrower shall then rent the next available Unit to a Very Low Income Household, to comply with the requirements of Section 2.1 above.

2. Non-Qualifying Household. If, upon recertification of the income of a Tenant of a City HOME-Assisted Unit, the Borrower determines that a former Very Low-Income Household's Adjusted Income has increased and exceeds the qualifying the qualifying income for a Low Income Household, such tenant shall be permitted to continue to occupy the Unit, and, upon expiration of such Tenant's lease, and sixty (60) days' written notice to the Tenant, the Rent shall be increased to the lesser of one-twelfth (1/12th) of thirty percent (30%) of actual Adjusted Income of the Tenant, or fair market rent (subject to 24 CFR 92.252(i)(2) regarding low income housing tax credit requirements). The Borrower shall rent the next available Unit to a Very Low Income Household to comply with the requirements of Section 2.1(c) above.

2.4 Increased Income of City-Required Very Low Income Tenants.

1. Increased income above Very Low but below Low Income Limit. In the event that, upon recertification of the income of a Tenant of a Very Low Income Unit, the Borrower determines that the Tenant no longer qualifies as a Very Low Income Household, but does qualify as a Low Income Household, the Tenant may continue to occupy the Unit and, upon sixty (60) days written notice to the Tenant, the Rent shall be increased to the HOME Low Income Rent. The Borrower shall then rent the next available Unit to a Very Low Income Household, to comply with the requirements of Section 2.1 above.

2. Non-Qualifying Household. If, upon recertification of the income of a Tenant, the Borrower determines that a former Very Low Income Household has an Adjusted Income exceeding the maximum qualifying income for an Low Income Household, such Tenant shall be permitted to continue occupying the Unit and upon expiration of the Tenant's lease and upon sixty (60) days' written notice, the Rent shall be increased to the lesser of one-twelfth (1/12th)of thirty percent (30%) of actual Adjusted Income of the Tenant, or fair market rent, and the Borrower shall rent the next available Unit to a Very Low Income Household to meet the requirements of Section 2.1 above.

2.5 Termination of Occupancy. Upon termination of occupancy of a Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level as the initial income level of the vacating Tenant, until such Unit is reoccupied, at which time the income character of the Unit shall be redetermined to meet the occupancy requirements of Section 2.1.

2.6 Compliance with Regulatory Agreements. So long as the Property is encumbered by any regulatory agreement between the Borrower and HUD, the State or State agency required by the financing for the Development and approved by the City, the Borrower's compliance with the terms of such regulatory agreement(s) shall be deemed to be in compliance with the occupancy, rent, and income restrictions set forth above.

III. INCOME CERTIFICATION AND REPORTING

3.1 Income Certification.

Borrower will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the City-Assisted Units. Borrower shall make a good faith effort to verify that the income provided by an applicant or occupying Tenant in an income certification is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a pay stub for the most recent pay period; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Borrower shall also complete and/or have the Tenants of the City-Assisted Units complete and sign the "Income Computation and Certification" and the "Owner's Certification of Household Income" both of which are attached hereto as Exhibit B and/or any other forms related to Tenants' income approved by the City or that provide income information that is sufficient to determine an applicant's income as required by this Section 3.1. Copies of Tenant income certifications shall be available to the City upon request.

3.2 Annual Report to the City.

The Borrower shall submit to the City (a) not later than the sixtieth (60th) day after the close of each calendar year, or such other date as may be requested by the City, a statistical report, including income, occupancy, and rent data for all Units, setting forth the information called for therein, and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the City in order to comply with reporting requirements of HUD or the State of California, if applicable.

Upon request of the City, Borrower shall furnish, within fifteen (15) days, copies of all Tenant agreements for the City HOME-Assisted Units. Within fifteen (15) days after receipt of a written request from the City, Borrower shall also submit any other information or completed forms requested by the City in order to comply with reporting requirements of HUD, (provided, however, that the Borrower shall in no event be obligated to provide any information that it cannot legally obtain as a housing provider), the State of California, or any other government entity or lender to Borrower.

3.3 Additional Information.

Borrower shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of Borrower which pertain to the Development.

3.4 Tenant Records.

Borrower shall maintain complete, accurate and current records pertaining to the Development, and shall permit any duly authorized representative of the City and HUD to inspect records, including records pertaining to income and household size of Tenants. All Tenant lists, applications and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of Borrower and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City and HUD. Borrower shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years. The Borrower is subject to the audit requirements set forth in 24 C.F.R. 570.502.

3.5 HOME Record Requirements.

For the period of the HOME Reporting Term all records maintained by Borrower pursuant to Section 3.4 above shall be (i) maintained in compliance with all applicable HUD records and accounting requirements, and (ii) open to and available for inspection and copying by HUD and its authorized representatives at reasonable intervals during normal business hours; provide however, records pertaining to Tenant income verifications, Rents, and Development inspections shall be subject to HUD inspection for five (5) years after expiration of the HOME Reporting Term. Borrower is subject to the audit requirements set forth in 24 CFR 92.505 during the HOME Reporting Term.

3.6 On-site Inspection.

City shall have the right to perform an on-site inspection of the Development when deemed necessary by the City, in any event at least one (1) time per year upon reasonable notice to the Borrower. Borrower agrees to cooperate in such inspection. If the City desires to inspect the interior of the residential units, the City shall give Borrower sufficient notice to allow Borrower to give not less than seventy-two (72) hours written notice to residents.

IV. OPERATION OF THE DEVELOPMENT

4.1 Residential Use.

The Development shall be operated only for residential use. No part of the Development shall be operated as transient housing.

4.2 Taxes and Assessments.

Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any line or charge from attaching to the Property; provided, however, that Borrower

shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Borrower exercises its right to contest any tax, assessment, or charge against it, Borrower, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest. The City acknowledges that the Borrower intends to apply for welfare exemption under Tax and Revenue Code Sections 214(f) or 214(g), as applicable.

V.
PROPERTY MANAGEMENT AND MAINTENANCE

5.1 Management Responsibilities.

The Borrower is responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility over management of the Development. The Borrower shall retain a professional property management company approved by City in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required.

5.2 Management Agent; Periodic Reports.

The Development shall at all times be managed by an experienced management agent reasonably acceptable to City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Borrower shall submit for City's approval the identity of any proposed Management Agent (and City hereby pre-approves Eden Housing Management, Inc. as the initial Management Agent). The Borrower shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably necessary for City to determine whether the proposed management agent meets the standard for a qualified management agent set forth above. If the proposed management agent meets the standard for a qualified management agent set forth above, City shall approve the proposed management agent by notifying the Borrower in writing. Unless the proposed management agent is disapproved by City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved. The City acknowledges that the Management Agent may be removed by the Permitted Limited Partner (as defined in the Development Agreement) pursuant to the First Amended and Restated Limited Partnership Agreement between Borrower and the Permitted Limited Partner.

5.3 Performance Review.

City reserves the right to conduct an annual (or more frequently, if deemed necessary by City) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Borrower shall cooperate with City in such reviews.

5.4 Replacement of Management Agent.

If, as a result of a periodic review, City determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, City shall deliver notice to Borrower of its intention to cause replacement of the Management Agent, including the reasons therefor. Within twenty-one (21) days after receipt by Borrower of such written notice, City staff and the Borrower shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent. If, after such meeting, City staff recommends in writing the replacement of the Management Agent, Borrower shall promptly dismiss the current Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a management agent set forth in Section 5.2 above and approved by City pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Borrower shall provide that the Management Agent may be dismissed and the contract terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute default under this Agreement, and City may enforce this provision through legal proceedings as specified in Section 6.8 below.

5.5 Approval of Management Policies.

Upon request, the Borrower shall submit its written management policies with respect to the Development to City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

5.6 Property Maintenance.

The Borrower agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

In the event that the Borrower breaches any of the covenants contained in this section and such default continues for a period of ten (10) days after written notice from City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from City with respect to landscaping and building improvements, then City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, City shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by City and/or costs of such cure, which amount shall

be promptly paid by the Borrower to City upon demand.

VI. MISCELLANEOUS

6.1 Lease Provisions.

In leasing the Units, Borrower shall use a form of Tenant lease approved by the City. The lease shall not contain any provision which is prohibited by 24 C.F.R. Section 92.253(b) and any amendments thereto. The form of Tenant lease shall also comply with all requirements of this Agreement and the Development Agreement, and shall, among other matters:

(a) provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (i) to provide any information required under this Agreement or reasonably requested by Borrower to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Development in accordance with the standards set forth in this Agreement, or (ii) to qualify as a Very Low Income Household, as a result of any material misrepresentation made by such Tenant with respect to the income computation.

(b) Be for an initial term of not less than one (1) year, unless by mutual agreement between the Tenant and Borrower, and provide for no increase in Rent during such year. After the initial year of tenancy, the lease may be month to month by mutual agreement of Borrower and the Tenant. Notwithstanding the above, any rent increases shall be subject to the requirements of Section 2.2.

6.2 Lease Termination.

Any termination of a lease or refusal to renew a lease for a Unit must be in conformance with 24 C.F.R. Section 92.253(c) and must be preceded by not less than sixty (60) days' written notice to the tenant by the Borrower specifying the grounds for the action.

6.3 Nondiscrimination.

All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. Borrower shall not give preference to any particular class or group of persons in renting or selling the Units, except to the extent that the Units are required to be leased to income eligible households pursuant to this Agreement. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g., SSI), ancestry, age (except for lawful senior housing) or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Borrower or any person claiming under or through Borrower, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit.

6.4 Section 8 Voucher and Certificate Holders.

The Borrower will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing housing certificate program or the Housing Choice Voucher Program under Section 8 of the United States Housing Act, or its successor. The Borrower shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than the criteria applied to all other prospective Tenants, nor shall the Borrower apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective Tenants.

6.5 Compliance with Development Agreement and Program Requirements.

Borrower's actions with respect to the Property shall at all times be in full conformity with: (i) all requirements of the Development Agreement; (ii) all requirements imposed on projects assisted under the HOME Investment Partnership Program as contained in 42 U.S.C. Section 12701, et seq., 24 C.F.R. Part 92, and other implementing rules and regulations; and (ii) all requirements imposed on projects assisted under the CDBG Program as contained in 42 USC 5301 et seq., 24 CFR Part 570, and other implementing rules and regulations. Borrower shall ensure that the Development meets the Housing Quality Standards pursuant to 24 C.F.R. Section 92.251 throughout the Term.

6.6 Prohibition Against Transfer of Property and Assignment of Agreement Prior To Completion.

Prior to the recording of the Notice of Completion, the Borrower shall not voluntarily or involuntarily make or attempt any total or partial sale, transfer, conveyance, assignment or lease ("Transfer") of the whole or any part of the Property or the buildings or structures thereon or this Agreement without the prior written approval of the City which City may withhold in its sole and absolute discretion.

If the Borrower proposes a Transfer of the Property or a portion thereof, other than as authorized in Section 10.3, the proposed transferee shall have the qualifications and financial resources necessary and adequate as may be reasonably determined by the City to fulfill the obligations undertaken in this Agreement by the Borrower. Any transferee, by instrument in writing satisfactory to the City and in form recordable among the land records, for itself and its successors and assigns, and for the benefit of the City shall expressly assume all of the obligations of the Borrower under this Agreement relating to the Property and agree to be subject to all the conditions and restrictions to which the Borrower is subject. There shall be submitted to the City for review all instruments and other legal documents proposed to affect any such Transfer; and if approved by the City its approval shall be indicated to the Borrower in writing. This Section 10.2 shall not be deemed to prevent the granting of easements, rights of way, licenses or permits to facilitate the development of the Property.

In the absence of specific written agreement by the City, no Transfer by the Borrower shall be deemed to relieve the Borrower or any other party from any obligations under this

Agreement.

6.7 Permitted Transfers With Prior Approval; City Pre-Approved Transfers.

Except as permitted under this Section 6.7, any Transfer shall be permitted only after (1) the City, in its reasonable discretion, has delivered to the Borrower its prior written approval of such Transfer, and (2) the transferee has assumed the Borrower's obligations under this Agreement by signing an assignment assumption and release agreement, in a form prepared by the City, and such other reasonable documentation as the City may reasonably require to evidence such transferee's assumption of the Borrower's duties and obligations under the Loan Documents.

Borrower anticipates syndicating the low income housing tax credits that will be generated by the Development, which syndication will require (i) formation of a limited partnership, the general partner of which shall be a wholly-controlled affiliate of Borrower (the "Partnership" or the "Borrower") and the initial limited partner shall be Borrower or a wholly-controlled affiliate of Borrower and (ii) a subsequent transfer of the limited partner interest in Borrower to the initial investor limited partner(s). The City hereby approves the initial Transfer of the limited partner interest in Borrower, provided that (i) the amended and restated partnership agreement is submitted to the City for review and approval; and (ii) the partnership documents do not conflict with the Loan Documents.

The City hereby approves future Transfers of the investor limited partner(s) interest(s) in the Partnership provided that: (i) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the amended partnership agreement approved by the City; and (ii) in subsequent Transfers, a wholly-owned or wholly-controlled affiliate of the initial investor limited partner retains a membership or partnership interest and/or serves as a managing member or managing general partner of the successor limited partner.

The City hereby approves a Transfer of the Property from the Borrower to Eden Housing Inc. ("Eden") or wholly-controlled affiliate of Eden, and an assumption of the City Loan by such transferee at or before the end of the fifteen (15)-year compliance period as described in Section 42(i)(1) of the Internal Revenue Code, pursuant to an option agreement as described or to be described in the Partnership agreement (the "Option Agreement"), provided that the transferee expressly assumes the obligations of the Partnership under the Loan Documents, utilizing a form of assignment and assumption agreement to be provided by the City.

In the event the general partner of the Borrower is removed by the investor limited partner of the Borrower for cause following default under the partnership agreement, the City hereby approves the Transfer of the general partner interest to a 501(c)(3) tax exempt nonprofit entity selected by the limited partner and approved by the City, which approval shall not be withheld unreasonably.

6.8 Term.

The provisions of this Agreement shall apply to the Property for the entire Term even if the entire City Loan is paid in full prior to the end of the Term. This Agreement shall bind any

successor, heir or assign of Borrower, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by City. City makes the City Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

6.9 Notice of Expiration of Term.

Borrower shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11.

6.10 Covenants to Run With the Land.

City and Borrower hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

6.11 Enforcement by City.

If Borrower fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after City has notified Borrower and the Investor Limited Partner (as defined in the Development Agreement) in writing of the default or, if the default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within ninety (90) days, City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law, provided that the Investor Limited Partner shall have the right but not the obligation to cure as set out in Section 12.21 of the Development Agreement:

1. Calling the City Loan. City may declare a default under the City Note, accelerate the indebtedness evidenced by the City Note, and proceed with foreclosure under the City Deed of Trust.
2. Action to Compel Performance or for Damages. City may bring an action at law or in equity to compel Borrower's performance of its obligations under this Agreement and/or for damages.
3. Remedies Provided Under Development Agreement. City may exercise any other remedy provided under the Development Agreement.

6.12 Attorneys' Fees and Costs.

In any action brought to enforce this Agreement, the prevailing party shall be entitled to

all costs and expenses of suit, including reasonable attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

6.13 No Liability of Officials, Directors, Employees, and Agents.

No member, official, employee, or agent of the City shall be personally liable to the Owner in the event of any default or breach by City or for any amount which may become due to the Owner or successor or on any obligation under the terms of this Agreement. No director, officer, employee, agent of the Owner, or limited partner if Owner is a limited partnership, shall be personally liable to the City in the event of any default or breach by the Owner or for any amount which may become due to the City or successor or on any obligation under the terms of this Agreement.

6.14 Recording and Filing.

City and Borrower shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of San Joaquin.

6.15 Subordination.

This Agreement shall be subordinated to financing approved by the City (in each case, a "Senior Lien"), but only if all of the following conditions are satisfied:

(a) All of the proceeds of the proposed Senior Lien, less any transaction costs, shall be used to provide predevelopment, acquisition, construction and/or permanent financing or refinancing for the Development.

(b) The proposed lender (each, a "Senior Lender") must be a state or federally chartered financial institution, a nonprofit corporation, a recognized affordable housing lending group such as the Housing Partnership Fund, or a public entity that is not affiliated with Borrower or any of Borrower's affiliates, other than as a depositor or a lender.

(c) Borrower shall demonstrate to the City's reasonable satisfaction that subordination of the Deed of Trust and/or Regulatory Agreement is necessary to secure adequate acquisition, construction, permanent financing and/or refinancing to ensure the viability of the Development, including the operation of the Development as affordable housing, as required by the Loan Documents. To satisfy this requirement, Borrower shall provide to the City, in addition to any other information reasonably required by the City, evidence demonstrating that the proposed amount of the Senior Loan is necessary to provide adequate predevelopment, acquisition, construction, permanent financing or refinancing to ensure the viability of the Development, and adequate financing for the Development would not be available on similar terms without the proposed subordination.

(d) The subordination agreement(s) shall be in a form reasonably acceptable to the City, and shall be structured to minimize the risk that the Deed of Trust and/or Regulatory Agreement would be extinguished as a result of a foreclosure by the Senior Lender or other

holder of the Senior Lien. To satisfy this requirement, the subordination agreement shall provide the City with rights to cure any defaults by Borrower, including: (i) providing the City with copies of any notices of default at the same time and in the same manner as provided to Borrower; and (ii) providing the City with a cure period of at least sixty (60) days to cure any default.

(e) The subordination(s) described in this Section may be effective only during the original term of the Senior Loan and/or any extension of its term approved in writing by the City, provided, however, that nothing in this subsection (e) shall prohibit the City from approving the refinancing of a Senior Loan. Upon a determination by the City's City Manager that the conditions in this Section have been satisfied, the City's City Manager or his/her designee will be authorized to execute the approved subordination agreement without the necessity of any further action or approval.

6.16 No Impairment of Lien.

No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument.

6.17 Governing Law.

This Agreement shall be governed by the laws of the State of California.

6.18 Waiver of Requirements.

Any of the requirements of this Agreement may be expressly waived by City in writing, but no waiver by City of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

6.19 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of City of Alameda.

6.20 Notices.

Formal notices, demands, and communications between the City and Borrower shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, or faxed with a copy mailed within one business day of facsimile transmission, emailed with a copy mailed within one business day of emailed transmission to the principal office of the City and Borrower as follows:

City: City of Lodi
221 West Pine Street

Lodi, CA 95240
Attention: City Manager

With a copy to:
The City Attorney and the Housing Manager

Borrower: Eden Development, Inc.
22645 Grand Street
Hayward, CA 94541-5031
Attention: Executive Director

With a copy to:

[Address of investor limited partner to be
provided]

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt for delivery or refusal of delivery.

6.21 Severability.

If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

6.22 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

6.23 Revival of Agreement after Foreclosure.

This Agreement shall be revived according to its original terms if, during the original Term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Development or Property.

6.24 Investor Limited Partner Provisions.

If and when the Borrower transfers the Property and assigns the Loan to a limited partnership in accordance with Section ___ to qualify for low income housing tax credit financing, the City agrees to the following provisions for the benefit of Borrower's investor limited partner:

(a) The City will give the limited partner a copy of any written notice (at the limited partner's address set forth in the Regulatory Agreement) that the City gives to Borrower under this Agreement and the other City Loan Documents;

(b) The City will give the limited partner Ten (10) days after the limited partner's receipt of such notice to cure a non-payment of any sum due under the City Loan Documents;

(c) The City will give the limited partner Thirty (30) days after the limited partner's receipt of such notice to cure any other default under this Agreement and other City Loan Documents;

(d) If a default is incapable of being cured within Thirty (30) days, the City will give the limited partner an additional Ninety (90) days to cure such default provided the limited partner has commenced to cure such default and is diligently proceeding to cure such default through the end of such period;

(e) If the limited partner makes any such payment or otherwise cures such default, the City will accept such action as curing such default as if such payment or cure were made by Borrower;

(f) The City will permit the limited partner to transfer the limited partner's interest to any person or entity at any time provided that, if at the time of such transfer the limited partner has not made 100% of the capital contributions the limited partner is required to make to Borrower, the limited partner shall remain liable to Borrower for such capital contributions;

(g) The City will permit the limited partner to remove the general partner of Borrower in accordance with the Partnership Agreement, provided that the substitute general partner is reasonably acceptable to City; and

(h) The City will permit insurance and condemnation proceeds to be used to rebuild the Development provided that (i) sufficient funds are provided from other sources to effectively rebuild the Development to a lawful multifamily housing complex, and (ii) subject to the rights of any senior lenders, City shall hold all such proceeds and disburse them based on the progress of construction, subject to such additional reasonable conditions as City may impose

6.25 HUD-Required Provisions Rider.

During the term of the HUD 202 Capital Advance the City agrees to comply with the provisions set forth in the HUD-Required Provisions Rider attached hereto as Exhibit C and incorporated into this Agreement.

WHEREAS, this Agreement has been entered into by the undersigned as of the date first above written.

CITY:

City of Lodi

By: _____

Its: _____

BORROWER:

Eden Development, Inc., a California nonprofit public benefit corporation, its general partner

By: _____
Linda Mandolini, Executive Director

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20__ before me, _____,
Notary Public, personally appeared _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 20__ before me, _____,
Notary Public, personally appeared _____

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description of the Property

EXHIBIT B
FORM OF INCOME CERTIFICATION
INCOME COMPUTATION AND CERTIFICATION

EXHIBIT C

HUD-Required Provisions Rider

This HUD-Required Provisions Rider (the "Rider") is dated as of _____, and is attached to and made a part of that certain Purchase and Development Agreement by and between _____ (the "Borrower"), and the City of Lodi (the "City") (the "Development Agreement"), a Promissory Note from Borrower to City (the "City Note") in the amount of One Million One Hundred Thousand Dollars (\$1,100,000) (the "Loan"), a Regulatory Agreement by and between Borrower and the City (the "Regulatory Agreement"), and a Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing by Borrower to the City (the "City Deed of Trust"), all dated _____ (collectively, the "City Documents"), relating to the property commonly known as Lodi Senior Housing (the "Development"). In the event of any conflict, inconsistency or ambiguity between the provisions of this Rider and the provisions of the City Documents, the provisions of this Rider shall control. All capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the City Documents. As used in this Rider, the term "HUD Documents" shall mean the following documents relating to the HUD Section 202 Capital Advance for the Development, HUD Project No. _____:

- A. Deed of Trust from Borrower to the general partner of Borrower which shall be assigned to HUD to be recorded against the Property (the "HUD Deed of Trust");
 - B. Capital Advance Program Regulatory Agreement between Borrower and HUD to be recorded against the Property ("HUD Regulatory Agreement");
 - C. Capital Advance Program Use Agreement between Borrower and HUD to be recorded against the Property (the "HUD Use Agreement");
 - D. HUD Security Agreement between Borrower and the general partner of Borrower which shall be assigned to HUD (the "HUD Security Agreement"); and
 - E. HUD Project Rental Assistance Contract (the "PRAC").
1. Term of Rider. Notwithstanding anything else in this Rider to the contrary, the provisions of this Rider shall be and remain in effect only so long as the HUD Documents, or any of them, are in effect; thereafter, this Rider and its requirements shall be deemed no longer in effect.
 2. Subordination. The covenants contained in the City Documents shall be subordinate to the rights of HUD under the HUD Documents, and to the HUD rules and regulations pertaining thereto; and furthermore, the City Documents shall not be enforceable against the HUD Secretary, his or her successors and assigns, should the HUD Secretary acquire title to the Property by power of sale, foreclosure, or by deed in lieu of foreclosure. In addition, so long as the HUD Documents are in effect, in the event that there are any conflicts between the terms and conditions in the City Documents and the terms and conditions of the HUD Documents and HUD rules and regulations pertaining thereto, the

HUD Documents and HUD rules and regulations shall prevail. No default may be declared under the City Documents without HUD prior written consent.

3. HUD Rules. During the time period in which Section 202 or the PRAC regulations apply to the Development, rents approved by HUD pursuant to the Section 202 program and the PRAC shall be deemed to be in compliance with the City Regulatory Agreement, and compliance by the Borrower with the Section 202 Regulations and the PRAC with respect to continued occupancy by households whose incomes exceed the eligible income limitations of the City Regulatory Agreement, or other matters set forth in the City Regulatory Agreement, shall be deemed to be in compliance with the requirements of the City Documents. Nothing in the City Documents shall in any way limit, interfere or conflict with the rights of HUD with respect to the management, operation or occupancy of the Development; nor can the City Documents in any way jeopardize the continued operation of the Development on terms at least as favorable to existing as well as future tenants.
4. City Loan Disbursement. Upon continued satisfaction of the conditions precedent to loan disbursement set forth in the Loan Agreement, the City shall disburse the City Loan proceeds to Borrower from time to time following approval by the City of Borrower's requisitions in accordance with the City Documents. Requisitions shall be submitted only to the City for approval and disbursement pursuant to the Loan Agreement.
5. Residual Receipts. Any whole or partial repayment of the principal and any other payments as set forth in the City Documents that are made after initial occupancy of the Development and after the PRAC has been executed shall be made only from Residual Receipts (as defined in the HUD Documents), and then only after obtaining the prior written approval of HUD, or from the Borrower's own funds.
6. Indemnification. Enforcement by the City of any indemnification provisions in the City Documents will not and shall not result in any monetary claim against the Development, the HUD Capital Advance proceeds, any reserve or deposit required by HUD in connection with the HUD Capital Advance, or the rents or other income from the Development other than Residual Receipts authorized for release by HUD, without the prior written consent of HUD, but City shall have the right to add any amounts due the City pursuant to indemnification provisions in the City Documents to the principal amount of the City Loan and the City Note, and interest shall accrue thereon commencing on the date indemnification payments are due.
7. Transfer. Approval by HUD of a Transfer of Physical Assets (as defined in Handbook 4350-1 Rev-1) ("TPA") shall constitute approval of the transfer by the City and the Borrower shall deliver to the City, at the same time as its delivery to HUD, any application for HUD's approval of a proposed transfer. Also, the Borrower shall require the transferee to expressly assume the Borrower's obligations under the City Documents; provided, however, HUD shall not be required to enforce the requirements of this sentence and if Borrower and any transferee fail to include such assumption in transfer documents, such failure shall not affect the validity of the transfer. The City shall have the right to specifically enforce the requirement that any transferee assume the

Borrower's obligations under the City Documents. In the absence of such written assumption, no transfer shall be deemed to relieve the transferor from any obligations under the City Documents.

8. Default under City Documents. The City shall not declare a default under the City Documents unless it has received the prior written approval of HUD, and the City's right to accelerate the City Note during the term of the HUD Documents shall be enforceable only with the prior written approval of HUD.
9. Receiver. The City, for itself, its successors and assigns further covenants and agrees that in the event of the appointment of a receiver in any action by the City, its successors or assigns, to foreclose the City Deed of Trust, no rents, revenue or other income of the Development collected by the receiver or by the mortgagee-in-possession shall be utilized for the payment of interest, principal, or any other charges due and payable under the City Deed of Trust, except from Residual Receipts, if any. The appointment of a receiver shall require approval by the Secretary of HUD, and pursuant to HUD regulations, as long as the City is the beneficiary under the City Deed of Trust, the City cannot be a mortgagee-in-possession. In the event of the appointment, by any court, of any person, other than HUD or the City, as a receiver or a mortgagee or party in possession, or in the event of any enforcement of any assignment of leases, rents, issues, profits, or contracts contained in the City Documents, with or without court action, no rents, revenue or other income of the Development collected by the receiver, person in possession or person pursuing enforcement as aforesaid, shall be utilized for the payment of interest, principal or any other amount due and payable under the provisions of the City Documents, except from Residual Receipts in accordance with the HUD Regulatory Agreement. The receiver, person in possession or person pursuing enforcement shall operate the Development in accordance with all provisions of the HUD Documents.
10. Deed-in-Lieu of Foreclosure. In the event that HUD acquires title to the Property by deed-in-lieu of foreclosure, the lien of the City Deed of Trust will automatically terminate subject to the conditions as hereinafter described. The City may cure a default under the HUD Deed of Trust prior to conveyance by deed-in-lieu of foreclosure. HUD shall give written notice to the Borrower of a proposed tender of title in the event HUD decides to accept a deed-in-lieu of foreclosure. HUD will only give such written notice if, at the time of the placing of the City Deed of Trust against the Property, HUD receives a copy of an endorsement to the title policy of the Borrower or the City which indicates that (a) the City Deed of Trust has been recorded and (b) HUD is required to give notice of any proposed election or tender of a deed-in-lieu of foreclosure. Such notice shall be given at the address stated in the City Deed of Trust or such other address as may subsequently, upon written notice to HUD, be designated by the City as its legal business address. The City shall have thirty (30) days to cure the default after notice of intent to accept a deed-in-lieu of foreclosure is mailed.
11. Borrower's Notice to the City. Notwithstanding the requirements set forth in Paragraph 10 above, in the event that Borrower contemplates executing a deed-in-lieu of foreclosure, Borrower shall first give the City thirty (30) days' prior written notice;

provided, however, that the failure of the Borrower to give said notice shall have no effect on the right of HUD to accept a deed-in-lieu of foreclosure.

12. Amendment. No amendment to the City Documents made after the date of this Rider shall have any force or effect until and unless such amendment is approved in writing by HUD.

EXHIBIT J
Seller Insurance Requirements

USE THE FOLLOWING ONLY IF THE SELLER DOES NOT HAVE ITS OWN INSURANCE REQUIREMENTS.

The Buyer shall maintain and keep in force, at the Buyer's sole cost and expense, the following insurance applicable to the Development in a form acceptable to the Seller's Executive Director with evidence of such coverage provided to the Seller's Executive Director within ten (10) days of execution of this Agreement, but in no event later than the initial disbursement of Loan funds pursuant to this Agreement:

(a) Workers' Compensation insurance to the extent required by law, including Employer's Liability coverage, with limits not less than One Million Dollars (\$1,000,000) each accident.

(b) Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence for Bodily Injury and Property Damage, including coverage for Contractual Liability, Personal Injury, Broadform Property Damage, and Products and Completed Operations.

(c) Comprehensive Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for owned, non-owned and hired vehicles, as applicable; provided, however, that if the Buyer does not own or lease vehicles for purposes of this Agreement, then no automobile insurance shall be required.

(d) Upon acquisition of the Property, property insurance, including during the course of construction builder's risk insurance, covering the Development, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to the Seller, naming the Seller as a Loss Payee, as its interests may appear. Flood insurance shall be obtained if required by applicable federal regulations.

(e) For any design professionals working on the Development, errors and omission coverage in a minimum amount of One Million Dollars (\$1,000,000).

(f) The Buyer shall cause any general contractor or subcontractor working on the Development under direct contract with the Buyer or subcontract, to maintain insurance of the types and in at least the minimum amounts described in Subsections (a), (b), and (c) above, except that each subcontractor shall only be required to maintain the abovementioned insurance to the extent that such coverage is customarily maintained by such subcontractor and shall require that such insurance shall meet all of the general requirements of subsections (i), (j) and (k) below.

(g) The required insurance shall be provided under an occurrence form, and the Buyer shall maintain such coverage continuously throughout the Term. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in

such annual aggregate limit, such annual aggregate limit shall be two times the occurrence limits specified above; provided, however, that for subcontractors the general aggregate shall not be required to apply on a per project basis.

(h) Commercial General Liability and Comprehensive Automobile Liability insurance policies shall be endorsed to name as an additional insured the Seller and its officers, agents, employees and members of the Seller Council.

(i) All policies and bonds shall contain (a) the agreement of the insurer to give the Seller at least thirty (30) days' notice prior to cancellation (including, without limitation, for non payment of premium) or any material change in said policies; (b) an agreement that such policies are primary and non contributing with any insurance that may be carried by the Seller; (c) a provision that no act or omission of the Buyer shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; and (d) a waiver by the insurer of all rights of subrogation against the Seller and its authorized parties in connection with any loss or damage thereby insured against. Buyer shall provide certificates of insurance and original written endorsements as evidence of the required insurance coverage.

(j) If in connection with the use of the Seller Loan funds, death, serious personal injury, or substantial property damage occurs, Buyer shall immediately notify the Seller. Buyer shall promptly submit to the Seller a written report, in such form as may be required by the Seller, of all accidents which occur in connection with this Agreement. This report shall include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Buyer's contractor or subcontractor, if any; (3) name and address of Buyer's liability insurance carrier; and (4) a detailed description of the accident and whether any of the Seller's equipment, tools or material were involved.

EXHIBIT K
Schedule of Performance

ROGET PARK SENIOR HOUSING
Preliminary HUD Schedule
June 4, 2009

(All dates set forth below are preliminary and are subject to change as the process moves forward. Each performance deadline is conditioned upon all prior performance deadlines being met in a timely manner.)

Project Milestone	Est. Target Date
<ol style="list-style-type: none"> 1. Predevelopment activities started by Developer 2. Developer submitted development concept to City for review. 	<p>May 2009</p>
<ol style="list-style-type: none"> 3. Developer to submit to the City for review and approval the Preliminary Financing Plan 4. City to introduce development concepts to key community members 5. Developer submits preliminary development proposal to City for review. 6. Community Meeting – Introduce Development Team and present Proposed Site 7. City to approve or disapprove Developer’s Preliminary Financing Plan; City approves predevelopment and acquisition loan request 8. City commences CEQA/NEPA 9. Execute DDLA 	<p>June 2009</p>
<ol style="list-style-type: none"> 10. Developer submits application to HUD for grant under Section 202 Housing for the Elderly 	<p>Est. August 2009 (Developer intends to apply for HUD 202 funds in response to the 2009 NOFA; however, if the project is not selected, Developer shall submit for HUD 202 Financing in 2010 and 2011)</p>

11. Developer submits for Project Entitlements	Approx. 4 months from item #2
12. HUD 202 awards announced	Approx. 4 months from item #10
13. City completes environmental assessment in accordance with CEQA. 14. Developer obtains Project Entitlements	Approx. 5 months from item #11
15. City publishes Notice of Intent to Release funds (NOI/RROF)	45 days prior to item #16
16. Close of Escrow and Funding of CDBG Loan	No later than June 30, 2010
17. Developer submits HUD "Firm Commitment Application"	After receipt of HUD 202 Award and after the project is "permit ready"
18. Gap Financing Identified and Approved by City.	Not later than 60 days prior to CDLAC/TCAC application submittal date.
19. Developer submits applications for bond financing through California Debt Limit Allocation Committee (CDLAC) and 4% Tax Credits through State Tax Credit Allocation Committee (TCAC) CDLAC and TCAC applications	Borrower shall monitor HUD's processing of the HUD Firm Commitment and shall submit the CDLAC application when it is reasonable to project that HUD will be able to issue the Firm Commitment within the 90-day CDLAC construction start deadline. Borrower shall not be obligated to obtain a CDLAC or TCAC allocation after September of any year.
20. Close on Construction Financing and Commencement of Construction	Within 90 days of CDLAC and TCAC allocations
21. Construction Completion	Within 24 months of commencement of construction, or within deadlines established by funding source used, HUD, TCAC and/or CDLAC
22. 100% Occupancy	Within 6 months of construction completion

EXHIBIT L
Scope of Development

[to be inserted when approved by Seller]

EXHIBIT M
Preliminary Site Plan

Consultants:

Landscape
Bruce Jett Associates Inc.
2470 Manner Square
Loop Alameda CA 94501

Civil
Baumbach & Piazza Inc.
323 W Elm Street
Lodi CA 95240

Tienda Senior Housing

2245 Tienda Drive
Lodi, CA 95242

Client
Eden Housing, Inc.

22645 Grand Street
Hayward CA 94541

Stamp

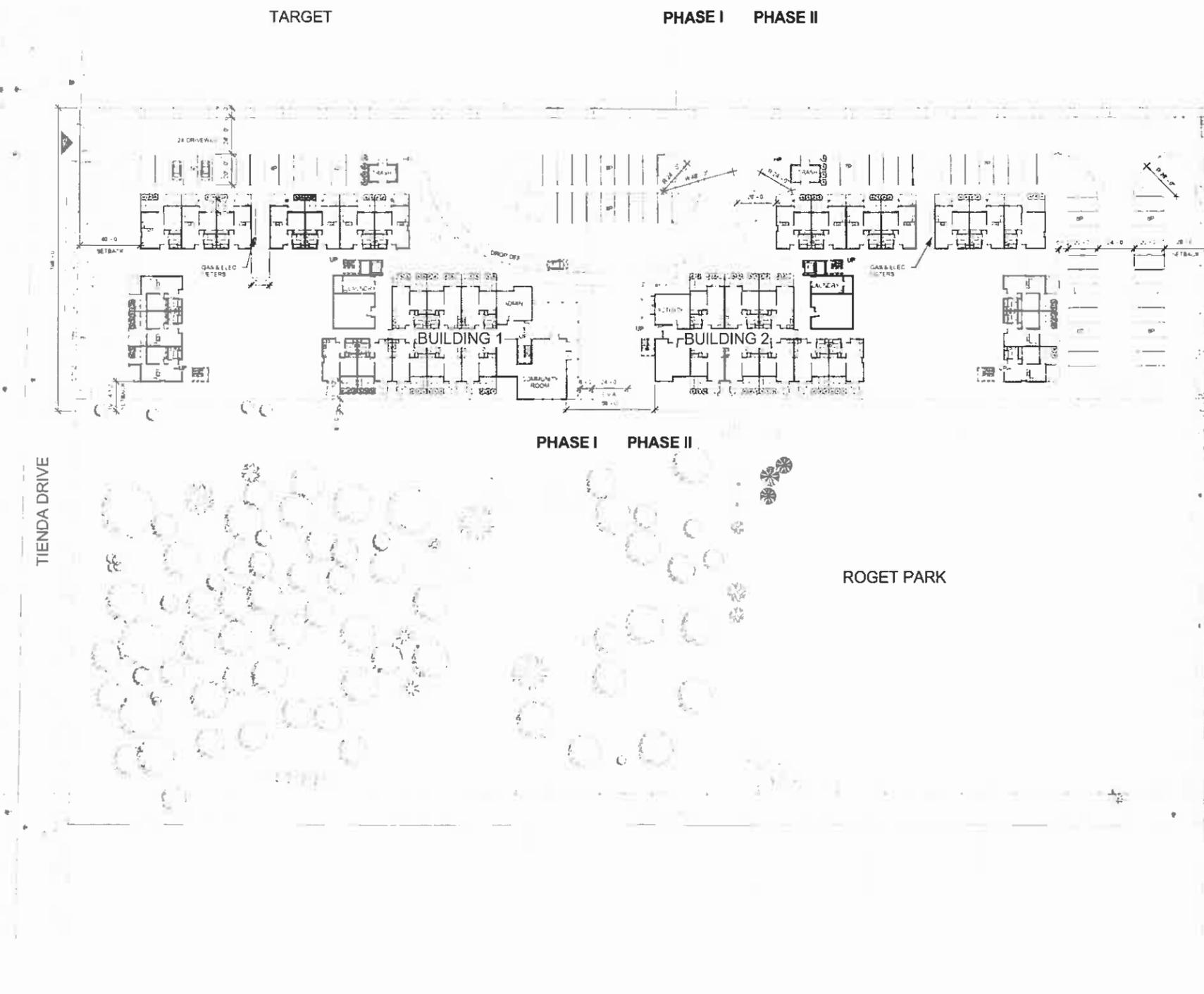
Job Number 0908
Drawn by Y3
Checked by PW
Date October 12 2009
Scale 1" = 30'-0"

Title
SITE PLAN

Sheet

A1.0

- PRELIMINARY -
Not-For-Construction



site plan 1
1" = 30'-0"

Exhibit M

EXHIBIT N
HUD-REQUIRED PROVISIONS RIDER

For value received, the undersigned agree that the following provisions shall be incorporated into and made a part of the following documents as amended (the "Junior Loan Documents") relating to the property commonly known as _____ Senior Housing (the "Project"): That certain Purchase and Development Agreement dated _____, 2009 ("Agreement") and memorandum thereof recorded _____ as series no. _____ of San Joaquin County by the City of Lodi (the "Lender") and Eden Development, Inc., its successors and assigns (the "Borrower"); that Regulatory Agreement recorded _____ as series no. _____ (the "Lender Regulatory Agreement"); that Promissory Note dated as of _____, 2009 secured by that certain Deed of Trust recorded _____ as series no. _____.

In the event of any conflict, inconsistency or ambiguity between the provisions of this Rider and the provisions of the Junior Loan Documents, the provisions of this Rider shall control. All capitalized terms used herein and not otherwise defined herein shall have the meaning given to such terms in the Junior Loan Documents. As used in this Rider, the term "HUD Loan Documents" shall mean the following documents relating to the HUD Section 202 Capital Advance for the Project (HUD Project No. 121-EE____-NP-WAH).

- A. Deed of Trust recorded concurrently herewith on the Property among Borrower as trustor, North American Title Company as trustee and Eden Development, Inc. as beneficiary, which beneficial interest will be assigned to HUD by that collateral assignment at closing (the "HUD Deed of Trust");
- B. Regulatory Agreement between Borrower and HUD recorded currently herewith on the Property ("HUD Regulatory Agreement");
- C. Capital Advance Program Use Agreement between Borrower and HUD recorded concurrently herewith on the Property (the "HUD Use Agreement"), incorporated by reference in the HUD Deed of Trust;
- D. HUD Security Agreement between Borrower as the debtor and Eden Development, Inc. as the secured party, which interest shall be assigned to HUD by that collateral assignment (the "HUD Security Agreement");
- E. HUD Project Rental Assistance Contract (the "PRAC"); and
- F. Other HUD Capital Advance documents.

1. Term of Rider. Notwithstanding anything else in this Rider to the contrary, the provisions of this Rider shall be and remain in effect only so long as any of the HUD Loan Documents are in effect; thereafter, this Rider and its requirements shall be deemed no longer in effect.

2. Subordination. The covenants contained in the Junior Loan Documents shall be subordinate to the rights of HUD under the HUD Loan Documents, and to the HUD rules and regulations pertaining thereto; and furthermore, the Junior Loan Documents shall not be enforceable against the HUD Secretary, his or her successors and assigns, should the HUD Secretary acquire title to the Project by power of sale, foreclosure, or by deed-in-lieu of foreclosure. In addition, so long as the HUD Loan Documents are in effect, in the event that there are any conflicts between the terms and conditions in the Junior Loan Documents and the terms and conditions of the HUD Loan Documents and HUD rules and regulations pertaining thereto, the HUD Loan Documents and HUD rules and regulations shall prevail. No default may be declared under the Junior Loan Documents without prior written HUD consent.

3. HUD Rules. During the time period in which Section 202 or the PRAC regulations apply to the Project, rents approved by HUD pursuant to the Section 202 program and the PRAC shall be deemed to be in compliance with the Lender Regulatory Agreement, and compliance by the Borrower with the Section 202 Regulations and the PRAC with respect to continued occupancy by households whose incomes exceed the eligible income limitations in Section 2 of the Lender Regulatory Agreement, or other matters set forth in the Lender Regulatory Agreement, shall be deemed to be in compliance with the requirements of the Junior Loan Documents. Nothing in the Junior Loan Documents shall in any way limit, interfere or conflict with the rights of HUD with respect to development, operation and management of the Project; nor can the Junior Loan Documents in any way jeopardize the continued operation of the project on terms at least as favorable to existing as well as future tenants.

4. Maturity Date. The Junior Note may not mature, and may not bear a maturity date, prior to the date on which the HUD Note matures. The term of the Junior Loan Documents shall be extended if the Junior Note matures, there are no residual receipts or non-Project funds available for repayment and the HUD Mortgage has not been retired in full or if HUD grants a deferment of amortization or forbearance that results in an extended maturity of the HUD Loan Documents.

5. Residual Receipts. As long as HUD, its successors or assigns, is the holder of the HUD Documents, any payments due from Project income from the Section 202 units under the Junior Loan Documents, or any prepayments made with Project income from the Section 202 units, shall be payable only from residual receipts of the Project, as that term is defined in the HUD Regulatory Agreement between HUD and the Borrower, and subject to the availability of residual receipts in accordance with the provision of said HUD Regulatory Agreement. No payments or prepayments using residual receipts can be made without HUD approval. Borrowers may make payments or prepayments at any time without HUD approval using funds that do not come from Project income from

the Section 202 units. The restrictions on payment imposed by this paragraph shall not excuse any default caused by the failure of the makers to pay the indebtedness evidenced by the Lender's junior Note.

6. Indemnification. Enforcement by the Lender of any indemnification provisions in the Junior Loan Documents will not and shall not result in any monetary claim against the Project, the HUD Capital Advance proceeds, any reserve or deposit required by HUD in connection with the HUD Capital Advance, or the rents or other income from the Section 202 units in the Project other than residual receipts authorized for release by HUD, without the prior written consent of HUD, but Lender shall have the right to add any amounts due the Lender pursuant to indemnification provisions in the Junior Loan Documents to the principal amount of the Loan and the Note and interest shall accrue thereon commencing on the date indemnification payments are due. In addition, any indemnification provisions shall not be enforceable against the HUD Secretary, his or her successors and assigns, should the HUD Secretary acquire title to the Project by power of sale, foreclosure, or by deed-in-lieu of foreclosure.

7. Transfer. Approval by HUD of a Transfer of Physical Assets (as defined in Handbook 4350.1, REV-1, Chapter 13) ("TPA") shall constitute approval of the transfer by the Lender, and the Borrower shall deliver to the Lender at the same time as its delivery to HUD, any application for HUD's approval of a proposed transfer. Also, the Borrower shall require the transferee to expressly assume the Borrower's obligations under the Junior Loan Documents; provided, however, HUD shall not be required to enforce the requirements of this sentence and if Borrower and any transferee fail to include such assumption in transfer documents, such failure shall not affect the validity of the transfer. The Lender shall have the right to specifically enforce the requirement that any transferee assume the Borrower's obligations under the Junior Loan Documents. In the absence of such written assumption, no transfer shall be deemed to relieve the transferor from any obligations under the Junior Loan Documents.

8. Default under Junior Loan Documents. The Lender shall not declare a default under the Junior Loan Documents unless it has received the prior written approval of HUD, and the right of the Lender to accelerate the Junior Note during the term of the HUD Loan Documents shall be enforceable only with the prior written approval of HUD.

9. Receiver. The Lender, for itself, its successors and assigns, further covenants and agrees that in the event of the appointment of a receiver in any action by the Lender, its successors and assigns, to foreclose the Lender's junior Deed of Trust, no rents, revenue or other income of the Project collected by the receiver or by the mortgagee-in-possession shall be utilized for the payment of interest, principal, or any other charges due and payable under the Lender's junior Deed of Trust, except from Residual Receipts, if any, as the term is defined in the HUD Regulatory Agreement. The appointment of a receiver shall require approval by the Secretary of HUD, and pursuant to HUD regulations, as long as the Lender is beneficiary under the Deed of Trust, the Lender cannot be mortgagee-in-possession. In the event of the appointment, by any court, of any person, other than HUD, the Lender, as a receiver or a mortgagee or party

in possession, or in the event of any enforcement of any assignment of leases, rents, issues, profits, or contracts contained in the Junior Loan Documents, with or without court action, no rents, revenue or other income of the Project collected by the receiver, person in possession or person pursuing enforcement as aforesaid, shall be utilized for the payment of interest, principal or any other amount due and payable under the provisions of the Junior Loan Documents, except from Residual Receipts in accordance with the HUD Regulatory Agreement. The receiver, person in possession or person pursuing enforcement shall operate the Project in accordance with all provisions of the HUD Documents.

10. Deed-in-Lieu of Foreclosure. In the event that HUD acquires title to the Project by deed-in-lieu of foreclosure, the lien of the Lender's junior Deed of Trust will automatically terminate subject to the conditions as hereinafter described. HUD may cure a default under the HUD Deed of Trust prior to conveyance by deed-in-lieu of foreclosure. HUD shall give written notice to the Lender of a proposed tender of title in the event HUD decides to accept a deed-in-lieu of foreclosure. HUD will only give such written notice if, at the time of the placing of the subordinate lien against the Property, HUD receives a copy of an endorsement to the title policy of the Borrower or Lender which indicates that (a) the Lender's junior Deed of Trust has been recorded, and (b) HUD is required to give notice of any proposed election or tender of a deed-in-lieu of foreclosure. Such notice shall be given at the address stated in the Lender's junior Deed of Trust or such other addresses as later on provided to HUD by written notice, and designated by the Lender as its legal business address. The Lender shall have thirty (30) days to cure the default after notice of intent to accept a deed-in-lieu of foreclosure is mailed.

11. Borrower's Notice to City. Notwithstanding the requirements set forth in Paragraph 10 above, in the event that Borrower contemplates executing a deed-in-lieu of foreclosure, Borrower shall first give the Lender thirty (30) days prior written notice; provided, however, that the failure of the Borrower to give said notice shall have no effect on the right of HUD to accept a deed-in-lieu of foreclosure.

12. Sale, Transfer or Assignment of the Junior Note. The Lender's junior Note is non-negotiable and may not be sold, transferred, assigned or pledged by the Lender except with the prior approval of HUD.

13. Amendment. No amendment to the Junior Loan Documents made after the date of this Rider shall have any force or affect until and unless such amendment is approved in writing by HUD.

[signature page to follow]

IN WITNESS WHEREOF, the undersigned have executed this Rider as follows:

EDEN DEVELOPMENT, INC. a California Nonprofit Public Benefit Corporation

CITY OF LODI

By: _____

By: _____

Name: _____

City Manager

EXHIBIT O
Memorandum of Purchase and Development Agreement

**Recording Requested By
And When Recorded Mail To:**
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

With a Copy to and
Mail Tax Statements to:
Eden Development, Inc.
22645 Grand Street
Hayward, CA 94541-5031

FREE RECORDING REQUESTED
(Gov't Code Section 6103)

**MEMORANDUM OF PURCHASE AND
DEVELOPMENT AGREEMENT**

By this Memorandum of Purchase and Development Agreement made _____, 20__ made concurrently with the Purchase and Development Agreement ("Agreement") between the same parties covering the same property, more particularly described as the City of Lodi, a California municipal corporation and Eden Development, Inc., a California nonprofit public benefit corporation (individually "Party" and collectively, "Parties") hereby agree the real property commonly known as approximately 3.39 acres located at 2245 Tienda Drive in the City of Lodi("Property"), which Property is more particularly described in Exhibit A, attached hereto, shall be held, maintained and operated pursuant to the terms of the Agreement and the Exhibits attached, thereto.

This Memorandum may be executed in multiple originals, each of which is deemed an original, and may be signed in Counterparts.

IN WITNESS WHEREOF, the parties hereto have entered into this Memorandum as of the date set forth above.

Eden Development, Inc.,
a California nonprofit public benefit corporation

By: _____
Linda Mandolini,
Executive Director

Date: _____, 2009

City of Lodi,
a California municipal corporation

By: _____
Blair King, City Manager

Date: _____, 2009

Approved as to Form:

By: _____
D. Stephen Schwabauer, City Attorney

RESOLUTION NO. 2009-____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE AN
OPTION AGREEMENT TO PURCHASE REAL PROPERTY
PURSUANT TO THE TERMS OF THE PURCHASE AND
DEVELOPMENT AGREEMENT WITH EDEN
DEVELOPMENT, INC. REGARDING A SENIOR HOUSING
PROJECT AT 2245 TIENDA DRIVE

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute an Option Agreement to purchase real property pursuant to the terms of the Purchase and Development Agreement with Eden Development, Inc., a California corporation, for the development of an affordable senior housing project known as the "Tienda Drive Senior Housing Project."

Dated: October 21, 2009

=====

I hereby certify that Resolution No. 2009-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held October 21, 2009, 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: Receive A Report on Draft Environmental Impact Report/Environmental Assessment for I-5 Widening from Stockton to Southerly Limits of the White Slough Water Pollution Control Facility

MEETING DATE: October 21, 2009

PREPARED BY: Community Development Director

RECOMMENDED ACTION: Receive a report on Draft Environmental Impact Report/Environmental Assessment for I-5 Widening from Stockton to southerly limits of the White Slough Water Pollution Control Facility and take appropriate action.

BACKGROUND INFORMATION: This item is being brought to the City Council as an informational item. The Council may want to discuss and provide direction for additional follow up action.

The Draft Environmental Impact Report/Environmental Assessment analyzes a proposed project that will build freeway and interchange improvements from 0.2 mile south of Charter Way/Martin Luther King Jr. Boulevard to 1.8 miles north of Eight Mile Road in northwest Stockton. The document was prepared by CalTrans. The stated purpose of the project is as follows:

- Reduce traffic congestion and delay on Interstate 5
- Encourage High-Occupancy Vehicle use in the Interstate 5 corridor within the project area
- Improve regional mobility
- Provide a balanced circulation system and reduce out-of-direction travel

As stated in the document "The project is needed because northwest Stockton has been and is expected to continue experiencing substantial traffic growth, both locally from new area development and regionally from nearby communities such as Sacramento, Lodi, Lathrop, Manteca, and Tracy." The complete document is available on-line at:

http://www.dot.ca.gov/dist10/environmental/projects/i5nstkn/PDFfactsheet/20090917_Signed%20EIR_EA_I-5Interchanges.pdf

The portion of the project which staff is focused on with this review is the new interchange designated as North Gateway Boulevard. This interchange would occur approximately 1.8 miles north of Eight Mile Road (Exhibit "A"). The proposed interchange is within the current Stockton General Plan which abuts the City of Lodi's White Slough property (Exhibit "B"). The document states that the new interchange "would improve local access to Interstate 5, reduce demands at existing interchanges, and connect a planned regional arterial with Interstate 5." The City of Stockton is proposing a new east-west expressway along Stockton's northerly boundary.

APPROVED: _____
Blair King, City Manager

To a certain extent, this document simply implements Stockton's approved General Plan which designates this area north of Eight Mile Road for a variety of urban land uses many of which have already been approved.

ENVIRONMENTAL IMPACTS: The document outlines a variety of potential environmental impacts. Staff believes there are two topic areas that deserve additional discussion within the report.

Section 2.1.2 Growth The California Environmental Quality Act (CEQA) requires that an analysis of a project's potential to induce growth be incorporated in an EIR. The discussion outlined in the document states that "The proposed project would not directly affect growth within the Stockton region or San Joaquin County, but accessibility in the project area would change. Specific to the proposed interchange north of eight Mile Road, we disagree with the statement. Further, the document states "Both the 2035 Stockton General Plan and the 2010 San Joaquin General Plan do not project any potential growth as a result of the proposed project; only transportation circulation would improve in the region. The addition of North Gateway Boulevard and Otto Drive interchanges would handle increased traffic volumes from ongoing population and housing growth in this region of Stockton. We believe there is a direct connection between the need for this project and the growth anticipated through the Stockton General Plan. Without one, the other would/could not occur.

Section 2.1.3 Farmlands/Timberlands Construction of the project would convert approximately 58 acres of agricultural soils to urban (highway) uses. Most of that impact occurs within the existing right-of-way of Interstate 5 south of Eight Mile Road. According to the California Department of Conservation, approximately five acres of Prime and Unique Farmland is impacted by the project slated north of Eight Mile Road. The document states that the amount of agricultural land to be converted is "negligible" compared to the total amount of farmland in San Joaquin County or in California. While staff agrees that the amount of acreage is not substantial when compared to the entire County or State, we do believe that the resulting loss is a significant impact under CEQA that should be mitigated. An additional concern related to this discussion is the missing Farmland Conversion Impact Rating form. The discussion within this section refers to Appendix H, which is not included. Further, the document indicates that Appendix G contains this information; however, it is not included.

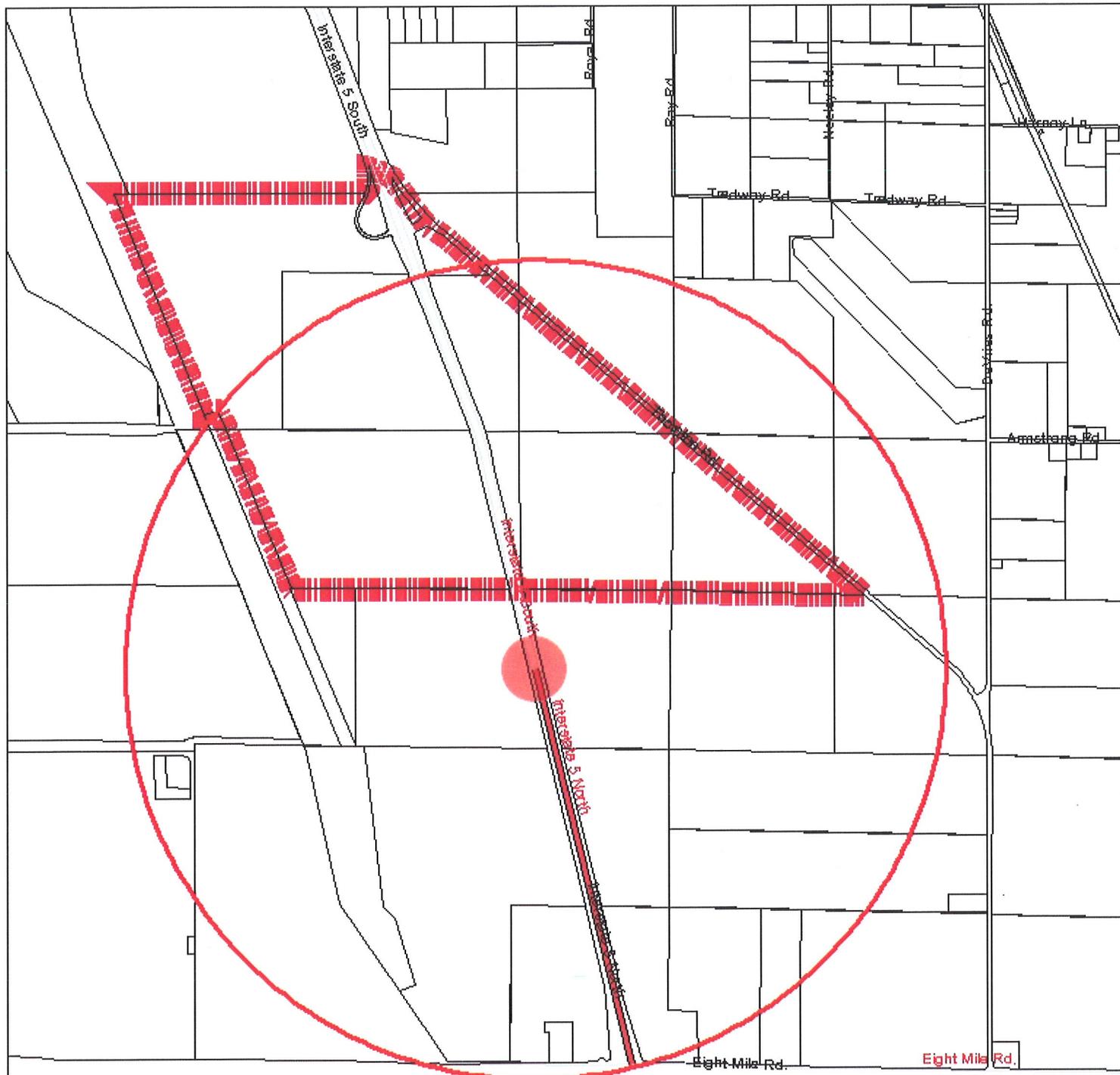
The final area of staff's review is the schedule and estimated costs of the project. The entire project is broken down into five phases. All phases are scheduled to be completed by 2015 with an estimated cost of over \$589,000,000. The fifth phase is the North Gateway Interchange including auxiliary lanes to Eight Mile Road. This phase alone is estimated at \$63,000,000. The funding sources identified for the entire project are a combination of San Joaquin Measure K Renewal Funds, City of Stockton Public Facility Fee funds and State Transportation Improvement Program (STIP) funds.

FISCAL IMPACT: N/A

Konradt Bartlam
Community Development Director

KB/kjc

Attachments:



Legend

-  1.3 Mile Radius
-  Proposed off-ramp Location
-  Exact distance to Eight Mile Road 1.2628025038 mile
-  City Limits



Existing



Proposed



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Approve Legal Expenses Incurred by Outside Counsel/Consultants Relative to the Environmental Abatement Program Litigation (\$1,653.43).

MEETING DATE: October 21, 2009

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: Approve Legal Expenses Incurred by Outside Counsel/Consultants Relative to the Environmental Abatement Program Litigation (\$1,653.43).

BACKGROUND INFORMATION: Listed below is an invoice for services incurred relative to the Environmental Litigation that is currently outstanding and needs to be considered for payment.

Folger Levin & Kahn - Invoices Distribution

Matter No.	Invoice No.	Date	Description	Water Acct.
8002	117029	July-09	People v. M&P	\$814.54
8002	117496	August-09	People v. M&P	\$688.89
				\$1,503.43

MISCELLANEOUS

Invoice No.	Date	Description	Water Account
93246	Jun-09	Bridge City Legal, Inc.	\$150.00

FISCAL IMPACT: This expense will be paid out of the Water Fund.

FUNDING AVAILABLE: 184010.7323 - \$1,653.43

D. Stephen Schwabauer
City Attorney

Approved:

Jordan Ayers, Deputy City Manager/
Internal Services Director

APPROVED: _____
Blair King, City Manager



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Ordinance No. 1824 Entitled, "An Ordinance of the Lodi City Council Amending Lodi Municipal Code Title 16 – Subdivisions – by Adding New Sections 16.12.040 and 16.16.030, 'Monuments'"

MEETING DATE: October 21, 2009

PREPARED BY: City Clerk

RECOMMENDED ACTION: Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1824.

BACKGROUND INFORMATION: Ordinance No. 1824 entitled, "An Ordinance of the Lodi City Council Amending Lodi Municipal Code Title 16 – Subdivisions – by Adding New Sections 16.12.040 and 16.16.030, 'Monuments,'" was reintroduced at the regular City Council meeting of October 21, 2009.

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: _____
Blair King, City Manager

ORDINANCE NO. 1824

AN ORDINANCE OF THE LODI CITY COUNCIL AMENDING
LODI MUNICIPAL CODE TITLE 16 – SUBDIVISIONS – BY ADDING
NEW SECTIONS 16.12.040 AND 16.16.030, “MONUMENTS”

=====

BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Lodi Municipal Code Chapter 16.12, “Parcel Maps,” is hereby amended by adding a new Section 16.12.040, “Monuments,” to read as follows:

16.12.040 Monuments

Whenever, the City established GPS Network Grid is within a reasonable distance to the parcel map boundary, as determined by the City Engineer, the field survey shall reference at least two control monuments. The control monuments shall be used to establish the basis of bearing and ties to those monuments and shall be shown on the parcel map.

SECTION 2. Lodi Municipal Code Chapter 16.16, “Final Maps,” is hereby amended by adding a new Section 16.16.030, “Monuments,” to read as follows:

16.16.030 Monuments

Whenever, the City established GPS Network Grid is within a reasonable distance to the final map boundary, as determined by the City Engineer, the field survey shall reference at least two control monuments. The control monuments shall be used to establish the basis of bearing and ties to those monuments and shall be shown on the final map.

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 towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 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. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 6. This ordinance shall be published pursuant to law and shall become effective 30 days from the date of passage and adoption.

Approved this 21st day of October, 2009

LARRY D. HANSEN
Mayor

ATTEST:

RANDI JOHL
City Clerk

State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1824 was introduced at a regular meeting of the City Council of the City of Lodi held October 7, 2009, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held October 21, 2009, by the following vote:

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

I further certify that Ordinance No. 1824 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 TO FORM:

D. STEPHEN SCHWABAUER
City Attorney