LODI CITY COUNCIL

Carnegie Forum
305 West Pine Street, Lodi

TM

AGENDA - REGULAR MEETING

Date: **January 7, 2004**
Time: **Closed Session 5:30 p.m.**
Regular Meeting 7:00 p.m.

For information regarding this Agenda please contact:
Susan J. Blackston
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 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) Actual litigation: Government Code §54956.9(a); one case; *Silicon Energy Corp., v. City of Lodi et al.*, San Joaquin County Superior Court, Case No. CV016042

b) Conference with Human Resources Director concerning Vacation Accrual Cap Policy regarding all bargaining units and unrepresented employees pursuant to Government Code §54957.6

c) Conference with Labor Negotiator, Human Resources Director Joanne Narloch, regarding Association of Lodi City Employees concerning Maintenance and Operators pursuant to Government Code §54957.6

C-3 Adjourn to Closed Session

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

C-4 Return to Open Session / Disclosure of Action

A. Call to Order / Roll call

B. Invocation – Pastor Richard Wheeler, Living Truth Christian Center

C. Pledge of Allegiance

D. Presentations

D-1 Awards – None

D-2 Proclamations – None

D-3 Presentations

a) Presentation regarding the Martin Luther King, Jr. celebration on January 19, 2004

E. Consent Calendar (Reading; comments by the public; Council action)

E-1 Receive Register of Claims in the amount of $2,108,653.62 (FIN)

E-2 Approve minutes (CLK)

a) November 18, 2003 (Shirtsleeve Session)
b) November 19, 2003 (Regular Meeting)
c) December 2, 2003 (Shirtsleeve Session)
d) December 2, 2003 (Special Meeting)
e) December 9, 2003 (Shirtsleeve Session)
f) December 9, 2003 (Special Meeting)
g) December 15, 2003 (Special Meeting)
h) December 23, 2003 (Shirtsleeve Session)
i) December 30, 2003 (Shirtsleeve Session)
j) December 30, 2003 (Special Meeting)

E-3 Authorize the sale of scrap wire and metal during 2004 (FIN)

E-4 Report of sale of surplus equipment (PW)

Res. E-5 Adopt resolution approving the plans and specifications and authorizing advertisement for bids for the Pine Street Sidewalk Replacement Project (north side of Pine Street from School Street to the alley west of Sacramento Street); and authorizing the City Manager to award or reject the contract up to $65,000 and appropriate funds (PW)

E-6 Approve donation of retired bleachers to Lodi-Tokay Rotary Club (PR)

Res. E-7 Adopt resolution awarding the contract for the Armory Park Ball Diamond Renovation, 333 North Washington Street, to A.M. Stephens Construction, of Lodi ($58,346.70); and appropriate $63,500 (PR)

Res. E-8 Adopt resolution approving the Addendum to the Improvement Agreement for Public Improvements of Almondwood Estates, Tract No. 3273, and appropriate funds ($48,070) (PW)

Res. E-9 Adopt resolution approving the Addendum to the Improvement Agreement for the Public Improvements of Century Meadows Two, Unit No. 4, Tract No. 3272, and appropriate funds ($58,400) (PW)

Res. E-10 Adopt resolution approving the Improvement Agreement for Public Improvements at 312 and 316 South Sacramento Street and appropriate funds ($29,000) (PW)

Res. E-11 Adopt resolution approving a rental agreement between the City of Lodi and Richard and Teresa Mojica, dba Mojica's Batting Cages, for use of 125 E. Elm Street, Unit D (PR)

Res. E-12 Adopt resolution authorizing the City Manager to extend the consulting services agreement with McDonald Partners, Inc., through June 2004 to provide bulk power cost modeling and strategic services to the Electric Utility Department ($70,000) (EUD)

Res. E-13 Adopt resolution authorizing the City Manager to allocate a Public Benefits Program grant in the amount of $25,000 to Schaefer Systems International, Inc., for a process cooling equipment demand-side management project (EUD)

Res. E-14 Adopt resolution approving Memorandum of Understanding between City of Lodi and Lodi Police Mid-Management Organization (HR)

Res. E-15 Adopt resolution amending Traffic Resolution 97-148 by approving the conversion from Yield to Stop Controls at the following three intersections: Chestnut Street at Pleasant Avenue, Chestnut Street at School Street, and Tamarack Drive at Lee Avenue (PW)

Ord. (Introduce) E-16 Introduce ordinance repealing and reenacting Lodi Municipal Code Chapter 12.06, Downtown Lodi Business Improvement Area No. 1, Section 12.06.090, "Collection of Benefit Fee," and Chapter 3.01, Business Tax Certification, Section 3.01.460, "Enforcement," relating to collection and enforcement of various fees (CA)

Ord. (Introduce) E-17 Introduce ordinance amending Title 9 – Public Peace, Morals, and Welfare, Chapter 9.08, "Offenses Against Property," by repealing and reenacting Section 9.08.150 of the Lodi Municipal Code relating to vehicles (CA)

E-18 Set public hearing for January 21, 2004, to consider the reallocation of unobligated Community Development Block Grant funds to the Salvation Army ($50,000) (CD)

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. Public Hearings – None

H. Communications

H-1 Claims filed against the City of Lodi

a) Charles Mauch, date of loss 6/24/03

H-2 Reports: Boards/Commissions/Task Forces/Committees – None

H-3 Appointments

Res. a) Adopt resolution appointing four additional members to the Community Separator / Greenbelt Task Force (CLK)

b) Appointment to the San Joaquin Partnership (CLK)

c) Post for expiring terms on the Site Plan and Architectural Review Committee (CLK)

H-4 Miscellaneous – None

I. Regular Calendar

I-1 Update from Mayor Larry Hansen regarding audit (agreed-upon procedures) of Envision Law Group's billings

I-2 Review options for conducting a public survey and authorize the City Manager to negotiate such services as determined by Council (CM)

Res. I-3 Adopt resolution authorizing staff to solicit proposals for a catering service and rental contract for Hutchins Street Square facilities and authorizing the City Manager to reject or award the contract (COM)

I-4 Update on White Slough Water Pollution Control Facility improvements (PW)

J. Ordinances

Ord. (Adopt) J-1 Ordinance No. 1738 entitled, "An Ordinance of the City Council of the City of Lodi Amending Title 8 – Health and Safety – Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, by Repealing and Reenacting Section 8.24.010 – 'Definitions,' Subsection '2,' and 8.24.040 – 'Liability,' Subsection 'F,' to the Lodi Municipal Code Relating to Abatement Action Cost and Recovery Issues"

Ord. (Adopt) J-2 Ordinance No. 1739 entitled, "An Ordinance of the City Council of the City of Lodi Amending Title 8 – Health and Safety – Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, By Repealing and Reenacting Section 8.24.090 – 'Miscellaneous Provisions,' Subsections 'D' and 'E,' and Adding Subsection 'F' to the Lodi Municipal Code Relating to Availability of Contribution"

Ord. (Adopt) J-3 Ordinance No. 1740 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 13 – Public Services by Adding Chapter 13.14 'Stormwater Management and Discharge Control' Relating to Stormwater"

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

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

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.

_____
Susan J. Blackston
City Clerk

AGENDA ITEM D-03a

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Presentation Regarding The Martin Luther King Celebration On January 19, 2004

MEETING DATE: January 7, 2004

PREPARED BY: City Clerk

RECOMMENDED ACTION: None required.

BACKGROUND INFORMATION: Dr. Norman King will be at the meeting to announce and provide information regarding the Martin Luther King Celebration, which will be held from noon to 1:00 p.m. at Hutchins Street Square on January 19, 2004.

FUNDING: None required.

Susan J. Blackston
City Clerk

SJB/JMP

APPROVED: _____
H. Dixon Flynn, City Manager

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AGENDA ITEM E-01

CITY OF LODI
COUNCIL COMMUNICATION

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AGENDA TITLE: Receive Register of Claims Dated December 22, 2003, in the Amount of $2,108,653.62 and Payroll in the Amount of $1,194,484.05

MEETING DATE: January 7, 2004

PREPARED BY: Finance Director

RECOMMENDED ACTION: That the City Council receive the attached Register of Claims. The disclosure of the PCE/TCE expenditures are shown as a separate item on the Register of Claims.

BACKGROUND INFORMATION: Attached is the Register of Claims in the amount of $2,108,653.62 dated December 22, 2003, which includes PCE/TCE payments of $1,100.00.

FUNDING: As per attached report.

Vicky McAthie, Finance Director

VM/kb

Attachments

APPROVED: _____
H. Dixon Flynn, City Manager

As of Thursday	Fund	Name	Amount
12/04/03	00100	General Fund	542,248.39
	00103	Repair & Demolition Fund	1,200.00
	00123	Info Systems Replacement Fund	2,575.23
	00160	Electric Utility Fund	36,333.54
	00161	Utility Outlay Reserve Fund	6,899.61
	00164	Public Benefits Fund	9,948.49
	00170	Waste Water Utility Fund	19,513.51
	00171	Waste Wtr Util-Capital Outlay	34,312.31
	00172	Waste Water Capital Reserve	20.95
	00180	Water Utility Fund	2,543.13
	00181	Water Utility-Capital Outlay	52.73
	00210	Library Fund	3,903.71
	00234	Local Law Enforce Block Grant	146.54
	00270	Employee Benefits	16,164.60
	00310	Worker's Comp Insurance	48,555.96
	00325	Measure K Funds	5.00
	01211	Capital Outlay/General Fund	148.10
	01250	Dial-a-Ride/Transportation	1,478.42
	01410	Expendable Trust	14,199.90
Sum			740,250.12

Total for Week
Sum 740,250.12

As of Thursday	Fund	Name	Amount
12/11/03	00100	General Fund	618,024.83
	00103	Repair & Demolition Fund	2,384.00
	00123	Info Systems Replacement Fund	3,047.29
	00160	Electric Utility Fund	47,336.51
	00161	Utility Outlay Reserve Fund	5,300.19
	00164	Public Benefits Fund	21,854.32
	00170	Waste Water Utility Fund	10,333.12
	00171	Waste Wtr Util-Capital Outlay	195.00
	00172	Waste Water Capital Reserve	382,866.10
	00180	Water Utility Fund	4,607.88
	00210	Library Fund	10,419.31
	00235	LPD-Public Safety Prog AB 1913	2,489.28
	00270	Employee Benefits	18,976.65
	00310	Worker's Comp Insurance	15,810.35
	00325	Measure K Funds	201,164.17
	00332	IMF(Regional) Streets	3,908.39
	01211	Capital Outlay/General Fund	13,079.47
	01250	Dial-a-Ride/Transportation	6,010.68
	01410	Expendable Trust	504.04-
Sum			1,367,303.50
	00183	Water PCE-TCE	1,100.00
Sum			1,100.00
Total for Week Sum			1,368,403.50

Council Report for Payroll

Date - 12/22/03

Payroll	Pay Per Date	Co	Name	Gross Pay
Regular	12/07/03	00100	General Fund	912,944.49
		00160	Electric Utility Fund	154,209.15
		00161	Utility Outlay Reserve Fund	3,777.02
		00164	Public Benefits Fund	4,318.85
		00170	Waste Water Utility Fund	76,753.19
		00180	Water Utility Fund	7,482.07
		00210	Library Fund	30,866.60
		00235	LPD-Public Safety Prog AB 1913	1,591.11
		01250	Dial-a-Ride/Transportation	2,541.57
Pay Period Total: Sum				1,194,484.05

AGENDA ITEM E-02

CITY OF LODI
COUNCIL COMMUNICATION

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AGENDA TITLE: Approve Minutes – November 18, 2003 (Shirtsleeve Session), November 19, 2003 (Regular Meeting), December 2, 2003 (Shirtsleeve Session), December 2, 2003 (Special Meeting), December 9, 2003 (Shirtsleeve Session), December 9, 2003 (Special Meeting), December 15, 2003 (Special Meeting), December 23, 2003 (Shirtsleeve Session), December 30, 2003 (Shirtsleeve Session), and December 30, 2003 (Special Meeting)

MEETING DATE: January 7, 2004

PREPARED BY: City Clerk

RECOMMENDED ACTION: That the City Council approve the minutes of November 18, 2003 (Shirtsleeve Session), November 19, 2003 (Regular Meeting), December 2, 2003 (Shirtsleeve Session), December 2, 2003 (Special Meeting), December 9, 2003 (Shirtsleeve Session), December 9, 2003 (Special Meeting), December 15, 2003 (Special Meeting), December 23, 2003 (Shirtsleeve Session), December 30, 2003 (Shirtsleeve Session), and December 30, 2003 (Special Meeting), as prepared.

BACKGROUND INFORMATION: Attached are copies of the minutes of November 18, 2003 (Shirtsleeve Session), November 19, 2003 (Regular Meeting), December 2, 2003 (Shirtsleeve Session), December 2, 2003 (Special Meeting), December 9, 2003 (Shirtsleeve Session), December 9, 2003 (Special Meeting), December 15, 2003 (Special Meeting), December 23, 2003 (Shirtsleeve Session), December 30, 2003 (Shirtsleeve Session), and December 30, 2003 (Special Meeting), marked Exhibit A, B, C, D, E, F, G, H, I, and J, respectively.

FUNDING: None required.

_____
Susan J. Blackston
City Clerk

SJB/JMP

Attachments

APPROVED: _____
H. Dixon Flynn, City Manager

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EXHIBIT A

CITY OF LODI
INFORMAL INFORMATIONAL MEETING
"SHIRTSLEEVE" SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, NOVEMBER 18, 2003

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, November 18, 2003, commencing at 7:01 a.m.

A. ROLL CALL

Present: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

B. CITY COUNCIL CALENDAR UPDATE

City Clerk Blackston reviewed the weekly calendar (filed).

C. TOPIC(S)

C-1 "Capital projects funding and design options"

City Manager Flynn commented that Electric Utility Director Vallow has been a strong advocate of an approach to building capital projects which focuses on controlling costs.

Mr. Vallow noted that there are many projects the City needs over the next ten years and there are alternatives to traditional ways of building and financing these projects even during tough budget times.

With the aid of an overhead presentation (filed), Greg Parrett, President of Valley Management Group, stated that he had been in the construction field for 30 years and was educated in industrial engineering. He has built high-rises, 160 homes in Palm Springs, and was the vice president of a $900 million construction company in San Francisco. Five years ago he started Valley Management Group, which he explained was based around clients and controlling the construction process to bring projects within budget and on schedule. Valley Management Group is currently working on projects for the cities of Tracy and Lathrop. To illustrate the role that change orders play in increasing costs, he described a project he was involved in with Stanford University that resulted in $4 million worth of change orders. He also described a project he recently managed in Canada, in which he provided assistance in phased construction to control costs.

Mr. Parrett stated that there are several financial institutions that his company deals with, i.e. private venture capitalists and/or developers. His goal is to have a guaranteed maximum price and for this reason he disliked change orders. He believed that the most important part of projects is the definition of the scope of work. He described a typical project in which he brings the entire team together in the programming stage. He gives the general contractor a time and material contract for the first 25% of the design, negotiates his hourly rates and fees, and then they begin on the scope of work. When 25% of the design is complete (which takes approximately three weeks) an agreement is reached on the budget and scope of work. When 90% of the design is complete, he asks the general contractor for a guaranteed maximum price, scope, and schedule.

Mr. Parrett reported that Valley Management Group is building a fire station for the city of Tracy. It was originally estimated at $2.3 million, and through value engineering the architect's drawings, he reported that it will be constructed for $900,000. He described an alternative in which a developer or financial institution buys the property and finances the project so that it becomes a private project, which enables him to do value engineering. The project is then built and leased back to the city for 20 or 30 years. Mr. Parrett

commented that this alternative allows cities not to spend their own money on capital projects, and instead use funds for paramedics, equipment, etc. Once the project is built, the owner becomes the landlord of the property. Maintenance of the building is taken care of by the landlord. He stated that the buyer eventually becomes the seller, and noted that the City can buy the property at any time. He recommended looking at two sites, due to the negotiating flexibility it offers. He pointed out that the developer has a better chance of negotiating for the property than the city would. Mr. Parrett stated that he knew of four financial institutions (i.e. developers) that would be interested in handling a project in this way.

In answer to Council Member Hansen's concern about quality and longevity of the building, Mr. Parrett stated that guarantees are given from the manufacturer and the general contractor.

In reply to Mayor Hitchcock's inquiry regarding cost savings, Mr. Vallow reported that Mr. Parrett had looked at the bid estimates on the soccer complex project and believed it could be done for 25% less. He stated that a private developer would have tax advantages and favorable financing rates, which would get rolled back into the lease price.

Fire Chief Pretz explained that at the end of 20 years the City would have paid 15% more than if it had built the building and owned it outright; however, in this process the annual costs are considerably less. He stated that this kind of financing could only be used for Fire Station 2 and rebuilding Fire Station 1 because they are already in existence.

Mayor Hitchcock asked Chief Pretz if he could afford the annual lease cost from his operating budget. He stated that a 20-year lease cost on $1.3 million amounts to $10,000 a month. A 30-year lease would be $8,000 a month. Chief Pretz explained that the lease cost is not programmed in the budget now; however, he believed that once the paramedic program moves forward, and partnerships are developed to bring in revenue, the money could be spent on the lease cost or to offset the additional personnel cost.

Mayor Pro Tempore Howard spoke in support of the concept of public and private partnerships. She noted that the City already has design work done on a number of projects and asked Mr. Parrett if they could be used in the process he described.

Mr. Parrett replied that he has already looked at value engineering the sports complex and fire station, noting that he is charging "almost nothing" for the analysis.

Council Member Land commented that it appears as though the process described by Mr. Parrett is an attempt to circumvent regulations regarding prevailing wages. He asked if the City would be limited on what funds it used to pay for the lease agreement.

Mr. Flynn explained that if the intent is to construct a public building, then public laws apply to it. He reminded Council that Certificates of Participation are similar to a lease back arrangement.

City Attorney Hays confirmed that if the purpose for which the building is being constructed is for municipal or governmental use, then prevailing wage applies.

D. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

E. ADJOURNMENT

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

ATTEST:
Susan J. Blackston, City Clerk

EXHIBIT B

LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, NOVEMBER 19, 2003

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of November 19, 2003, was called to order by Mayor Hitchcock at 7:02 p.m.

Present: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

B. INVOCATION

The invocation was given by Pastor Bill Sherrill, Lodi Police Chaplains.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 Proclamations – None

D-3 (a) Mayor Hitchcock presented a Certificate of Recognition to David Haas, representing First Church of Christ Scientist, located at 322 West Elm Street, which was dedicated as an historical site by the Lodi Historical Society at a ceremony conducted on Saturday, October 18, 2003.

D-3 (b) Public Works Director Prima reported that in the course of a few weeks the Public Works Department is losing nearly 100 years of service to the City through the retirements of Joe Ferrante, Water/Wastewater Supervisor (not in attendance), Ron Hertz, Street Maintenance Worker III, and Fran Forkas, Water/Wastewater Superintendent

Fran Forkas stated that when he arrived in Lodi in 1974 the population was 29,000 and it has more than doubled since that time. He and his staff took the White Slough facility through expansions in 1976 and 1990. The treatment facility is now undergoing tertiary treatment stages, a requirement from the regional board that will cost between $30 to $50 million. In 1976-77 the City introduced its water conservation program, which is still in existence today and is savings millions of gallons. Approximately eight years ago an educational program for grades K-6 was instituted. Mr. Forkas recalled that in the mid-1990s he participated in a lawsuit against Shell Oil Company, Dow Chemical Company, and Occidental Petroleum. After three and a half years, a settlement was reached related to the chemical dibromochloropropane. A 40-year agreement was settled on, in which Shell, Dow, and Occidental contributes heavily to the City on an annual basis. Now the City is facing another dilemma with the PCE/TCE situation and has exceeded $20 million and four years of effort. He expressed hope for a settlement in favor of the City during the January 2004 Federal Court trial. Mr. Forkas noted that Lodi rarely chlorinates its water system, which he felt was a tribute to the employees of the Water/Wastewater Division who keep the water clean and bacteria free.

Ron Hertz stated that he served in the United States Navy Seabees prior to being hired by the City of Lodi and was proud of the work he has accomplished and the people he has worked with at the Municipal Service Center.

Mayor Hitchcock presented a Resolution of Appreciation to Fran Forkas, retiring Water/Wastewater Superintendent, and Ronald W. Hertz, retiring Street Maintenance Worker III.

D-3 (c) Dennis Lewis, President of Lodi Adopt-A-Child, reported that this is the program's 15th Christmas. He began the program in 1989 with 30 children participating, and this year it has over 1,600. Last year the all volunteer staff gave away 300 bicycles and 10 computers. Joe Merino from Merino Computer Concepts refurbishes for free all the used computers that are donated to the program. The Christmas party is scheduled for December 20 at the Boys and Girls Club. He encouraged all citizens to sponsor a child in the program.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Land, Beckman second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

E-1 Claims were approved in the amount of $5,434,397.23.

E-2 The minutes of October 15, 2003 (Regular Meeting), October 28, 2003 (Shirtsleeve Session), November 4, 2003 (Shirtsleeve Session), November 4, 2003 (Special Meeting), and November 11, 2003 (Shirtsleeve Session) were approved as written.

E-3 "Accept the quarterly investment account report as required by law SB564" was ***removed from the Consent Calendar and discussed and acted upon following the approval of the Consent Calendar***.

E-4 Adopted Resolution No. 2003-212 awarding the contract for the English Oaks Common Park Shade Structure, 2184 Newbury Circle, to Diede Construction, of Woodbridge, in the amount of $32,281.23, and appropriated $35,000 in accordance with staff recommendation.

E-5 Adopted Resolution No. 2003-213 approving the final map and Improvement Agreement for Legacy Estates Unit 1, Tract No. 3260, directed the City Manager and City Clerk to execute the improvement agreement and map on behalf of the City, and appropriated funds in the amount of $14,000 for the required reimbursements.

E-6 Adopted Resolution No. 2003-214 accepting a portion of the improvements in Century Meadows Three, Unit No. 4, Tract No. 2769.

E-7 Adopted Resolution No. 2003-215 accepting a portion of the improvements for the Harney Lane Sanitary Sewer Lift Station.

E-8 Adopted Resolution No. 2003-216 authorizing a two-year contract extension to Out of Play Concessions for concession operations at Chapman Field/Armory Park and Softball Complex.

E-9 Adopted Resolution No. 2003-217 accepting funds in the approximate amount of $100,000 from the State Citizens Option for Public Safety Grant offered through AB 1584 State Supplemental Law Enforcement Services funds.

E-10 Adopted Resolution No. 2003-218 approving Statement of Benefits between City of Lodi and Fire Mid-Management (unrepresented).

E-11 Set public hearing for December 17, 2003, to consider unmet transit needs in Lodi.

ACTION ON ITEM REMOVED FROM CONSENT CALENDAR

E-3 "Accept the quarterly investment account report as required by law SB564"

NOTE: Due to a potential conflict of interest related to his employment with Farmers and Merchants Bank, Council Member Land abstained from discussion and voting on this matter.

MOTION / ACTION:

The City Council, on motion of Council Member Beckman, Howard second, accepted the quarterly investment account report as required by law SB564. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – Land

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Jared Lopes stated that he was 16 years of age and attended Tokay High School as a freshman and sophomore. He is now a junior on independent study and he made this change because he felt that he was not living up to his potential as a student. In addition, he was troubled by things he saw at Tokay High School, e.g. sexual activity, alcoholism, drug abuse, depression, talk of suicide, smell of marijuana in the bathrooms. He expressed hope that a teen center could be created and asked Council what he could do to get it started.

  Mayor Pro Tempore Howard pointed out that the 180 Teen Center is one such organization; however, she agreed that more quality programs and services for youth are needed in the community.

  Council Member Beckman gave his business card to Mr. Lopes and extended an invitation to meet with him.

  Council Member Hansen commented that the 180 Teen Center is a Christian-based organization and some youth are not comfortable in that setting.

  Mr. Lopes acknowledged that many teens do not like church. It was not his intention to have a church- or religion-based teen center. He believed that the problem with teenagers today is due to a lack of attention and love.

  Council Member Hansen suggested that civic organizations might be willing to help.

  Mayor Hitchcock recommended that Mr. Lopes make a presentation to Lodi Unified School District, as it may have facilities that could be made available to him.

- Ken Bingaman reminded Council about the aquatics center, indoor sports facility, and DeBenedetti Park. Mr. Lopes' comments demonstrate that the needs of the youth in the community are not being met. He urged Council to see that at least one of its priority projects gets implemented.

G. PUBLIC HEARINGS

G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider resolution confirming the 2003-04 Annual Report and levy of assessment for Downtown Lodi Business Improvement Area 1.

Deputy City Manager Keeter reported that at the meeting of October 15 Council received the 2003-04 Annual Report for Downtown Lodi Business Improvement Area (BIA) 1 and established the public hearing date. The public hearing is called for pursuant to Section 36535 of the California Streets and Highways Code. The public has an opportunity to present written or oral protests to the assessments being proposed. In order for such a protest to be successful, the protest must comply with the provisions of Sections 36524 and 36525 of the California Streets and Highways Code and be received from the owners of businesses in the improvement that are representing 50% or more of those member businesses who will pay the assessments for the proposed levy. If such a level of protest is not reached, then a resolution should be adopted by the Council confirming the report as originally filed or as amended by the Council. The adoption of such a resolution constitutes a levy of the assessment for the BIA during calendar year 2004.

Mayor Pro Tempore Howard was pleased that goals included the expansion of the BIA boundaries, and review and update of the assessment fees to better reflect membership benefits and an equitable fee structure.

Council Member Hansen questioned why the banners were not listed as a goal or objective.

Peter Westbrook, President of the Downtown Lodi Business Partnership (DLBP), replied that there were several options for funding the banners. He stated that an adopt-a-banner program was being considered, as is an adopt-a-tree program for the tree lights. He expressed hope that a Shirtsleeve Session could be held jointly with the DLBP to review its three-year commitment and ensure that Council is in agreement.

Council Member Hansen asked that the banners be included in the written objectives so that it is not forgotten.

Mr. Westbrook replied that the report can be amended now to include the banners as a major goal for 2004-05 with an emphasis on putting the plan in place and starting the program in 2004.

In response to City Manager Flynn, Mr. Westbrook reported that he was working with Electric Utility Director Vallow to have the tree lights done before the Parade of Lights event.

Hearing Opened to the Public

- Tim Vallem, business owner of Old Towne Antiques, protested the 2003-04 Annual Report and levy of assessment for Downtown Lodi BIA 1. He believed that Council failed to meet the perquisites for allowing the 2004 billings and alleged that various California Streets and Highways Code sections had been violated as he verbalized and delineated in a written statement distributed to Council (filed). He read from Lodi Municipal Code Section 12.06.110 and noted that the deadline was not met, "Pursuant to the act, it shall be necessary for the board to present by September 1 an annual budget for city council review and approval prior to beginning the billing period." He believed that the board referred to was the advisory board, not the DLBP. He also stated that there was not proper notification of the public hearing, because a mailed notice was not sent to all BIA business owners.

  Mr. Vallem pointed out that DLBP expenses are $80,640 to cover rent, utilities, insurance, and payroll. The only absolute incomes listed in its budget are the assessments and City contributions of $47,000. The assessment fees would be committed immediately toward paying fixed expenses, which he stated was contrary to state code requirements. He noted that the City and the advisory board have never established a formal written collection procedure. Further, he stated that the DLBP was formed under California Corporations Code as a non-profit corporation not for public use; therefore, he believed that the DLBP is not an extension of the City and the City has no jurisdiction. The loss of authority violates California Streets and Highway Code Section 36003 and Lodi Municipal Code Section 12.06.060 in the use of funds. He stated that any individual Council Member who would knowingly vote in favor of going forward with the assessment would be in violation of the law and could be held liable.

  In answer to questions by Council Member Land, Mr. Vallem stated that he would not like to see the DLBP disestablished. He wanted it to operate in the manner approved by Council six years ago. He voiced concern that the organization had incurred expenses beyond its income. Mr. Vallem reported that he paid his assessment only for the first two years that the BIA was in place. He recalled the Council originally said it would match the assessment fees for the first two years as seed money, after which

the organization was to stand on its own. Last fall former DLBP Executive Director Lew VanBuskirk asked Council for $35,000 to fund banners, which were never purchased. Mr. Vallem stated that many merchants downtown have expressed their disappointment with the BIA; however, they pay their assessments because they are afraid of the repercussions. He has asked, and been refused, to have a straw vote taken of all merchants in the BIA to ascertain what their real opinion is. Mr. Vallem stated that there are merchants in Zone B who should not be assessed because they do not benefit from tourism. There have been no improvements west of Church Street or north of Locust Street. He reported that the president of the Santa Rosa downtown business organization informed him that it had a similar situation, i.e. overloaded with expenses, and they decided to disband it. He stated that Finance Director McAthie acknowledged that there have been violations of the Federal Fair Credit Protection Act.

City Attorney Hays answered an inquiry by Mr. Vallem, explaining that appeals of City Council actions can be taken before the Superior Court of San Joaquin County. He pointed out that Streets and Highways code sections prior to 36530 apply only to the district when it is being formed. The operative code sections that deal with assessments are found at 36530 et seq. The timeline to follow is found in Section 36534, which states that the public hearing shall be held not less than ten days after the adoption of the resolution of intention. The City is in compliance with that timeline. Section 36534 b) states that the City Clerk shall give notice of the public hearing by causing the resolution of intention to be published once in a newspaper of general circulation in the city not less than seven days before the public hearing. The notification requirement was met. He recalled that the Council initially appointed an advisory board and at another point acted to make the DLBP its advisory board. The Downtown Lodi BIA follows the model used by other assessment organizations throughout the state. He commented that exemptions in the law say that banks are not subject to payments of taxes and license fees, and there is a large body of law that differentiates between taxes and assessments.

In response to Mr. Vallem, Mr. Hays explained that the DLBP is only in control of funds to the extent that it expends them based upon the budget.

Public Portion of Hearing Closed

City Manager Flynn agreed with Mr. Westbrook's earlier suggestion to have a special joint meeting with the DLBP to review its goals and objectives.

Mayor Hitchcock suggested that the matter be continued to the regularly scheduled meeting on December 17 to allow time for further research of Mr. Vallem's allegations of code violations.

Council Member Hansen was satisfied with the explanation given by Mr. Hays and saw no reason to delay action on the matter. He noted that other business owners could have protested the report; however, only one has appeared.

Mayor Pro Tempore Howard also was confident in the information Mr. Hays provided and felt that it would be appropriate to move forward with a decision. She agreed with Mr. Vallem that the DLBP's financial situation could be improved; however, Council voted earlier to fund it again as has been done in the past.

Council Member Beckman commented that he would like to see more of an effort by the DLBP to become self sufficient.

In reply to Council Member Beckman, Mr. Hays explained that the law under which it was formed calls it a business improvement "area", not a business improvement "district".

In answer to Mr. Hays, City Clerk Blackston reported that the only protest received regarding the 2003-04 Annual Report and levy of assessment for Downtown Lodi BIA 1 was the statement presented by Tim Vallem.

MOTION:

Council Member Hansen made a motion, Beckman second, to adopt Resolution No. 2003-219 confirming the 2003-04 Annual Report for Downtown Lodi BIA 1 and levy of assessment.

DISCUSSION:

Council Member Land suggested that Mr. Hays research the regulations and address in writing whether or not all the legal requirements are being met.

Mayor Hitchcock recommended that Mr. Hays meet with Mr. Vallem to discuss the laws regulating the BIA.

VOTE:

The above motion carried by a unanimous vote.

H. COMMUNICATIONS

H-1 Claims filed against the City of Lodi – None

H-2 Reports: Boards/Commissions/Task Forces/Committees – None

H-3 Appointments – None

H-4 Miscellaneous

a) City Clerk Blackston presented the cumulative Monthly Protocol Account Report through October 31, 2003.

RECESS

At 8:57 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 9:07 p.m.

I. REGULAR CALENDAR

I-1 "Discussion regarding proposed audit (agreed-upon procedures) of Envision Law Group's billings"

Council Member Hansen explained that the driving factor for him regarding this topic was whether or not the taxpayers of Lodi have a stake in this matter and may stand to lose anything, which he believed they do. He recalled that when discussions took place about getting a second opinion, his main concern was related to costs. A report from the Finance Department indicates that $21,272,763.31 has been spent thus far on the Environmental Abatement Program (PCE/TCE) litigation. Of this amount, $14.9 million came from the Lehman Bros. loan and $6.3 million came from the Water Fund. During the process of interviewing attorneys, the firm of Barger & Wolen was found to have extensive experience in reviewing litigation cases. Mr. Hansen disclosed that he met with the City Attorney today and spoke on the phone to John Meyer of Envision Law Group regarding this matter. Mr. Meyer believes that Barger & Wolen has potential conflicts of interest issues, which should prohibit it from representing the City. Robert Levy and David McMahon of Barger & Wolen disagree with Mr. Meyer on this matter. Mr. Hansen recommended that Council appropriate an initial retainer of $50,000 from the Water Fund for Barger & Wolen to conduct an audit of Envision Law Group's billings to the City. He noted that an extensive audit of billings (which began in 1996-97) would take months to complete and is estimated at $100,000 to get an initial level of answers. He believed that it was Council's responsibility to determine whether or not the fees charged to the City were reasonable and necessary. He felt accountability to the taxpayers because of the issues and concerns that have been raised.

Mayor Hitchcock explained that during discussions she and Council Member Hansen had with attorneys they began to have concerns and felt that it would be important to obtain hard data. They believed that conducting an audit would be a better first step than pursuing the second opinion at this time.

Council Member Beckman asked whether the audit would incorporate an examination of the City's relationship with Lehman Bros. and potential impacts to that relationship, to which Mr. Hansen replied in the affirmative.

Council Member Land inquired if the audit would affect USF&G's current actions related to defense costs, to which City Attorney Hays stated that there was a real potential for it to cause an impact to that matter.

Council Member Land suggested that the audit be performed after the trial in January and the USF&G case is settled.

Council Member Hansen replied that he did not foresee the litigation ending anytime in the near future.

Council Member Beckman pointed out that if the City is placed in a position of litigating against its own insurance company to get it to pay defense costs, the results from the audit would give Council information to make a better decision should such a lawsuit take place. The audit would provide unbiased detailed information about the legitimacy of bills that were submitted to USF&G. In response to Mr. Land's concern about timing, he noted that if there are unreasonable or unnecessary billings taking place, the longer the City waits to do the audit, the more damage that can be done.

Council Member Hansen noted that one of the concerns expressed by citizens is whether there will be money left to pay for the cleanup. He learned that in a similar case at the Lincoln shopping center, handled by attorney Michael Donovan, $60 million was involved and issues were raised about whether there would be sufficient money remaining to clean up the contamination.

Mayor Hitchcock added that there was a pattern that took place in the Lincoln case, which had been addressed by the judge, and Mr. Donovan's firm has now repeated this similar handling in Lodi's PCE/TCE litigation. This she felt was cause for considerable concern.

City Manager Flynn stated that he fully supported the recommendation to audit the billings of Envision Law Group. He reported that two former Council Members called and reminded him that, when this case began, they were told that it should be settled within a year or two.

Mayor Hitchcock asked Mr. Flynn why, for the first time, he included a statement in his budget transmittal that the City was involved in groundwater contamination litigation, which could result in increased rates to citizens.

Mr. Flynn replied that if there is an element similar to a deductible, the ratepayers would bear the burden for the cost.

Mayor Hitchcock asked why City Attorney Hays had not responded about yesterday's opinion from Judge Damrell, to which he replied that he was not aware of it.

Mayor Pro Tempore Howard disclosed that Council Member Hansen contacted her yesterday to provide background material related this matter.

At the request of Mayor Pro Tempore Howard, Robert Levy of Barger & Wolen reported that his firm was hired by all of the primary insurers for Lincoln Properties. He believed that some of the insurers, e.g. Lumberman's and Fireman's Fund, insure businesses in Lodi. He commented that it would be improbable to find a qualified firm that has never been hired by any of the entities against which the City has a cause of action.

In response to Mayor Hitchcock, Mr. Levy explained that there is a coverage action, in which one of Barger & Wolen's clients, i.e. Chubb, has a third-level excess policy insuring the City of Lodi. That coverage action is stayed at this time. Mr. Levy offered that he and his partners would respond in writing to the City regarding any potential conflicts of interest.

Mr. Hays reported that Barger & Wolen represent Hartford Insurance, which is one of the City's insurers that it will potentially look to for coverage. He noted that this case is currently stayed.

Mr. Levy responded that his firm would not take a position adverse to the City on behalf of any client, nor would it take a position for the City adverse to an existing client on the same matter. He stated that if the action becomes "un-stayed", Barger & Wolen would get off the case.

Council Member Beckman asked how Barger & Wolen proposes to maintain the Canon of Ethics in regard to its duties to its clients past, present, and future.

Mr. Levy explained that the Canon of Ethics specifies solutions for certain problems. In an existing matter an attorney cannot take two sides of the same position in favor of two separate clients. Mr. Levy stated that he would address in a written statement the Canons, which he believed were material as they apply to this engagement.

David McMahon of Barger & Wolen added that as a precaution an ethical wall would be set up within the firm to ensure that Ethan Miller (a partner in the firm) and anyone affiliated with him who worked with Federal Insurance, would not be involved in any way with the audit for the City.

Referencing the "blue sheet" (filed), Mayor Pro Tempore Howard noted that the motion on September 17 had three elements and she asked whether Council was no longer interested in getting a second opinion regarding the current legal strategy.

Council Member Hansen believed that once the audit was completed, there may not be a need to pursue a second opinion.

In reply to questions posed by Council Member Land, Mr. McMahon reported that since 1990-91 Barger & Wolen has audited more than 60 firms on mass tort and very large cases. He explained that audits are requested to confirm that legal fees were reasonable and necessarily incurred, that there were not mathematical errors, and to ensure that fees from other cases were not mistakenly added into the bills. Barger & Wolen has been involved in cases concerning ethical billing practices and has had cases before Supreme Courts throughout the United States dealing with a wide number of billing issues. He clarified that the purpose of the audit is not to find something wrong; it is to make sure that the City is getting the value for its dollar. There is also a qualitative function that is brought to the audit, i.e. a determination is made regarding whether an amount spent on a particular task, or group of tasks, was reasonable and appropriate.

At the request of Council Member Hansen, Mr. McMahon explained that most large institutions have guidelines, which will tell the lawyers they hire what is acceptable, what they are expected to do, what they can bill for, and what are appropriate costs. Failing having these written guidelines, there are "generally accepted billing practices." Attorneys are required to adhere to a Code of Ethics and there is an ethical overlay pertaining to what is appropriate for an attorney to charge. Examples of what would be looked for in an audit include 1) charges for paralegals to do clerical work such as sending faxes, making copies, etc.; 2) transient billers, i.e. people who work only a few hours and are not providing real value to the case; and 3) long billing days that are serial in nature and not associated with an imminent trial.

Mayor Pro Tempore Howard asked whether other firms were interviewed that had not previously done an audit of Mr. Donovan. She suggested that only item three of Council Member Hansen's recommendation (i.e. authorize Council Member Hansen and Mayor Hitchcock to negotiate a contract) be considered, as she felt it was important for the entire Council to review the contract before approval. She emphasized the importance of hearing from other law firms that were interviewed, and particularly those that could provide a neutral approach to the audit.

Council Member Hansen reported that he and Mayor Hitchcock interviewed 15 to 20 attorneys of various firms who specialized in environmental law. The focus of their discussion was on the legal strategy that the City is involved in, not the audit. Of all the firms, there was only one who had not already heard about the case. Most of the others were following it closely, were up to date on its current status, and had read the legal decisions and motions. Mr. Hansen recalled that he originally had suggested that the City auditors conduct the audit and a law firm be hired to provide a second opinion on the legal strategy. Since locating Barger & Wolen, due to the unique advantage of its experience in the Lincoln case, he felt the best course of action at this time would be to pursue the audit and delay further quests until the results are known.

Mayor Pro Tempore Howard clarified that at no time has she challenged the request of Council to hire a firm to audit the billings of Envision Law Group. She believed it was important that if Council was changing the direction of the motion made on September 17 that it should elucidate the fact that at this time the action desired is to move forward solely with hiring a firm to do an audit.

MOTION #1 / VOTE:

The City Council, on motion of Council Member Beckman, Hitchcock second, unanimously voted to move forward on item one of the motion made on September 17, 2003 (*i.e. 1. Financial agreement with Lehman Bros., Inc.; evaluation to include possible ramifications to the City of various scenarios that could occur*) and engage an outside professional firm to audit billing records of Envision Law Group; and that items two and three of the motion made on September 17, 2003 (*i.e. 2. Determine other potential options and strategies that the City could pursue in regard to the PCE/TCE litigation; and 3. Valuation of the City's current strategy*) be stayed until such time as Council deems it necessary to proceed.

Council Member Hansen commented that the original strategy of trying to resolve this matter without taxpayer's dollars was a good strategy and continues to be so.

MOTION #2 / VOTE:

The City Council, on motion of Council Member Hansen, Hitchcock second, 1) authorized that the law firm of Barger & Wolen LLP be retained pending successful resolution of any conflicts and a background/reference check; 2) appropriated an initial retainer of $50,000; and 3) authorized Council Member Hansen and Mayor Hitchcock to negotiate the contract, which will then be reviewed by the City Council before being formally initiated. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Land, and Mayor Hitchcock
Noes: Council Members – Howard
Absent: Council Members – None

I-2 "Presentations of proposals by Bill Mathis of Mathis and Associates and Dale Edwards of Century Assembly Church and selection of facilitator for team-building sessions with Council Members"

Deputy City Manager Keeter recalled that at the July 30 meeting Council discussed the possibility of conducting a team-building session to enhance the relationship amongst Council Members as a working group. As a result, staff identified five facilitators who had the capability of providing such a service. Council Members Hansen and Land conducted interviews with potential facilitators and have invited two to give presentations to Council. Bill Mathis was not present.

Dale Edwards stated that he had experience in team building, strategic planning, development of leadership, and leadership dynamics. He has been a pastor for 34 years and stated that the dynamic of interpersonal issues, whether it is secular or sacred, are basically the same. He noted that conflict is not inherently destructive or constructive; it is a matter of people having different perspectives. The team-building process would be to help Council identify the unique differences that Council Members individually and collectively bring together so that the inherent strength/weakness can be worked together for a purpose. The success is determinant upon Council's willingness to make it happen.

In answer to Council Member inquiries, Mr. Edwards recommended that he meet individually with each participant prior to the team-building session. Following that he suggested a day long off-site session, perhaps on a Saturday, be held, after which it would be determined whether follow up or ongoing sessions are desired. Mr. Edwards stated that he would not be charging a fee for the service as he did not want the appearance of a conflict of interest.

Mayor Hitchcock suggested that all Council appointees participate in the team-building session(s) as well.

Council Member Land stated that his only relationship with Century Assembly Church (at which Dale Edwards serves as Pastor) is through a non profit called Building Blocks that strives to improve the quality of life for residents on the east side. He suggested that Council select a facilitator after Mr. Mathis has an opportunity to provide a presentation on December 17.

Council Member Beckman mentioned that he was a member of Heartland Community Church; however, he and his wife recently attended a few services at Century Assembly Church and may be continuing to do so in the near future.

MOTION / VOTE:

There was no Council action taken on this matter.

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

Council Member Hansen made a motion, Hitchcock second, to continue with the remainder of the meeting following the 11:00 p.m. hour.

DISCUSSION:

Council Member Land recalled that the last time a vote was taken to continue the meeting at 11:00 p.m. it was estimated to conclude in 30 minutes; however, it actually took two hours. Mr. Land explained that he had an obligation to represent the City early tomorrow morning for the San Joaquin Partnership, after which he would go to work, and would represent the City again that evening for the Housing Authority. He expressed difficulty in carrying out these duties when meetings continue to 1:00 or 2:00 a.m. He stated that he would support the motion to continue if business could be completed before midnight.

Mayor Hitchcock could not predict the adjournment time, as she was unaware of what comments or inquiries Members of Council might bring up under the remaining topics.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Mayor Hitchcock
Noes: Council Members – Land
Absent: Council Members – None

I. REGULAR CALENDAR (Continued)

I-3 "Direct City Manager regarding Finance Department office space and authorize City Manager to execute or reject necessary contracts and agreements"

Public Works Director Prima reported that the City has been working toward relocating the Finance Department from its current leased space on Pine Street, due to various concerns about the building. Staff had received direction from Council to temporarily relocate the Finance Department to space at the parking structure. After preparing plans and specifications for tenant improvements to the parking structure and accepting bids, the Acordia building at 300 West Pine Street became available for lease. Staff has had discussions with the owner of the Acordia building pursuant to direction received from Council in closed session. Referring to a "blue sheet" (filed) entitled Finance Department Office Space Cost Analysis, Mr. Prima reported that the one-time costs for the parking structure total $507,750. The owner of the Acordia building is willing to finance $206,650 for the tenant improvements, etc. over the term of the lease. The annual costs at the Acordia building would be $155,980, whereas at the parking structure it would be $16,262. Staff recommends moving the Finance Department to the Acordia building and requests authorization from Council to allow the City Manager to execute a five-year lease. Additionally it is requested that the City Manager be authorized to bid and execute the contract for the move, e.g. installation of voice/data communications, office furniture, etc., and to reject bids on the tenant improvements at the parking structure.

Discussion ensued regarding the cost of space at the parking structure.

Mayor Hitchcock expressed concern over the significantly higher cost of leasing the Acordia building. She pointed out that a term of five years amounts to a difference of $81,000 versus $780,000, and ten years would be $162,000 versus $1.5 million. She recalled that the impetus for relocating the Finance Department was due to concerns of the employees. The Acordia building is said to have a musty smell in the basement and an allegation that someone heard it too was a "sick building." She feared that the same type of employee complaints would surface again in the future if the Department moved to the Acordia building. Ms. Hitchcock stated that she would not support the recommendation because of the huge cost savings associated with utilizing the space at the parking structure.

Council Member Hansen was under the impression that questions had been asked about whether there have been any problems with the Acordia building or complaints from employees, and that the answer was that there was not.

In reply, Mr. Prima stated that that was his understanding as well; however, he did not personally pursue that line of questioning.

Council Member Hansen suggested that an escape clause be built into the agreement in the event that funds become available to remodel the old public safety building.

MOTION:

Council Member Hansen made a motion, Beckman second, to adopt Resolution No. 2003-220 rejecting all bids for the Parking Structure Tenant Improvements project and directing the City Manager to negotiate necessary contracts and agreements for the Acordia Building, 300 West Pine Street, with final approval pending the ability to escape from the contract, if deemed necessary.

DISCUSSION:

Mayor Pro Tempore Howard noted that previously when discussions occurred regarding relocating the Finance Department, the Acordia building was not available as an option. She believed that the Acordia building offered the benefit of close proximity to City Hall and moving the drop box onto the property site for a more convenient drive-through type service. She was opposed to tying up retail space at the parking structure for an indefinite amount of time.

VOTE:

The motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, Howard, and Land
Noes: Council Members – Mayor Hitchcock
Absent: Council Members – None

I-4 "Introduce ordinance amending Title 5, Permits and Regulations, Chapter 5.40, Adult Oriented Businesses, repealing and reenacting Sections 5.40.300, 5.40.305, 5.40.400, and 5.40.405 of the Lodi Municipal Code relating to adult-oriented businesses"

City Attorney Hays reported that the City recently settled litigation with a local adult business owner that required the City to amend its adult business ordinance. The revisions set forth in the ordinance are designed to remove certain elements of the adult business ordinance that were challenged. The requirement that applicants provide fingerprints and social security numbers with their application for participation in an adult-oriented business has been removed. The social security number remains a voluntary option for the applicant to provide in order to assist in eliminating name confusion. Also eliminated was the prohibition of licensure for applicants with a prior history of criminal or civil adult business violations. These changes were reviewed with Police Chief Adams with regard to whether he felt it would hinder any enforcement activities that could be undertaken and he did not believe that it would.

In reference to a letter from Reverend Stephen Jarrett distributed to Council via a "blue sheet" (filed), Mr. Hays stated that he found it offensive because it was a personal attack on him. He pointed out that the settlement reached in this matter was fully briefed and discussed with Council and the City Attorney's Office carried out the directions of Council.

Council Member Hansen concurred with Mr. Hays and noted that Council makes such decisions based on the probability of winning the case, and discusses the principle of the matter versus the potential cost to the taxpayer. In this case the chances of winning were slim to none. In his letter, Reverend Jarrett indicates that the only cost to the City would be the City Attorney's salary. Mr. Hansen pointed out that this was an incorrect statement, because when a case is lost there is a requirement to pay the attorney's fees for the other side.

Mayor Hitchcock agreed with Council Member Hansen's comments.

Council Member Beckman expressed great sadness over the course that the nation has gone, especially in the 9th Circuit. He noted that the Constitution is laden with references to a religious creator, to the Supreme Being. The nation's founding fathers were all very strongly religious men. He believed that something had gone drastically wrong in the course of America where its people now find themselves in a purely secular nation, with a purely secular government. He stated that those that have any type of moral values have become those who are prohibited from espousing them.

PUBLIC COMMENTS:

- Ken Owen stated that he too was disappointed that it had to cost the City $105,000 to settle the case, in addition to revising its ordinance. He stated that effort should be made to keep adult-oriented businesses from coming into Lodi and that he would continue to fight to rid the City of the two that are currently operating. He agreed with the action that was taken by the City and did not believe that Council was left with any option in the matter.

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Howard, Hansen second, unanimously introduced Ordinance No. 1737 amending Title 5, Permits and Regulations, Chapter 5.40, Adult Oriented Businesses, repealing and reenacting Sections 5.40.300, 5.40.305, 5.40.400, and 5.40.405 of the Lodi Municipal Code relating to adult-oriented businesses.

I-5 "Introduce ordinance repealing and reenacting Lodi Municipal Code Chapter 12.06, Downtown Lodi Business Improvement Area No. 1, Section 12.06.090, "Collection of Benefit Fee," and Chapter 3.01, Business Tax Certification, Section 3.01.460, "Enforcement," relating to collection and enforcement of various fees" was ***pulled from the agenda pursuant to staff's request***.

I. REGULAR CALENDAR (Continued)

I-6 "Introduce ordinance amending Title 8, Health and Safety, Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, by repealing and reenacting Section 8.24.010, "Definitions," Subsection 2, and Section 8.24.040, "Liability," Subsection F, to the Lodi Municipal Code relating to abatement action costs and recovery issues"

City Attorney Hays reported that in October 2002 the 9th Circuit Court issued a decision in the Fireman's Fund case. The case was brought to try and invalidate the municipal enforcement ordinance the City has had with regard to environmental matters known as the Municipal Environmental Response and Liability (MERLO) ordinance. The court validated the vast majority of the MERLO, but expressed some concern over the definition of abatement action costs, which provided for recovery even where the City was a liable party under CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act), and also included recovery of attorneys' fees as an element of abatement cost. The ordinance under consideration for introduction addresses those issues. He stated that an amendment to the ordinance is appropriate, as the court ruled that the MERLO should be preempted by federal law to the extent that the MERLO defined abatement action costs in a manner permitting the City to recover attorneys' fees and interest in abatement action concerning a site, or portion of a site, where the City was deemed a responsible party under federal CERCLA. The amended ordinance limits the definition of abatement action costs as including litigation costs or attorneys' fees imposed by the MERLO to those instances where the City is not liable. It expressly authorizes the recovery of attorneys' fees by a prevailing party pursuant to Government Code Section 38773.5 in specific actions.

In answer to Council Member Hansen, Mr. Hays explained that this issue was briefed and submitted as a petition for certiorari to the United States Supreme Court and that was declined in April 2003.

Council Member Hansen stated that he needed additional time to review the ordinances for items I-6 and I-7; Mayor Hitchcock concurred.

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Hitchcock second, unanimously voted to reschedule agenda items I-6 and I-7 to the City Council meeting of December 17, 2003.

I-7 "Introduce ordinance amending Title 8, Health and Safety, Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, by repealing and reenacting Section 8.24.090, "Miscellaneous Provisions," Subsections D and E, and adding Subsection F to the Lodi Municipal Code relating to the availability of contribution" was ***pulled and rescheduled for the City Council meeting of December 17, 2003***.

J. ORDINANCES

None.

K. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Mayor Pro Tempore Howard thanked the Public Works Department for responding to concerns regarding a new street light signal, and placing signs at the intersection of Ham Lane and Century Boulevard, which clarify that left turns are to yield on the green light.
- Council Member Hansen asked the City Manager to see that the alley on Elm Street is cleaned and the lighting improved.
- Mayor Hitchcock announced that a representative from Senator Poochigian's Office would be at the Carnegie Forum tomorrow from 1:00 to 4:30 p.m.

L. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager Flynn announced the birthdays of Nancy Martinez on November 11 and Susan Lake on December 1. Today he attended the city managers Council of Governments (COG) meeting, at which the city manager of Stockton proposed that the number of COG board representatives be changed to correlate with the population of its member cities.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 12:01 a.m., Thursday, November 20, 2003.

ATTEST:

Susan J. Blackston
City Clerk

EXHIBIT C

CITY OF LODI
INFORMAL INFORMATIONAL MEETING
"SHIRTSLEEVE" SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, DECEMBER 2, 2003

The December 2, 2003, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled.

ATTEST:

Susan J. Blackston
City Clerk

EXHIBIT D

LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, DECEMBER 2, 2003

A. CALL TO ORDER / ROLL CALL

The Special City Council meeting of December 2, 2003, was called to order by Mayor Hitchcock at 7:04 a.m.

Present: Council Members – Beckman, Howard, Land, and Mayor Hitchcock

Absent: Council Members – Hansen

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

CITY COUNCIL CALENDAR UPDATE

City Clerk Blackston reviewed the weekly calendar (filed).

Announcements

City Manager Flynn reported that he sent an e-mail message to Council last night regarding the budget. He will be prepared to make recommendations to Council at the regularly scheduled meeting on December 17. He noted that a reception was held yesterday for Water/Wastewater Superintendent Fran Forkas who has retired. He stated that on Thursday at noon he would be accompanying his wife to Fresno, as she is having gastric bypass surgery on Friday morning. Mr. Flynn anticipated that he would also be absent on Monday.

B. REGULAR CALENDAR

B-1 "Identify and approve two priority projects for submittal to the San Joaquin Council of Governments (SJCOG) for the annual "One Voice" visit to Washington, D.C."

City Manager Flynn stated that one of the criteria for a priority project is that it can be completed in the near term. He explained that Federal funding appropriations expire after four or five years.

Deputy City Manager Keeter reported that the San Joaquin Council of Governments (SJCOG) "One Voice" trip is scheduled for March 21 to 26, 2004. Typically one Council Member and one staff member attends. She reported that the following projects had been considered in the past for the One Voice trip:

- White Slough Treatment Plant;
- Lodi Avenue Rail Safety Project;
- Aquatics Center;
- Indoor Sports Facility;
- Animal Shelter;
- Library Expansion;
- Fire Station 2 (remodel);
- Old Public Safety Building (remodel); and
- Highway 12 Safety Improvements.

Ms. Keeter noted that last year Lodi lobbied for the White Slough Treatment Plant and partnered with the County and Caltrans to lobby for the Highway 12 Safety Improvements.

Mayor Pro Tempore Howard commented that the new public safety building was also considered in 2001.

Ms. Keeter outlined the following criteria, which she explained are considered at the Federal level and may help make a project "sellable":

1. Is there a local match or state grant, fees, or bonds;
2. Is the project ready to go in the near future, e.g. it is important to have a comprehensive project description;
3. Is it transportation related;
4. Does it have a regional benefit;
5. Is there support or opposition from groups outside the city;
6. Is it a state or federally mandated project; and
7. Can the project be phased.

Fire Chief Pretz recalled that Fire Station 2 was originally part of the new public safety building project. After analysis by architectural firms and a structural engineer, it was suggested that the building be demolished and rebuilt. The building does not meet essential facility standards, Americans with Disabilities Act standards, or seismic resistance standards. He noted that staff is looking into funding through the hazard mitigation grant (Federal Emergency Management Agency funds) and Homeland Security grant for Fire Stations 2 and 4. He stated that the cost to replace Fire Station 2 is estimated at $1.7 million. There is $140,000 set aside in the next fiscal year for design. In response to the seven criteria outlined previously, he offered the following related to the Fire Station 2 project:

1. There is a 75/25 match for hazard mitigation funds;
2. It could be designed and ready to go in a short period of time;
3. Fire Station 2 responds to Highway 99 for transportation accidents;
4. Fire Station 2 is part of the group that would go to Stockton, Lockeford, and Clements areas if called into the countywide mutual aid system;
5. No opposition;
6. He reiterated that the building does not meet any of the essential facilities criteria; and
7. It is a one-phase project.

Police Captain Main reported that the Police Department pistol range is currently located in the basement of the police facility, which was established in 1966. It has severe ventilation problems and was recently subject to an Occupational Safety and Health Administration complaint. It does not meet current needs for the type of training that needs to be conducted. Captain Main noted that training makes police officers more proficient and protects the City against liability. He stated that the proposed Pistol Range and Joint Training Facility would be on a 10 to 12 acre parcel, perhaps in the White Slough area. It would be a cooperative training facility with the Fire Department and possibly also with San Joaquin Delta College's basic peace officer academy. It could be a source of revenue if other agencies were charged for using it. He estimated the cost from $400,000 to $500,000 for a simple range, and up to several million dollars to create a complete training facility. He noted that Police Chief Adams is looking into Homeland Security funding for the project. In response to the seven criteria outlined previously, he offered the following related to the Pistol Range and Joint Training Facility project:

1. The only match would be if it were a cooperative facility with San Joaquin Delta College;
2. The project is still in the exploratory stage;
3. N/A;
4. There could be regional benefits if other agencies were utilizing the facility;
5. Not aware of any opposition;
6. The project is not mandated; and
7. It can be done in phases.

Public Works Director Prima reported that the Lower Sacramento Road project has been a Measure K project since the inception of the program. The City has done the segment of Kettleman Lane to Turner Road, and the County recently did a segment in Woodbridge. The City is now in the design stage for the segment of Kettleman Lane to Harney Lane. The County has been working on the portion between Harney Lane and Eight Mile Road. He suggested that additional funding be requested for work at the Harney Lane intersection (including a temporary traffic signal) to coordinate with the work that the County will do on the curve in a future phase. In response to the seven criteria outlined previously, he offered the following related to the Lower Sacramento Road Improvements (south of Kettleman Lane) project:

1. The environmental phase has been completed;
2. The project description is complete;
3. It is transportation related;
4. There is a regional benefit;
5. Not aware of any opposition;
6. It is not mandated; and
7. The project can be done in phases.

Police Captain Main stated that the current animal shelter was built in the 1960s and was designed as a pound with enough space for one employee and temporary shelter for up to ten dogs until they were destroyed. In 2000 the Mayor appointed an Animal Shelter Task Force, which developed long- and short-term solutions. Construction of a new animal shelter facility is estimated at $4 million. In response to the seven criteria outlined previously, he offered the following related to the Lodi Animal Shelter project:

1. No matching funding; however, the City has paid for design and land acquisition;
2. The project is ready to go;
3. N/A;
4. Many of the animals taken in and adopted are from county areas;
5. There is tremendous community support;
6. The current shelter does not meet state mandates; and
7. It is a one-phase project.

In reply to Mayor Hitchcock, Mr. Prima stated that the money set aside for future projects was earmarked for design. Mr. Flynn believed that there was only about $1 million left; however, he stated that he would research it and provide an answer.

At Mr. Flynn's request, Mr. Prima announced that he was engaged to Marilyn Storey.

Mr. Prima stated that the plan for the Old Public Safety Building Remodel has been to move Community Development and Public Works into the building and move the Finance Department back into City Hall. He reported that an updated structural evaluation of the building is being done. Two years ago the estimate to remodel the building was approximately $3.5 million. There is some potential to use impact fees for the Civic Center portion of the expansion.

Council Member Beckman stated that the White Slough project would be his first choice to submit to SJCOG for consideration.

Discussion ensued regarding Council Members' preferences for project submittal.

Mayor Pro Tempore Howard stated that she would like to attend the "One Voice" event.

MOTION / VOTE:

The City Council, on motion of Council Member Beckman, Land second, approved the following two projects for submittal to the SJCOG 2004 "One Voice" legislative visit to Washington, D.C.:

1. Lower Sacramento Road improvements south of Kettleman Lane
2. White Slough Water Pollution Control Facility improvements

and to further submit Fire Station 2 as a second-tier project. The motion carried by the following vote:

Ayes: Council Members – Beckman, Howard, Land, and Mayor Hitchcock
Noes: Council Members – None
Absent: Council Members – Hansen

C. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

D. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 8:13 a.m.

ATTEST:

Susan J. Blackston
City Clerk

EXHIBIT E

CITY OF LODI
INFORMAL INFORMATIONAL MEETING
"SHIRTSLEEVE" SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, DECEMBER 9, 2003

The December 9, 2003, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled.

ATTEST:

Susan J. Blackston
City Clerk

EXHIBIT F

LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, DECEMBER 9, 2003

A. CALL TO ORDER / ROLL CALL

The Special City Council meeting of December 9, 2003, was called to order by Mayor Hansen at 7:06 a.m.

Present: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

Absent: Council Members – None

Also Present: Deputy City Manager Keeter, City Attorney Hays, and City Clerk Blackston

B. REGULAR CALENDAR

B-1 "Discussion regarding proposed audit (agreed-upon procedures) of Envision Law Group's billings and authorization to execute contract with Barger & Wolen LLP"

Mayor Hansen reported that the Council Communication for this item included the following exhibits (all filed):

- Exhibit A – Staff report for Item I-1 on the November 19 City Council agenda;
- Exhibit B – List of references for Barger & Wolen;
- Exhibit C – Letter dated November 25 from Barger & Wolen to Larry Hansen confirming the terms under which the law firm has been retained by the City of Lodi to render legal services;
- Exhibit D – Facsimile dated November 26 from Barger & Wolen to Larry Hansen regarding the proposed legal fee audit; and
- Exhibit E – Letter dated December 5 from Barger & Wolen to Larry Hansen regarding disclosure of potential conflicts of interest.

Mayor Hansen noted that John Meyer of Envision Law Group had submitted a 13-page document (filed), which disputes Barger & Wolen's opinion on its potential conflicts of interest.

In reply to Council Member Land, Mayor Hansen reported that he and Council Member Hitchcock called all 11 references and with the exception of a few who they were unable to reach, each gave very favorable responses regarding the firm of Barger & Wolen and specifically of Robert Levy and David McMahon. Mr. Hansen stated that one of the questions he asked when he checked the references was whether they were aware of any adverse attorney-client relationship or indication of misconduct by Barger & Wolen and all of them adamantly replied that they were not aware of any such situation.

Council Member Land referenced Exhibit D, page 2, first paragraph and read, "To outline some of our assumptions, first, we believe that enough money probably is already available to fund the necessary cleanup…" Mr. Land pointed out that the scope of the site or cost of cleanup had never been determined and he asked how Barger & Wolen could know this information.

Mayor Hansen explained that the firm believed, from a cursory review of the situation, that the City appears to be on the right track in terms of pursuing the insurance companies and that money from the insurance companies could likely be collected and applied toward the cleanup.

Council Member Hitchcock added that, in speaking with other attorneys, they had indicated that the City's strategy in the litigation is not uncommon and there should be more than adequate funds to clean up the contamination. She noted, however, that in Lodi's case funds are being used up at an alarming rate for legal fees.

Robert Levy of Barger & Wolen explained that the assumption was based on his experience in similar cases involving Potentially Responsible Parties and insurance coverage over a number of years. The amount of insurance is usually adequate to do the cleanup that would satisfy the regulators. There is usually no wish of any claimant to go beyond the insurance assets. Further, he explained that this type of situation is normally considered property damage within the meaning of the term as used in the coverage grant of most commercial, general policies. He expressed his opinion that, as a general matter, they will be able to and they will be legally called upon under the right circumstances, to fund cleanup dollars.

Mayor Hansen read the end of the sentence Mr. Land had referred to, "…so long as unnecessary transaction costs can be avoided." He pointed out that this is one of the issues to be determined by the audit, i.e. whether the transactions the City has been billed for were reasonable and necessary.

Council Member Howard referenced Exhibit C, page 4, and noted that it requires a retainer of $10,000; however, when this matter was discussed at a previous meeting $50,000 was requested for retaining the services of Barger & Wolen.

Mayor Hansen reported that the audit could end up costing $100,000 or more. He explained that Barger & Wolen's standard retainer is $10,000; however, his intent in originally requesting $50,000 was to give them enough money to complete a substantial amount of the audit without the constraint of continually coming back for additional funding.

Council Member Howard asked that, in the future, full disclosure regarding the cost be explained at the initial time of discussion. She asked how long the audit was anticipated to take.

David McMahon of Barger & Wolen replied that there were a variety of different approaches and the time needed to conduct the audit would depend on Council's objectives. He mentioned that if retained, Barger & Wolen would like to communicate with USF&G in an effort to obtain results of the audit it is conducting, which could potentially result in a significant cost savings to the City. If Council wishes that results be available prior to the trial date in January, it would not be possible to conduct a complete line item audit. He explained that when conducting line item audits Barger & Wolen often hires an independent expert to work with them who has sophisticated software with various report capabilities such as identifying trends, etc. The outcome of line item audits is very specific; however, it takes much longer (at least three months) and is more expensive.

In answer to questions posed by Council Member Howard, Mr. McMahon stated that the firm never hires experts without conferring with the principal and making sure it is in agreement with any potential conflict of interest issue or associated cost, which is typically between 1% and 3% of the face value of the bills. Mr. McMahon stated that regular status reports could be given to Council, either oral, written, or both. Mr. Levy added that status reports would be provided at Council's direction based on its preference. In reference to the hourly rates listed on Exhibit C, page 6, Mr. McMahon explained that the need for multiple people to work on the audit at the same time would depend on how soon Council needs the results. Currently it is structured with Mr. Levy and Dawn Valentine working on the Lehman Brothers financing agreement and Mr. McMahon, Mr. Haupt, and paralegals working on the Envision audit. If results were needed prior to January 12, more assistance would be needed to work on the Envision audit. He explained the complexity and time-consuming nature of a comprehensive audit, which would determine such things as whether or not the effort and resultant cost expended to produce a certain work product was appropriate.

Council Member Howard asked that Council have an opportunity to consult with its legal team before giving permission to contract with any other firm to assist in the audit, to which Mr. McMahon agreed.

Mayor Hansen reported that he had met with Mr. Levy and Mr. McMahon on five occasions, at which he shared public documents and discussed various strategies. He anticipated making a progress report about the audit at each regularly scheduled Council meeting until it is concluded. He hoped to have a cursory overview report prior to the January trial date.

John Meyer of Envision Law Group referenced Exhibit E noting that Barger & Wolen had reported a number of conflict disclosures. He stated that there was a difference of opinion with respect to the nature and extent of the conflicts and whether they could be cleared. He explained that his memorandum details Envision's analysis of the conflicts in a very specific way to allow Council an opportunity to evaluate the nature of each conflict and how the Rules of Professional Conduct play out in that context. He stated that some of the conflicts clearly can be waived; however, one cannot. It is Envision's view that the Council would be best served by obtaining an audit and report generated by a firm that has solely the City's interest at heart. He explained that 'fiduciary relationship' is a standard evaluated in the attorney-client context in two different regards: 1) duty of confidentiality, and 2) duty of loyalty. The law provides an assessment of whether or not conflicts are actual, or whether they are potential. Under California law, potential and actual conflicts are generally treated similarly. The general rule is that once the client is provided with full disclosure it can choose to waive a conflict. There are situations in the actual conflict setting where the courts have differed from the general rule provided in the Rules of Professional Conduct and said that under no circumstances, as a matter of law, can such a waiver be granted because it comprises the duty of loyalty. Mr. Meyer stated that even if Council were to sign a consent, the courts would deem it invalid, because Barger & Wolen would be representing both the City of Lodi and a party adverse to the City in litigation. He believed it would be inappropriate for Council to proceed without first obtaining the advice of counsel on the question of conflicts. He reviewed Exhibit E, Barger & Wolen's disclosure of potential conflicts of interest. He claimed that as an attorney on behalf of the Chubb group (specifically, Federal Insurance that is still a party to the Hartford litigation) Barger & Wolen has existing duty of loyalty whether the action is stayed or not. The claim expenses component is the portion of the retention that is being discussed with Barger & Wolen, which would be at issue. In reply to Mayor Hansen, Mr. Meyer confirmed that this was the conflict that he felt could not be waived.

In answer to Council Member Hitchcock, Mr. Meyer reported that, in the trial commencing in January, determinations of liability would be made in the M&P investments actions at which point the question of indemnity under the City's insurance policies would be able to be addressed by Judge Kramer in the Hartford matter. The Superior Court would then proceed with the insurance coverage litigation. He explained that the indemnity question in the insurance litigation is typically stayed until the liability determinations are made in the underlying action.

Mayor Hansen read from Exhibit E, page 2, "Nevertheless, in a superabundance of caution, should the City decide to retain Barger & Wolen in connection with the proposed representation, we will terminate our representation of Federal in the cleanup litigation."

Mr. McMahon disclosed that Ethan Miller, an attorney with Barger & Wolen, has represented Pacific Indemnity Company and Federal Insurance Company. In an excess of caution Barger & Wolen would terminate that representation and put an ethical wall in place within the firm wherein Mr. Miller and any associate that may have assisted him on the case would be screened off and not be involved in any way with the representation of the City's interest. He urged Council to consult with an independent lawyer to resolve the issue if there is a difference of opinion. He reiterated his belief that the conflict could be waived if representation of Federal was terminated and an ethical wall was put in place, to which Mr. Levy expressed concurrence.

In answer to Mayor Pro Tempore Beckman, Mr. Levy stated that the work product, which would be reviewed as part of the audit, are public documents and he did not believe that access to anything other than public records would be necessary.

Council Member Howard noted that the contract from Barger & Wolen mentions that after an audit has been completed the firm would represent the City of Lodi in any legal proceedings over any concerns that may come about. She asked whether this would then shift the area of conflict of interest.

Mr. Meyer answered that it would be a separate, but related analysis. He stated that the relevant question is whether there is concurrent representation where the work to be performed fundamentally leads to adverse positions being taken. He stated that the withdrawal from representation of Federal would not cure the conflict. He urged Council to contact the State Bar's hot line and get the opinion of its ethics lawyer about whether it is an actual concurrent representation that is not waivable, or if terminating Federal would make it a former representation, and if they are clear of the "hot potato" rule such that they can undertake this representation subject to an appropriate waiver. Another option would be for Council to provide authorization for its attorneys to move to disqualify and raise this issue before Judge Kramer who would resolve the issue. Addressing Council Member Hitchcock, Mr. Meyer reported that none of the funds that have been used since 1999 have been, or would be, available for anything other than the litigation process. Neither the defense duty money from USF&G, nor money obtained from Lehman Bros., would provide funding for the cleanup.

Council Member Hitchcock clarified that her concern was that an alarming amount was being spent for litigation costs.

Mr. Meyer pointed out that Barger & Wolen stated that it would like to speak with opposing counsel (i.e. USF&G) in a litigated matter in order to address its review of the bills, which he felt highlighted the duty of loyalty question.

Mr. Levy explained that the motive and goal in contacting USF&G was to look at the results of its audit, and in essence, to use it as salvage to save the City money. Whether this occurs would be at Council's discretion. In reference to the Hartford action, Mr. Levy asked them if they would be comfortable with allowing Barger & Wolen to withdraw from it and they agreed on two provisos: 1) that Barger & Wolen disclose the nature of what its representation would be for the City, and 2) that Barger & Wolen would agree that it would not take the City's representation and sue Federal, Chubb, or Pacific to try to get policy proceeds. Mr. Levy stated that the firm has never been asked to do that, nor if it were asked, would it agree to. Further, he stated that the firm does not "fire" clients for the purpose of taking more lucrative assignments and consequently does not believe it is running afoul of the "hot potato" case as Mr. Meyer previously alluded to.

Mayor Hansen stated that the City Council representing the citizens of Lodi is the client in this case. He believed it is Council's obligation and duty to pursue an audit of Envision Law Group because of the issues that have been raised by citizens and the media.

In answer to Mayor Hansen, Mr. Levy clarified that it is not that Barger & Wolen would not be representing any of these entities forevermore; it may represent AIG Environmental, for example, in completely unrelated matters. Mr. Levy confirmed that it would not provide representation to any firm, with respect to anything having to do with the litigation in which the City is involved.

Mayor Hansen commented that as he and Council Member Hitchcock began interviewing attorneys and looking closer into the Lincoln case it became evident that there were disputes about billings and concern that they were starting to run out of money for the cleanup. In that case the judge stepped in and took action that stopped some of the billings and processes that were taking place.

Council Member Hitchcock expressed concern that the current path leads only to the continued addition of attorneys' fees and litigation costs, with no end in sight to get to cleanup of the contamination.

MOTION:

Council Member Hitchcock made a motion, Beckman second, to authorize the Mayor to execute the contract with Barger & Wolen LLP for the initial audit of Envision Law Group's billings.

DISCUSSION:

Council Member Land hoped that Council would first get a ruling from a third party attorney about the conflict of interest issue before moving forward on this matter.

Mayor Hansen stated that he would contact the State Bar, present the issue from both perspectives, and get another opinion.

Council Member Howard believed that there was a conflict of interest with Barger & Wolen. She noted that only one firm was interviewed regarding its background and qualifications in the area of auditing. Council has an opportunity to interview additional firms and find one that can unequivocally say it has no conflict. She believed that would be the wise decision and therefore would not be voting in favor of the motion.

Mayor Hansen expressed his opinion that it is a significant advantage that Barger & Wolen was involved with many other attorneys in the overview of the billings from the Lincoln case and he believed it would be very prudent for Council to take advantage of this experience.

Council Member Hitchcock agreed that there is a huge benefit to hiring a firm that has already had experience with Envision Law Group and believed that it would significantly reduce the "learning curve."

Mayor Pro Tempore Beckman pointed out that the City currently has USF&G as its insurance carrier that owes a duty to defend. The City also currently has Envision Law Group that is prosecuting cases for the City. Both of these firms owe an ethical duty to the Council and the City of Lodi and yet they are adverse to each other, i.e. USF&G is investigating Envision Law Group. Bringing one more firm in that owes an ethical duty to the City, that may or may not have conflicts with someone else, he did not see as any different than the situation that currently exists.

In reply to Deputy City Manager Keeter, Mayor Hansen stated that he would meet with Barger & Wolen to determine the best approach to undertake with regard to the audit. He would then report back to Council and allow an opportunity for further input. He confirmed that he would contact the State Bar and discuss the conflict issues that were raised this morning.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Land, and Mayor Hansen
Noes: Council Members – Howard
Absent: Council Members – None

C. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

D. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 8:35 a.m.

ATTEST:

Susan J. Blackston
City Clerk

EXHIBIT G

LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
MONDAY, DECEMBER 15, 2003

A. CALL TO ORDER / ROLL CALL

The Special City Council meeting of December 15, 2003, was called to order by Mayor Hansen at 4:35 p.m.

Present: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn (arrived at 5:05 p.m.), City Attorney Hays, and City Clerk Blackston

B. CLOSED SESSION

At 4:35 p.m., Mayor Hansen adjourned the Special City Council meeting to a Closed Session to discuss the following matters:

B-1 Actual Litigation: Government Code §54956.9(a); one case; *People of the State of California; and the City of Lodi, California v. M & P Investments, et al*.; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM

B-2 Actual litigation: Government Code §54956.9(a); one case; *Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al*., Superior Court, County of San Francisco, Case No. 323658

The Closed Session adjourned at 8:34 p.m.

C. RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 8:34 p.m., Mayor Hansen reconvened the Special City Council meeting, and City Attorney Hays disclosed the following:

In regard to Items B-1 and B-2, no reportable action was taken in closed session and the meeting was adjourned to December 17, 2003 at 5:00 p.m.

D. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

E. ADJOURNMENT

The Special City Council meeting of December 15, 2003 was adjourned to December 17, 2003 at 5:00 p.m.

ATTEST:

Susan J. Blackston
City Clerk

EXHIBIT H

CITY OF LODI
INFORMAL INFORMATIONAL MEETING
"SHIRTSLEEVE" SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, DECEMBER 23, 2003

The December 23, 2003, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled.

ATTEST:

Susan J. Blackston
City Clerk

EXHIBIT I

CITY OF LODI
INFORMAL INFORMATIONAL MEETING
"SHIRTSLEEVE" SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, DECEMBER 30, 2003

The December 30, 2003, Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was canceled.

ATTEST:

Susan J. Blackston
City Clerk

EXHIBIT J

LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, DECEMBER 30, 2003

A. CALL TO ORDER / ROLL CALL

The Special City Council meeting of December 30, 2003, was called to order by Mayor Hansen at 7:05 a.m.

Present: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

CITY COUNCIL CALENDAR UPDATE

City Clerk Blackston reviewed the weekly calendar (filed).

B. CLOSED SESSION

At 7:05 a.m., Mayor Hansen adjourned the Special City Council meeting to a Closed Session to discuss the following matter:

B-1 Actual litigation: Government Code §54956.9(a); one case; *Fireman's Fund Insurance Company v. City of Lodi, et al*., United States District Court, Eastern District of California Case No. CIV-S-98-1489 FCD JFM

The Closed Session adjourned at 9:47 a.m.

C. RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 9:47 a.m., Mayor Hansen reconvened the Special City Council meeting and disclosed that a meeting would be scheduled to renegotiate the contract between the City of Lodi and Envision Law Group. He also reported that Envision Law Group would be refunding certain past charges to the City.

Note: No reportable action was taken in closed session.

D. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

E. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 9:48 a.m.

ATTEST:

Susan J. Blackston
City Clerk

AGENDA ITEM E-03

CITY OF LODI
COUNCIL COMMUNICATION

AGENDA TITLE: Authorize the sale of scrap wire and metal during 2004

MEETING DATE: January 7, 2004

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council authorize the sale of scrap wire and metal at periodic intervals during the calendar year 2004.

BACKGROUND INFORMATION: During maintenance and installation operations the City utility departments generate quantities of scrap wire and metal, which is then accumulated for subsequent sale to scrap metal dealers on a highest-bid basis.

Lodi City Code Section 2.12.120 requires City Council approval for sale of surplus property having a value in excess of $2,000. In 2003, sales of scrap wire and metals yielded recovery of $14,386.45 in prior materials costs.

It is projected that the City will hold sale bids for scrap metal at least three times during 2004, in February, June, and October. Therefore, it is staff's recommendation that the City Council authorize the advertisement for bids, and the sale of scrap wire and metal as is necessary during 2004, and require a report of all such sales within thirty days of their completion.

FUNDING: None required.

_____
Alan Vallow, Electric Utility Director

Prepared by Joel Harris, Purchasing Officer

APPROVED: _____
H. Dixon Flynn, City Manager

AGENDA ITEM E-04

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: **Report of the Sale of Surplus Equipment**

MEETING DATE: **January 7, 2004**

PREPARED BY: **Public Works Director**

RECOMMENDED ACTION: None required. This report of the sale of surplus equipment is made in compliance with Section 3 of the Fleet Policies and Procedures.

BACKGROUND INFORMATION: During the third and fourth calendar quarters of 2003, the City sold the following surplus vehicles through Nationwide Auctions of Benicia. The City received from the sales the following amounts:

1994 Ford Crown Victoria	VIN 179274	$	802.00
1997 Ford Crown Victoria	VIN 161888	$	1,453.00
1997 Ford Crown Victoria	VIN 161886	$	709.00
1997 Ford Crown Victoria	VIN 161885	$	802.00
1981 Van Pelt Fire Engine	VIN 254281	$	1,101.00
1988 Dodge Ram 250	VIN 741475	$	1,453.00
1998 GMC Sonoma	VIN 505423	$	3,552.00

FUNDING: None required.

Revenue received:		$9,872.00
Accounts credited:	1201:	$4,867.00
	1711:	$1,453.00
	1811:	$3,552.00

_____
Richard C. Prima, Jr.
Public Works Director

Prepared by Dennis J. Callahan, Fleet and Facilities Manager

RCP/DJC/pmf

cc: Finance Director
Purchasing Officer

APPROVED: _____
H. Dixon Flynn, City Manager

AGENDA ITEM E-05

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: **Approve Plans and Specifications and Authorize Advertisement for Bids for the Pine Street Sidewalk Replacement Project (North Side of Pine Street from School Street to the Alley West of Sacramento Street); and Adopt Resolution Authorizing the City Manager to Award or Reject the Contract up to $65,000 and Appropriate Funds**

MEETING DATE: **January 7, 2004**

PREPARED BY: **Public Works Director**

RECOMMENDED ACTION: That the City Council approve the plans and specifications and authorize advertising for bids for the above project; and adopt a resolution authorizing the City Manager to award or reject the contract up to $65,000 and appropriate funds.

BACKGROUND INFORMATION: The section of Pine Street described above is located within Zone A of the Downtown Lodi Business Partnership Improvement Area (see attached map). The condition of the sidewalk and alley entrance has deteriorated, causing unsightly cracks and uneven surfaces.
Additionally, there are two old, unstable basement access doors within the project area. These doors, along with the uneven sidewalk surface, pose a tripping hazard to patrons walking along the sidewalk.

Since completion of the Downtown Revitalization, the City has progressively continued to improve sidewalk and basement access conditions in the downtown core, as funds have permitted. Street reconstruction and tree well installation was completed several years ago along this block. The north sidewalk east of the alley was replaced in 2000, in conjunction with the remodel of an adjacent building. This project will complete the reconstruction of the north side.

To enhance the appearance of this downtown street and protect the City from liability associated with trip hazards, staff recommends that Council approve the plans and specifications, authorize advertisement for bids, and authorize the City Manager to award the construction contract.

The plans and specifications are on file in the Public Works Department.

FUNDING: Measure K Maintenance

Project Estimate	Less than $65,000
Budgeted:	2003/04 fiscal year
Planned Bid Opening Date:	February 4, 2004

_____
Vicky McAthie, Finance Director

_____
Richard C. Prima, Jr.
Public Works Director

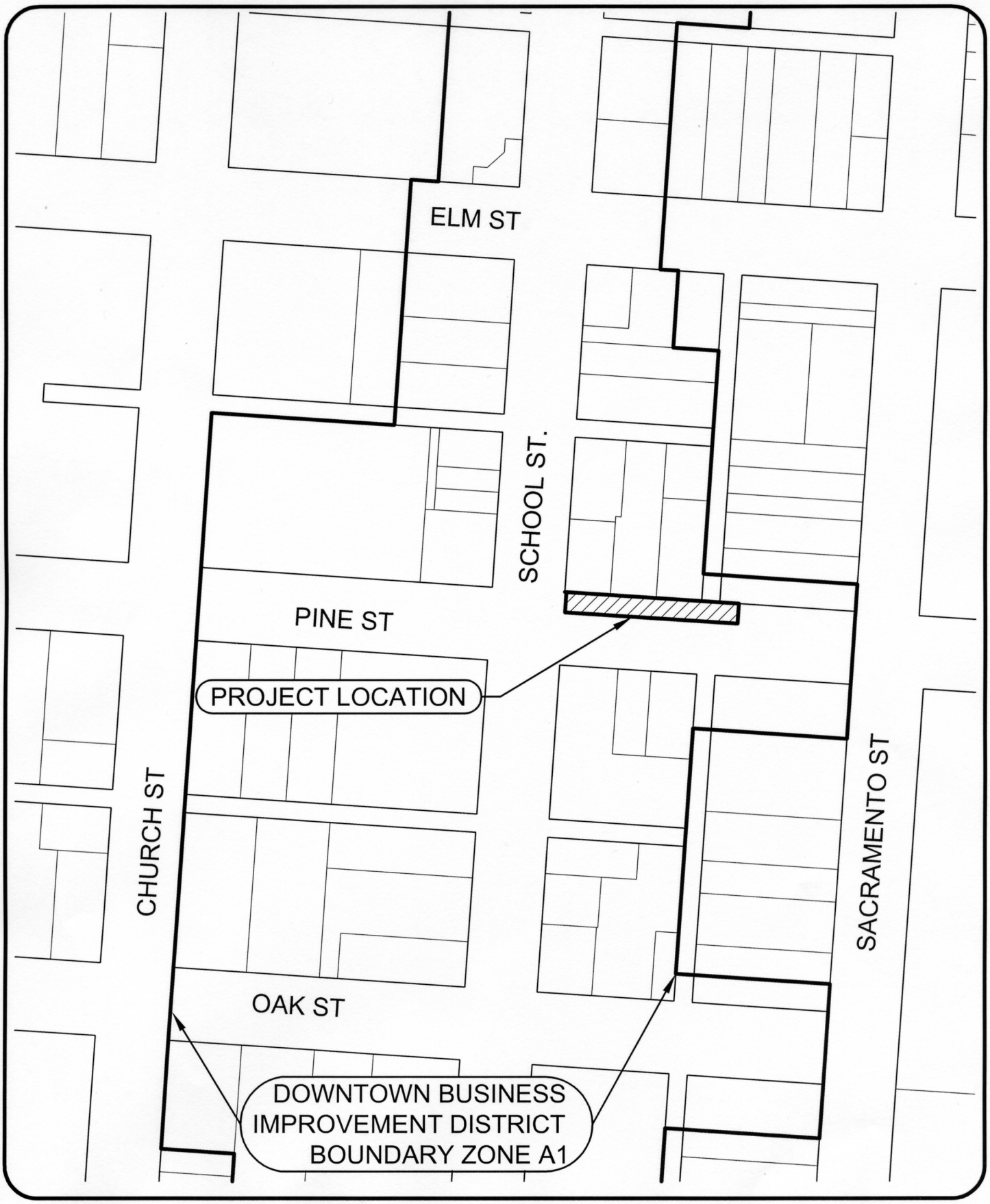
Prepared by Kevin Gaither, Senior Engineering Technician - Design
RCP/KG/pmf
Attachment

APPROVED: _____
H. Dixon Flynn, City Manager

CITY OF LODI

PUBLIC WORKS DEPARTMENT

PINE STREET SIDEWALK REPLACEMENT PROJECT PROJECT MAP



M:\OPEN\EXHIBITS\03X075.dwg, 12/22/2003 09:13:41 AM, jpizzo

RESOLUTION NO. 2004-____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING PLANS AND SPECIFICATIONS AND AUTHORIZING ADVERTISEMENT FOR BIDS FOR PINE STREET SIDEWALK REPLACEMENT PROJECT (NORTH SIDE OF PINE STREET FROM SCHOOL STREET TO THE ALLEY WEST OF SACRAMENTO STREET), AND FURTHER AUTHORIZING THE CITY MANAGER TO AWARD OR REJECT THE CONTRACT UP TO $65,000, AND APPROPRIATE FUNDS FOR THE PROJECT

==========

WHEREAS, this project includes a section of Pine Street that is located within Zone A of the Downtown Lodi Business Partnership Improvement Area; and

WHEREAS, the condition of the sidewalk and alley entrance has deteriorated, causing unsightly cracks and uneven surfaces, and additionally, there are two old unstable basement access doors within the project area which poses a tripping hazard to patrons walking along the sidewalk; and

WHEREAS, since completion of the Downtown Revitalization, the City has progressively continued to improve sidewalk and basement access conditions in the downtown core as funds have permitted; and this project will complete the reconstruction of the north side; and

WHEREAS, staff recommends approval of the plans and specifications and authorization for bids for the Pine Street Sidewalk Replacement Project (North Side of Pine Street from School Street to the Alley west of Sacramento Street), and further recommends authorizing the City Manager to award or reject the contract up to $65,000.00, and further recommends appropriating $65,000.00 from the Measure K Maintenance fund for this project.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the plans and specifications and authorize advertisement for bids for the Pine Street Sidewalk Replacement Project (North Side of Pine Street from School Street to the Alley west of Sacramento Street), and

BE IT FURTHER RESOLVED that the City Council authorizes the City Manager to award or reject the bid up to $65,000.00, for the Pine Street Sidewalk Replacement Project (North Side of Pine Street from School Street to the Alley west of Sacramento Street); and

BE IT FURTHER RESOLVED that funds in the amount of $65,000.00 be appropriated from the Measure K Maintenance fund for this project.

Dated: January 7, 2004

==========

I hereby certify that Resolution No. 2004-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

AGENDA ITEM E-06

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Donation of Retired Bleachers to Lodi-Tokay Rotary Club

MEETING DATE: January 7, 2004

PREPARED BY: Parks and Recreation Director

RECOMMENDED ACTION: That the City Council approves the donation of retired Parks and Recreation Department bleachers to the Lodi-Tokay Rotary Club.

BACKGROUND INFORMATION: The Lodi-Tokay Rotary Club recently contacted the Parks and Recreation Department to inquire about the bleachers located in the Grape Bowl Field House parking lot. The bleachers were removed from service two years ago due to safety issues. All six bleachers are not handicap accessible, are not equipped with back railings or side railings, and are in need of repair. All six bleachers have been replaced with updated bleachers that meet all current guidelines and regulations for five-tier style bleachers.

The Lodi-Tokay Rotary Club will be responsible for removing the bleachers from the Field House parking lot and transporting to their new destination located south of the California border. The Lodi-Tokay Rotary Club is involved with the Centenario Rotary Club of Ensenada, Mexico, to build and equip a park and sports complex adjacent to a newly constructed school. The utilization of these surplus bleachers will be a significant improvement.

FUNDING: No City funds will be expended to accomplish this beyond the administrative personnel costs.

Tony Goehring
Parks and Recreation Director

TG/SV:tl

cc: Purchasing Officer
Parks Superintendent
Park Supervisor, Wright

APPROVED: _____
H. Dixon Flynn, City Manager

Dec. 15, 2003

LODI –TOKAY ROTARY CLUB

Officers

Richard J. Jones
President 2003-2004

JoEllen Flemmer
President-Elect 2004-2005

Dr. Tom Shock
Vice President

Dorean Rice
Secretary

Chris Olsen
Treasurer

Board of Directors
2003-2004

Michelle Lemley
Community Service

Bob Casalegno
Vocational Service

Gloria Evosevich
Youth Service

John Metz
Club Service

Gary Greider
International Service

John Marshall
Rotary Foundation

Mike Pretz
Membership

Craig Norton
Sgt.-at-Arms

Steve Whyte
Bulletin Editor

Seldon Brusa
Member-at-Large

Mr. Steve Dutra, Parks Director
City of Lodi
125 N. Stockton St
Lodi Ca 95240

Dear Steve:

This letter is intended to formalize the request of the Lodi Tokay Rotary Club for the surplus bleachers that are stored at the Grape Bowl.

For the past two years, we have been working with the Centenario Rotary Club of Ensenada to build a school in an extremely poor neighborhood. Classrooms and a cafeteria have been constructed and at the present time a park and sports complex is being built adjacent to the school. This facility will not only serve the school children but also the recreational needs of the surrounding area.

At present, the only spectator seating available is a pile of rubber tires filled with sand. The utilization of the surplus bleachers will be an significant improvement.

If we obtain the bleachers, we have plans to truck them to Mexico where the local Rotarians will make sure they are installed at the sports complex.

Hopefully you will be in a position to grant our request. Please let me know if you need any additional information.

Very truly yours,

Bob Johnson

AGENDA ITEM E-07

CITY OF LODI
COUNCIL COMMUNICATION

AGENDA TITLE: Adopt a resolution awarding the contract for the Armory Park Ball Diamond Renovation, 333 North Washington Street ($58,346.70) to A.M. Stephens Construction of Lodi and appropriate $63,500.00

MEETING DATE: January 7, 2004

PREPARED BY: Parks and Recreation Director

RECOMMENDED ACTION: That the City Council adopt a resolution awarding the contract for the above project to A.M. Stephens of Lodi, CA in the amount of $58,346.70; and appropriate funds in accordance with the recommendation shown below.

BACKGROUND INFORMATION: This project was previously approved as part of the Parks and Recreation Departments 2003/2004 Capital Improvement Projects requests. Plans, specifications and authorization to advertise for bids for the above project was approved by the City Council at their regular meeting November 5, 2003. A bid opening was held on December 17, 2003, and two bids were received.

The scope of work consists of removing the existing outfield turf, installing clean sandy loam soil, soil preparation and grading. Work also includes providing and installing new sprinkler heads and new four foot wide sod rolls.

Bidders	Location	Base Bid
Engineer's Estimate		$72,700.00
A.M. Stephens Construction	Lodi	$58,346.70
JS Brar Construction	Clovis	$95,601.95

FUNDING:

2003/2004 Parks and Recreation Capital Improvement Funds: $63,500.00

Project Estimate: $72,700.00
Bid Opening Date: December 17, 2003

APPROVED: _____
H. Dixon Flynn, City Manager

Funding Available: _____
Vicky McAthie, Finance Director

_____
Tony Goehring
Parks and Recreation Director

TG/SV:tl

cc: City Attorney
Parks Superintendent
Sr. Civil Engineer Fujitani
Purchasing Officer
Parks and Recreation Management Analyst Trainee
Parks Project Coordinator

RESOLUTION NO. 2004-____

A RESOLUTION OF THE LODI CITY COUNCIL AWARDING THE CONTRACT FOR THE ARMORY PARK BALL DIAMOND RENOVATION, 333 NORTH WASHINGTON STREET, AND FURTHER APPROPRIATE FUNDS FOR THIS PROJECT

==========

WHEREAS, in answer to notice duly published in accordance with law and the order of this City Council, sealed bids were received and publicly opened on December 17, 2003, at 11:00 a.m. for the Armory Park Ball Diamond Renovation, 333 North Washington Street, described in the specifications therefore approved by the City Council on November 5, 2003; and

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

Bidder	**Location**	**Bid**
Engineer's Estimate		**$ 72,700.00**
A. M. Stephens Construction Co., Inc.	Lodi	$ 58,346.70
JS Brar Construction	Clovis	$ 95,601.95

WHEREAS, the City Manager recommends award of the contract for the Armory Park Ball Diamond Renovation, 333 North Washington Street be made to the low bidder, A. M. Stephens Construction Co., Inc., of Lodi, California.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that the award of the contract for the Armory Park Ball Diamond Renovation, 333 North Washington Street, be made to the low bidder, A. M. Stephens Construction Co., Inc., of Lodi, California, in the amount of $72,700.00; and

BE IT FURTHER RESOLVED that funds in the amount of $63,500.00 be appropriated from the 2003/2004 Parks and Recreation Capital Improvement Funds for this project.

Dated: January 7, 2004

==========

I hereby certify that Resolution No. 2004-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

AGENDA ITEM E-08

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: **Adopt Resolution Approving the Addendum to the Improvement Agreement for the Public Improvements of Almondwood Estates, Tract No. 3273, and appropriate funds ($48,070)**

MEETING DATE: **January 7, 2004**

PREPARED BY: **Public Works Director**

RECOMMENDED ACTION: That the City Council adopt a resolution approving the addendum to the improvement agreement for the public improvements of Almondwood Estates, Tract No. 3273, and direct the City Manager and City Clerk to execute the addendum to the improvement agreement on behalf of the City.

BACKGROUND INFORMATION: The Almondwood Estates subdivision is located north of Almond Drive and east of Stockton Street, as shown on Exhibit A. Resolution No. 2003-98 approving the improvement agreement for the subdivision was approved by Council on June 4, 2003. As a condition of development, the developer, KB Home North Bay, Inc., is required to complete the installation of street frontage improvements along Stockton Street. However, due to the deteriorated condition of the existing pavement in Stockton Street, staff is recommending that the existing pavement along the project frontage be removed and replaced to the centerline of the street. The developer has agreed to perform this work and is eligible for reimbursement by the City for the work in conformance with LMC §16.40 Reimbursement for Construction. The cost of the additional work is $48,070, which includes 10% for engineering and administration.

The developer is also required to install a reverse frontage masonry wall with landscaping and irrigation on Stockton Street and Almond Drive and street trees in the parkways along the interior subdivision streets. The developer paid a one-time fence and landscape maintenance and replacement fee in the amount of $76,244 to cover the ongoing maintenance costs for those improvements prior to approval of the final map. The developer subsequently elected to form the Almondwood Estates District Zone 1 Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1 to finance those costs. The District was approved by Council on August 20, 2003. The previously paid one-time maintenance and replacement fee ($76,244) has been refunded to the developer. Since the City will not receive payment from the District until January 2005, the developer will be required to provide maintenance and replacement for those improvements until that time.

The developer has furnished the City with the necessary addendum to the improvement agreement (Exhibit B) and provided improvement security for the additional work in Stockton Street. Staff recommends that Council approve the addendum to the improvement agreement and appropriate the necessary funds to reimburse the developer for the additional Stockton Street improvements.

FUNDING: Local Street Impact Fees $48,070

_____
Vicky McAthie, Finance Director

_____
Richard C. Prima, Jr.
Public Works Director

Prepared by Lyman Chang, Associate Civil Engineer
RCP/LC/pmf
Attachments
cc: Senior Civil Engineer Fujitani
Senior Civil Engineer Welch
K B Home, Inc.
David Evans & Associates, Inc.

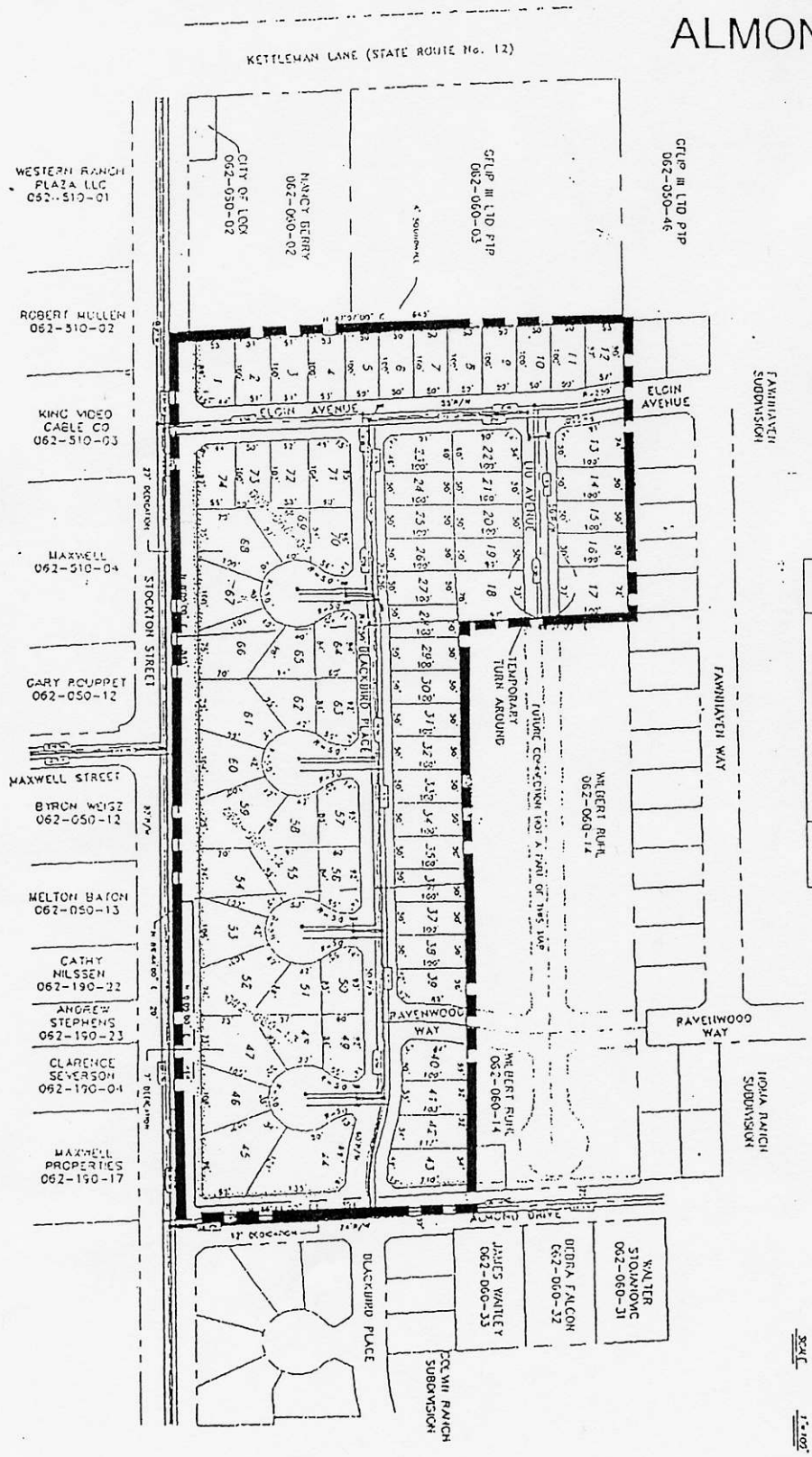
APPROVED: _____
H. Dixon Flynn, City Manager

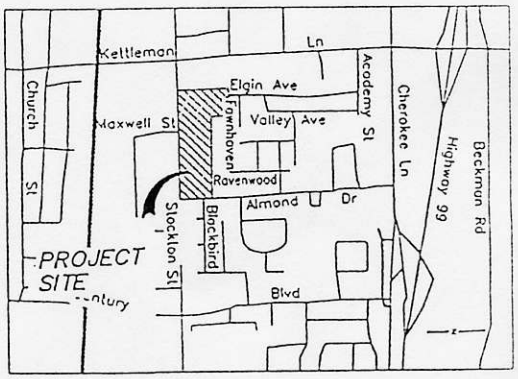
CITY OF LODI

PUBLIC WORKS DEPARTMENT

EXHIBIT A

ALMONDWOOD ESTATES





VICINITY MAP

N.T.S.

ADDENDUM
to the
IMPROVEMENT AGREEMENT
for the
PUBLIC IMPROVEMENTS
of
ALMONDWOOD ESTATES
TRACT NO. 3273

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, hereinafter referred to as "City", and K B HOME NORTH BAY, INC., A CALIFORNIA CORPORATION, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, the parties have entered into an Improvement Agreement dated June 6, 2003, which Agreement covers the responsibilities of City and of Developer for the development of Almondwood Estates, Tract No. 3273; and

WHEREAS, the Developer is responsible for the installation of street improvements in Stockton Street fronting the subject subdivision; and

WHEREAS, the Developer is responsible for the installation of street pavement improvement up to the existing pavement along the Stockton Street frontage of the subject subdivision; and

WHEREAS, the City has requested that the existing pavement east of the centerline of Stockton Street be reconstructed along the frontage of the subject subdivision; and

WHEREAS, the City is responsible for reimbursing Developer for the reconstruction of the existing pavement in Stockton Street along the frontage of the subject subdivision in conformance with LMC 16.40 Reimbursements for Construction; and

WHEREAS, the Developer is required to provide additional improvement security for the pavement reconstruction work as described in the Subdivision Map Act for faithful performance and the payment of all persons performing labor and furnishing materials for the installation of public improvements; and

WHEREAS, the Developer has established Almondwood Estates District Zone 1 Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1 to finance ongoing fence and landscape maintenance for the said subdivision.

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

1. That this document is considered an addendum to the original Improvement Agreement between the two parties.
2. That the Developer shall reconstruct the existing pavement in Stockton Street east of the centerline of Stockton Street to the new pavement installed by the Developer as required in the original Improvement Agreement.
3. That the City shall reimburse Developer in the amount of $48,070 for the street reconstruction, including miscellaneous utility frame adjustments, as shown on the attached Billing Schedule Addendum and Cost Estimate for Additional Improvement Security. Said reimbursement includes ten percent (10%) for engineering and administration in conformance with LMC 16.40 Reimbursements for Construction. Reimbursement shall be made when the work is complete and accepted by the City.

4. That the Developer shall furnish additional improvement Security of at least 100% of the estimate cost of the above referenced public improvements for the faithful performance of said work; and an amount equal to at least 50% of the above costs as security for the payment of all persons performing labor and furnishing materials in connection with this agreement as more fully described in the State Subdivision Map Act.

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

Faithful Performance	$48,070.00
Labor and Materials	$24,035.00

5. That the City has refunded to the Developer the previously paid one-time fence and maintenance fee in the amount of $76,244.00

6. That the Developer remains responsible for the regular maintenance of the public wall, landscape and irrigation improvements on Stockton Street and street tree improvements in the subdivision parkway until January 2005 when the first revenue will be received by the City from the Almondwood Estates District Zone 1 Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1.

In Witness Whereof, Developer and City have caused their names to be hereunto affixed and the City of Lodi has caused its corporate name and seal to be hereunto affixed by its proper officers thereunto duly authorized.

K B HOME NORTH BAY, INC.

_____ _____

Date

_____

_____

(CORPORATE SEAL)

CITY OF LODI, A MUNICIPAL CORPORATION

By: _____ _____

H. Dixon Flynn, City Manager Date

ATTEST:

_____ _____

Susan J. Blackston, City Clerk Date

APPROVED AS TO FORM:

_____

Randall A. Hays, City Attorney

City of Lodi
Publics Works Department

Development: Almondwood Estates
Developer: K B Home North Bay, Inc.
Engineer: David Evans and Associates, Inc.

TOTAL COST OF PROJECT IMPROVEMENTS[1]						A. DEVELOPER COST		B. COST OF CITY-FUNDED FACI
Item	Description	Quantity	Unit	Price	Total	Quantity	Total	Quantity
	Street System							
1	Earthwork	14,852	CY	$2.50	$37,130.00	14,852	$37,130.00	0
2	**Roadway Excavation**	**754**	**CY**	**14.00**	**10,556.00**	**0**	**0.00**	**754**
3	Demolition	1	LS	17,500.00	17,500.00	1	17,500.00	0
4	Asphalt Concrete (0.25')	90,059	SF	0.75	67,544.25	90,059	67,544.25	0
5	**Asphalt Concrete (0.40')**	**37,214**	**SF**	**1.40**	**52,099.60**	**26,214**	**36,699.60**	**11,000**
6	Aggregate Base (.33')	56,806	SF	0.55	31,243.30	56,806	31,243.30	0
7	Aggregate Base (.40')	26,214	SF	0.60	15,728.40	26,214	15,728.40	0
8	Aggregate Base (.42')	33,253	SF	0.65	21,614.45	33,253	21,614.45	0
9	**Aggregate Base (.45')**	**11,000**	**SF**	**0.65**	**7,150.00**	**0**	**0.00**	**11,000**
10	Compact Original Ground (0.67')	90,059	SF	0.24	21,614.16	90,059	21,614.16	0
11	**Compact Original Ground (0.5')**	**37,214**	**SF**	**0.15**	**5,582.10**	**26,214**	**3,932.10**	**11,000**
12	**Compact Native Material (0.5')**	**37,214**	**SF**	**0.20**	**7,442.80**	**26,214**	**5,242.80**	**11,000**
13	Vertical Curb & Gutter	5,535	LF	9.00	49,815.00	5,535	49,815.00	0
14	Vertical Curb, Gutter & Sidewalk	1,398	LF	12.00	16,776.00	1,398	16,776.00	0
15	Sidewalk (5')	29,037	SF	3.00	87,111.00	29,037	87,111.00	0
16	Wheelchair Ramps (Labor Only)	19	EA	250.00	4,750.00	19	4,750.00	0
17	Residential Driveways	6,354	SF	14.50	92,133.00	6,354	92,133.00	0
18	Bus Stop & Shelter Pads	676	SF	15.00	10,140.00	676	10,140.00	0
19	Concrete Subgrade Compaction	59,714	SF	0.55	32,842.43	59,714	32,842.43	0
20	Survey Monument	16	EA	150.00	2,400.00	16	2,400.00	0
21	**Adjust Survey Monument to Grade**	**1**	**EA**	**300.00**	**300.00**	**0**	**0.00**	**1**
22	**Adjust Manhole Frame & Cover to Grade**	**3**	**EA**	**400.00**	**1,200.00**	**0**	**0.00**	**3**
23	**Adjust Valves to Grade**	**6**	**EA**	**250.00**	**1,500.00**	**5**	**1,250.00**	**1**
24	Dead End Barricade (Standard Plan 139)	105	LF	40.00	4,200.00	105	4,200.00	0
25	Remove Existing Barricade	1	EA	300.00	300.00	1	300.00	0
26	Street Sign/Block Signs & Posts	10	EA	300.00	3,000.00	10	3,000.00	0
27	Regulatory Signs	3	EA	125.00	375.00	3	375.00	0
28	1' Block Retaining Wall	1,446	LF	8.00	11,568.00	1,446	11,568.00	0
29	Masonry Wall (7')	1,556	LF	53.00	82,468.00	1,556	82,468.00	0
30	Masonry Wall (9')	634	LF	68.00	43,112.00	634	43,112.00	0
31	Street Lights (100W Decorative Luminaire)	31	EA	2,000.00	62,000.00	31	62,000.00	0
32	Street Lights (100W HPS Luminaire)	9	EA	1,800.00	16,200.00	9	16,200.00	0
33	Sidewalk Barricade	1	EA	200.00	200.00	1	200.00	0
34	Landscaping & Irrigation	13,755	SF	3.00	41,265.00	13,755	41,265.00	0
45	Signing & Striping	1	LS	8,246.00	8,246.00	1	8,246.00	0
36	**Traffic Control**	**1**	**LS**	**7,994.00**	**7,994.00**	**0.4**	**3,000.00**	**0.6**
37	Winterization, Erosion Control	1	LS	4,000.00	4,000.00	1	4,000.00	0
				Subtotal	$879,100.49	***Subtotal***	$835,400.49	***Subtotal Street System***
								10% Engineering & Administration
								Total Street System
	Storm Drain System							
1	12" Storm Drain Pipe	1,695	LF	$20.00	$33,900.00	1,695	$33,900.00	0
2	15" Storm Drain Pipe	406	LF	22.00	8,932.00	406	8,932.00	0
3	48" Storm Drain Manhole	13	EA	1,300.00	16,900.00	13	16,900.00	0
4	Side Inlet Catch Basin	16	EA	1,500.00	24,000.00	16	24,000.00	0
5	24" Riser	1	EA	1,000.00	1,000.00	1	1,000.00	0
7	Connect to 54" Storm Drain Line	1	EA	1,500.00	1,500.00	1	1,500.00	0
				Subtotal	$86,232.00	***Subtotal***	$86,232.00	***Subtotal Storm Drain System***
								10% Engineering & Administration
								Total Storm Drain System

TOTAL COST OF PROJECT IMPROVEMENTS[1]						A. DEVELOPER COST		B. COST OF CITY-FUNDED FACI
Item	Description	Quantity	Unit	Price	Total	Quantity	Total	Quantity
	Sanitary Sewer System							
1	8" Sanitary Sewer Pipe	2,665	LF	$25.00	$66,625.00	2,665	$66,625.00	0
2	Sanitary Sewer Manhole	14	EA	1,500.00	21,000.00	14	21,000.00	0
3	Sanitary Service with Cleanout	74	EA	450.00	33,300.00	74	33,300.00	0
				Subtotal	$120,925.00	***Subtotal***	$120,925.00	***Subtotal Sanitary Sewer System***
								10% Engineering & Administration
								Total Sanitary Sewer System
	Water System							
1	8" Water Pipe	2,769	LF	$20.00	$55,380.00	2,769	$55,380.00	0
2	8" Water Valve	23	EA	750.00	17,250.00	23	17,250.00	0
3	Fire Hydrant Assembly	9	EA	2,600.00	23,400.00	9	23,400.00	0
4	Blowoff (Permanent)	4	EA	500.00	2,000.00	4	2,000.00	0
5	Blowoff (Temporary)	2	EA	500.00	1,000.00	2	1,000.00	0
6	1" Water Service w/Meter Box	74	EA	400.00	29,600.00	74	29,600.00	0
7	Connect to Existing Water	3	EA	5,000.00	15,000.00	3	15,000.00	0
				Subtotal	$143,630.00	***Subtotal***	$143,630.00	***Subtotal Water System***
								10% Engineering & Administration
								Total Water System
				Total	$1,229,887.49	**Total**	$1,186,187.49	
Revised Total Construction Cost (A. Developer Cost)							$1,186,187.49	
Less Previous Total Construction Cost Subject to Engineering Fee Calculation							($1,186,187.49)	
REVISED TOTAL COST FOR ENGINEERING FEE CALCULATION						**A. Total**	$0.00	**B. Total**

ADDITIONAL IMPROVEMENT SECURITY AMOUNTS:

Faithful Performance:	100% of A & B	$48,070.00
Labor & Materials:	50% of A & B	$24,035.00

[1] Work Items shown in bold print have been revised

BILLING SCHEDULE ADDENDUM

Development: Almondwood Estates
Developer: K B Home North Bay, Inc.
Engineer: David Evans and Associates, Inc.
Date: 12/3/03

Gross Acreage: 14.40
No. of Units: 74

				DEVELOPER COST	CREDITS
STREET SYSTEM					
Reimbursement by City					
Street Improvements per Item B of attached (327027; MTSI027)					48,070.00
STREET SYSTEM SUBTOTAL					$48,070.00
TOTAL AMOUNT OF BILLING SCHEDULE				$0.00	$48,070.00
NET AMOUNT TO BE PAID BY DEVELOPER TO CITY PRIOR TO PROJECT APPROVAL				($48,070.00)	
DEFERRED DEVELOPMENT IMPACT MITIGATION FEES					
Water Facilities	(1821.6122)	14.40	AC @ $4,105.00	$57,929.76	
	(12141.6127)			$1,182.24	
Sewer Facilities	(1731.6122)	14.40	AC @ $525.00	$7,408.80	
	(12141.6127)			$151.20	
Street Improvement Facilities	(3271.6122)	14.40	AC @ $8,249.00	$67,517.74	
	(3321.6122)			$48,892.15	
	(12141.6127)			$2,375.71	
Storm Drainage Facilities	(3261.6122)	14.40	AC @ $ 11,813.00	$166,705.06	
	(12141.6127)			$3,402.14	
Police Protection Facilities	(12151.6122)	14.40	AC @ $1,613.00	$22,762.66	
	(12141.6127)			$464.54	
Fire Protection Facilities	(12161.6122)	14.40	AC @ $1,577.00	$22,254.62	
	(12141.6127)			$454.18	
Parks & Recreation Facilities	(12171.6122)	14.40	AC @ $20,249.00	$285,753.89	
	(12141.6127)			$5,831.71	
General City Facilities	(12181.6122)	14.40	AC @ $6,517.00	$91,967.90	
	(12141.6127)			$1,876.90	
TOTAL AMOUNT OF DEFERRED FEES				$786,931.20	$48,070.00
NET AMOUNT OF DEFERRED FEES TO BE PAID BY DEVELOPER PRIOR TO PROJECT ACCEPTANCE				$738,861.20	

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

RESOLUTION NO. 2004-____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THE ADDENDUM TO THE IMPROVEMENT AGREEMENT FOR THE PUBLIC IMPROVEMENTS OF ALMONDWOOD ESTATES, TRACT NO. 3273; AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE AN ADDENDUM TO THE IMPROVEMENT AGREEMENT ON BEHALF OF THE CITY OF LODI

==========

WHEREAS, the Almondwood Estates Subdivision is located north of Almond Drive and east of Stockton Street and was approved by the City Council on June 4, 2003; and

WHEREAS, as a condition of development, the developer KB Home North Bay, Inc., is required to complete the installation of street frontage improvements along Stockton Street; and

WHEREAS, due to the deteriorated conditions of the existing pavement in Stockton Street, staff is recommending that the existing pavement along the project frontage be removed and replaced to the centerline of the street; and

WHEREAS, the developer has agreed to perform this work and is eligible for reimbursement by the City for the work in conformance with Lodi Municipal code §16.40 "Reimbursement for Construction," at a cost of $48,070.00, which includes 10% for engineering and administration costs; and

WHEREAS, the developer is also required to install a reverse frontage masonry wall with landscaping and irrigation on Stockton Street and Almond Drive and street trees in the parkways along the interior subdivision streets; and

WHEREAS, the developer paid a one-time fence and landscape maintenance and replacement fee in the amount of $76,244.00 to cover the ongoing maintenance costs for those improvements prior to approval of the final map; and

WHEREAS, the developer has elected to form the Almondwood Estates District Zone 1 Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1 to finance those costs, which was approved by the City Council on August 20, 2003; and

WHEREAS, the one-time maintenance and replacement fee has been refunded to the developer, and since the City will not receive payment from the District until January 2005, the developer is required to provide maintenance and replacement for those improvements until that time; and

WHEREAS, staff recommends that the City Council take the following action with regard to Almondwood Estates, Tract No. 3273:

1. Approve the Addendum to the Improvement Agreement for the Public Improvements of Almondwood Estates, Tract No. 3273, and direct the City Manager and City Clerk to execute the Addendum to the Improvement Agreement on behalf of the City; and

2. Appropriate the necessary funds to reimburse the developer for the additional Stockton Street improvements from Local Street Impact Fees.

The City Council of the City of Lodi hereby finds as follows:

1. Approves the Addendum to the Improvement Agreement for the Public Improvements of Almondwood Estates, Tract No. 3273, and directs the City Manager and City Clerk to execute the Addendum to the Improvement Agreement on behalf of the City of Lodi; and

2. Appropriates $48,070.00 to reimburse the developer for the additional Stockton Street improvements from Local Street Impact Fees.

Dated: January 7, 2004

==========

I hereby certify that Resolution No. 2004-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 7, 2004 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

AGENDA ITEM E-09

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: **Adopt Resolution Approving the Addendum to the Improvement Agreement for the Public Improvements of Century Meadows Two, Unit No. 4, Tract No. 3272; and Appropriate Funds ($58,400)**

MEETING DATE: **January 7, 2004**

PREPARED BY: **Public Works Director**

RECOMMENDED ACTION: That the City Council adopt a resolution approving the Addendum to the Improvement Agreement for the Public Improvements of Century Meadows Two, Unit No. 4, Tract No. 3272, direct the City Manager and City Clerk to execute the addendum to the improvement agreement on behalf of the City, and appropriate funds for the required reimbursement.

BACKGROUND INFORMATION: The Century Meadows Two, Unit No. 4 subdivision is located east of Mills Avenue, north of Harney Lane and south of the Century Meadows Two, Unit No. 3 development, as shown on the attached Exhibit A. Resolution No. 2002-252 approving the improvement agreement for the subdivision was approved by Council on December 18, 2002. As a condition of development, the developer, FCB Building Partners I, L.P., is required to complete the installation of street frontage improvements along Harney Lane. At this time, Century Meadows One, Unit No. 2 subdivision east of Century Meadows Two, Unit No. 4, as shown on Exhibit A, is also under construction. When the two subdivisions are complete, the properties at 1683 and 1749 West Harney Lane, APN 058-210-03 and 059-210-03, respectively as shown on Exhibit A, will be the only properties on the north side of Harney Lane between Ham Lane and Mills Avenue without street frontage improvements. In order to provide for orderly development and enhance public safety on Harney Lane, staff recommends that the frontage improvements along these properties be completed at this time. The developer of Century Meadows Two, Unit No. 4 has agreed to include the frontage improvements for these properties in their project. The improvements include curb, gutter and asphalt concrete pavement. The developer is eligible for reimbursement by the City for these improvements in conformance with LMC §16.40 Reimbursement for Construction. Staff estimates the cost of the work to be $49,040.74. The developer will be reimbursed based on verified claims for the work done by the developer's contractor when the improvements are complete and accepted by the City.

In order to construct the frontage improvements along 1683 and 1749 West Harney Lane, additional street right-of-way dedication on Harney Lane and public utility easements behind the right of way are required from the owner, Nick Farros. The owner has agreed to dedicate the right-of-way (10 feet) in exchange for the frontage improvements. Installation of the frontage improvements will include the relocation of one existing tree, relocation of a wood fence, and installation of a new driveway (to replace the old gate), as shown on Exhibit B. In addition, a chain link fence will be installed along the existing orchard. The cost of the work on the Faros property is estimated to be $9,340.00. The owner will be reimbursed based on verifiable claims for the improvements when the project is complete.

APPROVED: _____
H. Dixon Flynn, City Manager

The developer has furnished the City with the necessary agreement (Exhibit C) and provided improvement security for the additional work in Harney Lane. Staff recommends that the City Council approve the addendum to the improvement agreement and appropriate the necessary funds to reimburse the developer for the additional Harney Lane street frontage improvements and the owner for the private improvements necessitated by the Harney Lane work.

FUNDING: Local Street Impact Fees $58,400.00

_____
Vicky McAthie, Finance Director

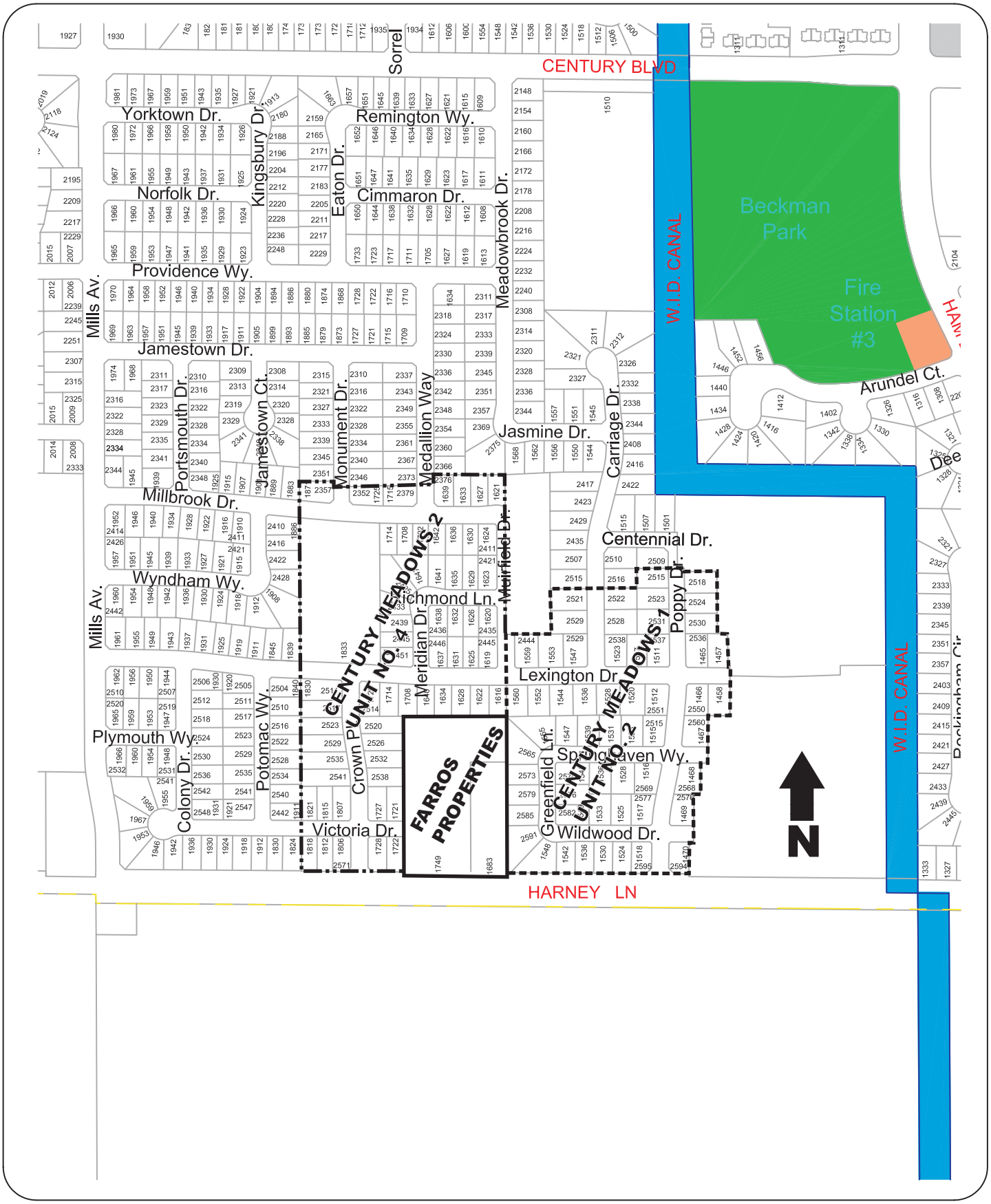
_____
Richard C. Prima, Jr.
Public Works Director

Prepared by Lyman Chang, Associate Civil Engineer
RCP/LC/pmf
Attachments
cc: Senior Civil Engineer Fujitani
Senior Civil Engineer Welch
FCB Building Partners I, LP
Nick Farros
Baumbach & Piazza

CITY OF LODI

PUBLIC WORKS DEPARTMENT

EXHIBIT A



CITY OF LODI

PUBLIC WORKS DEPARTMENT

EXHIBIT B

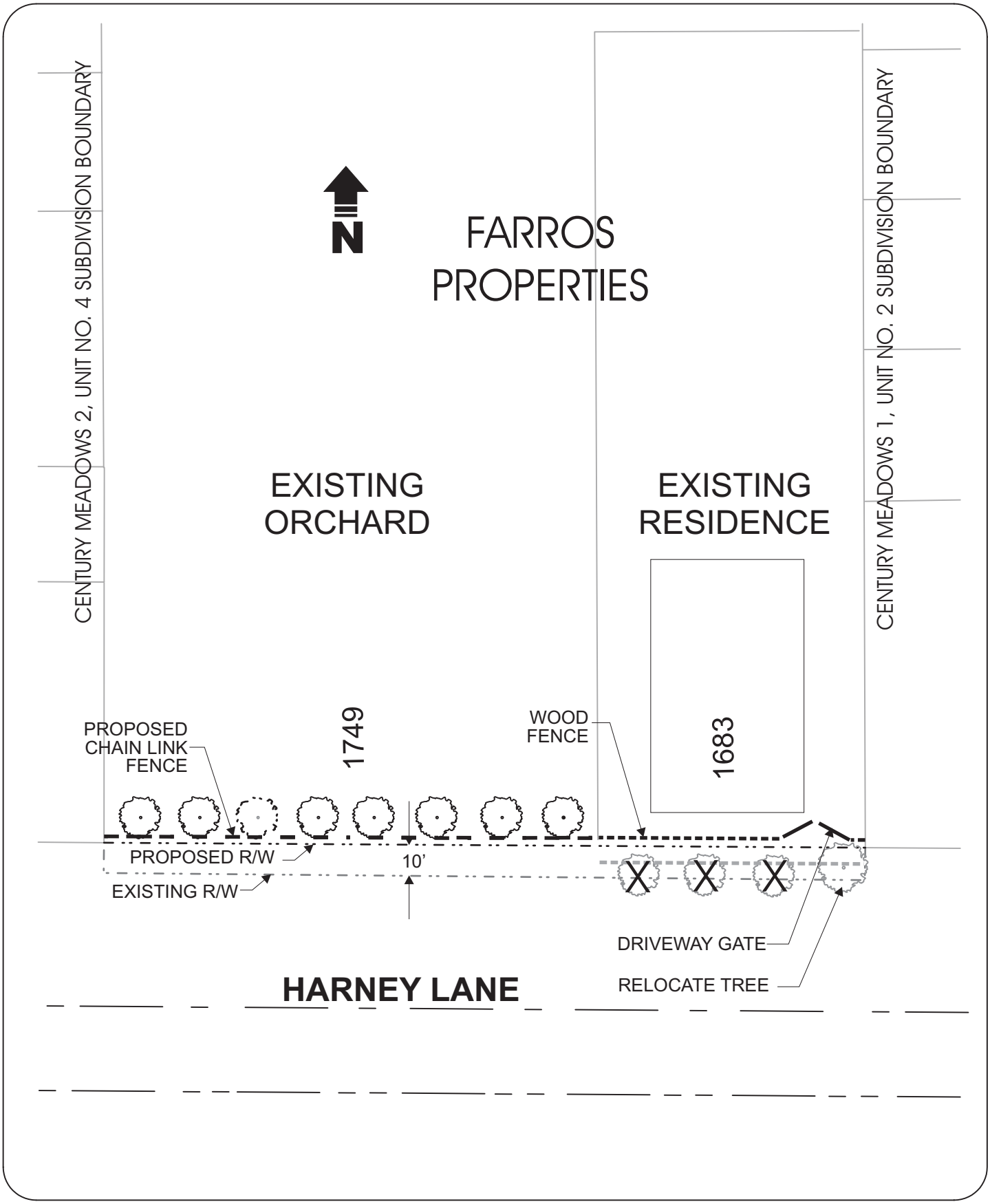


EXHIBIT C

ADDENDUM
to the
IMPROVEMENT AGREEMENT
for the
PUBLIC IMPROVEMENTS
of
CENTURY MEADOWS TWO, UNIT NO. 4
TRACT NO. 3272

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, hereinafter referred to as "City", and FCB BUILDING PARTNERS I, LP, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, the parties have entered into an Improvement Agreement dated December 27, 2002, which Agreement covers the responsibilities of City and of Developer for the development of Century Meadows Two, Unit No. 4, Tract 3272; and

WHEREAS, the Developer is responsible for installation of public improvements fronting the subject subdivision on Harney Lane; and

WHEREAS, the City requested that the Developer install additional street frontage improvements on Harney Lane which include curb, gutter, and street pavement along the properties known as 1649 and 1749 W. Harney Lane (APN 058-210-03 and 058-210-04, respectively); and

WHEREAS, the City is responsible for reimbursing Developer for the additional frontage improvements along those properties in conformance with LMC 16.40 Reimbursement for Construction; and

WHEREAS, the Developer is required to provide additional improvement security as described in the State Subdivision Map Act for faithful performance and payment of all persons performing labor and furnishing materials for the installation of public improvements.

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

1. That this document is considered an addendum to the original Improvement Agreement between the two parties.

2. That the Developer shall install street frontage improvements along the Harney Lane street frontages of the properties at 1649 and 1749 W. Harney Lane, including curb, gutter, sidewalk and street pavement to the centerline of Harney Lane

3. That the Developer will be reimbursed based on verified claims for work done by Developer’s contractor when the development are complete and accepted by the City. The estimated reimbursement amount is shown on the attached Billing Schedule Addendum and Cost Estimate for Additional Improvement Security. The reimbursement includes ten percent (10%) for engineering and administration in conformance with LMC 16.40 Reimbursement for Construction.

4. That the Developer shall furnish additional Improvement Security of at least 100% of the estimated cost of the above referenced public improvements for the faithful performance of said work; and an amount equal to at least 50% of the above costs as security for the payment of all persons performing labor and furnishing materials in connection with this agreement as more fully described in the State Subdivision Map Act.

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

Faithful Performance $49,040.74
Labor and Material $24.520.37

IN WITNESS WHEREOF, Developer and City have caused their names to be hereunto affixed and the City of Lodi has caused its corporate name and seal to be hereunto affixed by its proper officers thereunto duly authorized.

FCB BUILDING PARTNERS I, LP

_____ _____
Date

_____

(CORPORATE SEAL)

CITY OF LODI, A MUNICIPAL CORPORATION

By: _____ _____
H. Dixon Flynn, City Manager Date

ATTEST:

_____ _____
Susan J. Blackston, City Clerk Date

APPROVED AS TO FORM:

_____
Randall A. Hays, City Attorney

City of Lodi
Publics Works Department

COST ESTIMATE F(
ADDITION
IMPROVEMENT SECURI

Development: Century Meadows Two, Unit No. 4
Developer: FCB Building Partners I, LP
Engineer: Baumbach & Piazza

Acres: 15.15
Date: 12/15/03

TOTAL COST OF PROJECT IMPROVEMENTS						A. DEVELOPER COST		B. COST OF CITY-FUNDED FACILITIES TO BE BUILT BY DEVELOPER	
Item	Description	Quantity	Unit	Price	Total	Quantity	Total	Quantity	Total
	Street System								
1	**Clearing & Grubbing**	**12.46**	**AC**	**$500.00**	**$6,230.00**	**12.16**	**$6,080.00**	**0.3**	**$150.00**
2	Lot Grading	12.49	AC	3,748.58	46,819.76	12.49	46,819.76	0	0.00
3	**Roadway Excavation**	**9,731.48**	**CY**	**6.33**	**61,600.27**	**9,053.48**	**57,308.53**	**678**	**4,291.74**
4	Sawcut & Remove Existing AC (interior)	336	SF	0.75	252.00	336	252.00	0	0.00
5	**Sawcut & Remove Existing AC (Harney La**	**4,330**	**SF**	**0.75**	**3,247.50**	**0**	**0.00**	**4,330**	**3,247.50**
6	**Compact Original Ground (0.50')**	**24,320**	**SF**	**0.28**	**6,809.60**	**7,782**	**2,179.07**	**16,538**	**4,630.53**
7	Compact Original Ground (0.67')	99,497	SF	0.28	27,859.16	99,497	27,859.16	0	0.00
8	**Compact Native Material (0.50')**	**24,320**	**SF**	**0.28**	**6,809.60**	**7,782**	**2,179.07**	**16,538**	**4,630.53**
9	Aggregate Base, Class II (0.30')	25,348	SF	0.49	12,420.52	25,348	12,420.52	0	0.00
10	Aggregate Base, Class II (0.35')	64,829	SF	0.60	38,897.40	64,829	38,897.40	0	0.00
11	Aggregate Base, Class II (0.50')	2,950	SF	0.71	2,094.50	2,950	2,094.50	0	0.00
12	**Aggregate Base, Class II (0.60')**	**24,320**	**SF**	**0.81**	**19,699.20**	**7,782**	**6,303.75**	**16,538**	**13,395.45**
13	Asphalt Concrete, Type B (0.20')	93,463	SF	0.76	71,031.88	93,463	71,031.88	0	0.00
14	**Asphalt Concrete, Type B (0.40')**	**24,320**	**SF**	**1.48**	**35,993.60**	**7,782**	**11,517.97**	**16,538**	**24,475.63**
15	Rolled Curb, Gutter, & Sidewalk	211	LF	34.00	7,174.00	211	7,174.00	0	0.00
16	**Vertical Curb & Gutter**	**5,575**	**LF**	**10.90**	**60,767.50**	**5,245**	**57,170.50**	**330**	**3,597.00**
17	Sidewalk (4')	5,003	LF	8.00	40,024.00	5,003	40,024.00	0	0.00
18	Meandering Sidewalk (5')	242	LF	25.00	6,050.00	242	6,050.00	0	0.00
19	Curb Return (R=25') Incl. Compaction	2	EA	1,865.00	3,730.00	2	3,730.00	0	0.00
20	Curb Return (R=20') Incl. Compaction	11	EA	1,635.00	17,985.00	11	17,985.00	0	0.00
21	Bow-out Curb Return (R=20') Incl. Compacti	6	EA	2100.00	12,600.00	6	9810.00	0	0.00
22	**Concrete Subgrade Compaction**	**45,317**	**SF**	**0.55**	**24,924.35**	**44,492**	**24,470.60**	**825**	**453.75**
23	**Residential Driveway**	**1,556**	**LF**	**15.00**	**23,340.00**	**1,528**	**22,920.00**	**28**	**420.00**
24	Commercial Driveway	31	SF	64.50	1,999.50	31	1,999.50	0	0.00
25	Survey Monument	12	EA	230.00	2,760.00	12	2,760.00	0	0.00
26	Sidewalk Dead End Barricade	2	EA	158.00	316.00	2	316.00	0	0.00
27	Dead End Barricade (Standard Plan 139)	3	EA	1,565.00	4,695.00	3	4,695.00	0	0.00
28	Remove Existing Barricade	4	EA	250.00	1,000.00	4	1,000.00	0	0.00
29	Remove Temporary Fire Turnaround	2	EA	500.00	1,000.00	2	1,000.00	0	0.00
30	Street Sign Posts/Block Signs	11	EA	236.00	2,596.00	11	2,596.00	0	0.00
31	Concrete Block Retaining Wall	776	LF	26.00	20,176.00	776	20,176.00	0	0.00
32	Masonry Wall	296	LF	70.00	20,720.00	296	20,720.00	0	0.00
33	Landscaping & Irrigation	2,370	SF	4.00	9,480.00	2,370	9,480.00	0	0.00
34	Pedestal Street Lights (100W)	34	EA	2,360.00	80,240.00	34	80,240.00	0	0.00
35	Street Lights (100W)	1	EA	1,940.00	1,940.00	1	1,940.00	0	0.00
36	Street Lights (250W)	2	EA	1,970.00	3,940.00	2	3,940.00	0	0.00
37	Traffic Striping	1	LS	5,600.00	5,600.00	1	5,600.00	0	0.00
38	Painted Stop Bar & Legend	2	EA	130.00	260.00	2	260.00	0	0.00
39	Regulatory Signs (R1)	2	EA	157.00	314.00	2	314.00	0	0.00
40	Erosion Control/Winterization	1	LS	3,800.00	3,800.00	1	3,800.00	0	0.00
41	G-Basin Excavation	10,390	CY	3.24	33,663.60	10,390	33,663.60	0	0.00
				Subtotal	$730,859.95	***Subtotal***	$668,777.82	***Subtotal Street System***	$59,292.12
								10% Engineering & Administration	5,929.21
								Total Street System	$65,221.33
	Future Park Site Improvements (Parcel"A")								
1	Clearing & Grubbing	2.99	AC	$500.00	$1,495.00	0	$0.00	2.99	$1,495.00
2	Lot Grading	2.66	AC	3,748.58	9,971.23	0	0.00	2.66	9,971.23
3	Roadway Excavation	546.52	CY	6.33	3459.47	0	0.00	546.52	3,459.47
4	Compact Original Ground (0.67')	6,373	SF	0.60	3823.80	0	0.00	6,373	3,823.80
5	Aggregate Base, Class II (0.35')	6,373	SF	0.60	3823.80	0	0.00	6,373	3,823.80
6	Asphalt Concrete, Type B (0.20')	6,373	SF	0.76	4843.48	0	0.00	6,373	4,843.48
7	Concrete Subgrade Compaction	3,309	SF	0.55	1819.95	0	0.00	3,309	1,819.95
8	Vertical Curb & Gutter	509	LF	10.90	5,548.10	0	0.00	509	5,548.10
9	Sidewalk (4')	509	LF	8.00	4,072.00	0	0.00	509	4,072.00
10	Pedestal Street Lights (100W)	2	EA	2,360.00	4,720.00	0	0.00	2	4,720.00
11	Side Inlet Catch Basin	0.50	EA	850.00	425.00	0	0.00	0.50	425.00
12	12" Storm Drain	89	LF	21.50	1913.50	0	0.00	89	1,913.50
13	48" Storm Drain Manhole	0.25	EA	1130.00	282.50	0	0.00	0.25	282.50
14	6" Sanitary Sewer Pipe	24	LF	21.20	508.80	0	0.00	24	508.80
15	8" Sanitary Sewer Pipe	49.50	LF	23.10	1,143.45	0	0.00	49.50	1,143.45
16	Sanitary Sewer Manhole	0.50	EA	1,580.00	790.00	0	0.00	0.50	790.00
17	10" Water Pipe	127.50	LF	16.00	2040.00	0	0.00	127.50	2,040.00
18	4" Water Service w/Meter Box	1	EA	4,000.00	4,000.00	0	0.00	1	4,000.00
				Subtotal	$54,680.08	***Subtotal***	$0.00	***Subtotal Park Site Improvements***	$54,680.08
								10% Engineering & Administration	$5,468.01
								Total Park Site Improvements	$60,148.08
	Storm Drain System								

TOTAL COST OF PROJECT IMPROVEMENTS						A. DEVELOPER COST		B. COST OF CITY-FUNDED FACILITIES TO BE BUILT BY DEVELOPER	
Item	Description	Quantity	Unit	Price	Total	Quantity	Total	Quantity	Total
1	12" Storm Drain Pipe	1,773	LF	$21.50	$38,119.50	1,773	$38,119.50	0	$0.00
2	15" Storm Drain Pipe	197	LF	21.20	4,176.40	197	4,176.40	0	0.00
3	48" Storm Drain Manhole	6.75	EA	1,130.00	7,627.50	6.75	7,627.50	0	0.00
4	Side Inlet Catch Basin	13.50	EA	850.00	11,475.00	13.50	11,475.00	0	0.00
				Subtotal	$61,398.40	***Subtotal***	$61,398.40	***Subtotal Storm Drain System***	$0.00
								10% Engineering & Administration	0.00
								Total Storm Drain System	$0.00
	Sanitary Sewer System								
1	**6" Sanitary Sewer Pipe**	**1,232**	**LF**	**$21.20**	**$26,118.40**	**1,212**	**$25,694.40**	**20**	**$424.00**
2	8" Sanitary Sewer Pipe	1,941.50	LF	23.10	44,848.65	1,941.50	44,848.65	0	0.00
3	Sanitary Sewer Manhole	8.50	EA	1,580.00	13,430.00	8.50	13,430.00	0	0.00
4	**Sewer Cleanout**	**1**	**EA**	**$200.00**	**$200.00**	**0**	**$0.00**	**1**	**$200.00**
5	Sanitary Service with Cleanout	67	EA	375.00	25,125.00	67	25,125.00	0	0.00
6	Remove Existing Lamphole	1	EA	100.00	100.00	1	100.00	0	0.00
7	Lamphole	1	EA	460.00	460.00	1	460.00	0	0.00
				Subtotal	$110,282.05	***Subtotal***	$109,658.05	***Subtotal Sanitary Sewer System***	$624.00
								10% Engineering & Administration	62.40
								Total Sanitary Sewer System	$686.40
	Water System								
1	6" Water Pipe	445	LF	$13.50	$6,007.50	445	$6,007.50	0	$0.00
2	8" Water Pipe	2,118	LF	16.00	33,888.00	2,118	33,888.00	0	0.00
3	8" Water Pipe (Cl. 200)	171	LF	16.00	2,736.00	171	2,736.00	0	0.00
4	10" Water Pipe	1,147.50	LF	18.60	21,343.50	1,147.50	18,360.00	0	0.00
5	10" Water Pipe (Cl. 200)	40	LF	19.00	760.00	40	640.00	0	0.00
5	10" Water Pipe Oversizing Costs	1,315	LF	19.00	24,985.00	0	0.00	1,315	3,435.00
6	6" Water Valve	1	EA	550.00	550.00	1	550.00	0	0.00
7	8" Water Valve	17	EA	770.00	13,090.00	17	13,090.00	0	0.00
8	10" Water Valve	7	EA	1,050.00	7,350.00	7	5,390.00	7	1,960.00
9	Fire Hydrant Assembly	7	EA	1,850.00	12,950.00	7	12,950.00	0	0.00
10	Blowoff	3	EA	300.00	900.00	3	900.00	0	0.00
11	Remove Blowoff	5	EA	2,000.00	10,000.00	5	10,000.00	0	0.00
12	1" Water Service w/Meter Box	67	EA	400.00	26,800.00	67	26,800.00	0	0.00
13	1" Water Service w/Meter Box (Harney Lane	1	EA	400.00	400.00	1	400.00	0	0.00
14	3" PVC Conduit (Irrigation Street Crossing)	180	LF	7.00	1,260.00	180	1,260.00	0	0.00
				Subtotal	$163,020.00	***Subtotal***	$132,971.50	***Subtotal Water System***	$5,395.00
								10% Engineering & Administration	539.50
								Total Water System	$5,934.50
				Total	$1,065,560.40	**Total**	$972,805.77		
Total Construction Cost Subject to Engineering Fee Calculation (A. Developer Cost)							$972,805.77		
Less Previousl Total Construction Cost Subjectto Engineering Fee Calculation							($972,805.77)		($82,949.58)
TOTAL COST FOR ENGINEERING FEE CALCULATION						**A. Total**	$0.00	**B. Total**	$49,040.73

TOTAL ADDITIONAL IMPROVEMENT SECURITY AMOUNTS:

Faithful Performance:	100% of A, B & C	$49,040.74
Labor & Materials:	50% of A & B	$24,520.37

BILLING SCHEDULE ADDENDUM

Developmen	Century Meadows Two, Unit No. 4	Gross Acreage:	15.15
Developer:	FCB Building Partners I, LP	No. of Units:	60
Engineer:	Baumbach & Piazza		
Date:	12/15/03		

					DEVELOPER COST	CREDITS
STREET SYSTEM						
Reimbursement by City						
Street Improvements per Item B of attached Cost Estimate for Additional Improvement Security (327004.7720;MTSI014)						$ 48,354.34
STREET SYSTEM SUBTOTAL					$0.00	$48,354.34
SEWER SYSTEM						
Reimbursement by City						
Sanitary Sewer System per Item B of attached Cost Estimate for Additional Improvement Security (327004.7720;MTSI014)						686.40
SEWER SYSTEM SUBTOTAL					$0.00	$686.40
DEFERRED DEVELOPMENT IMPACT MITIGATION FEES						
Police Protection Facilities	(12151.6122)	12.16	AC @	$1,130.00	$13,465.98	
	(12141.6127)				$274.82	
Fire Protection Facilities	(12161.6122)	12.16	AC @	$540.00	$6,435.07	
	(12141.6127)				$131.33	
Parks & Recreation Facilities	(12171.6122)	12.16	AC @	$11,830.00	$140,975.74	
	(12141.6127)				$2,877.06	
Less Future Park Site Improvements	(1217004.1836.2400;MPR059)				($60,148.09)	
General City Facilities	(12181.6122)	12.16	AC @	$6,830.00	$81,391.74	
	(12141.6127)				$1,661.06	
DEVELOPMENT IMPACT MITIGATION FEES SUBTOTAL					$187,064.71	
HARNEY LANE LIFT STATION FEES						
Estimate based on lift station construction cost estimate available at time of execution of improvement agreement. Actual fee to be determined by City Council and paid prior to project acceptance.					$90,387.00	
TOTAL AMOUNT OF BILLING SCHEDULE ADDENDUM					$277,451.71	$49,040.74
ADDITIONAL NET AMOUNT TO BE PAID BY DEVELOPER TO CITY PRIOR TO PROJECT ACCEPTANCE					$228,410.97	

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

RESOLUTION NO. 2004-____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THE ADDENDUM TO THE IMPROVEMENT AGREEMENT FOR THE PUBLIC IMPROVEMENTS OF CENTURY MEADOWS TWO, UNIT NO. 4, TRACT NO. 3272; FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE AN ADDENDUM TO THE IMPROVEMENT AGREEMENT ON BEHALF OF THE CITY OF LODI, AND FURTHER APPROPRIATING FUNDS FOR THE REIMBURSEMENT

==========

WHEREAS, Century Meadows Two, Unit No. 4 Subdivision is located east of Mills Avenue, north of Harney Lane and south of the Century Meadows Two, Unit No. 3 development; and

WHEREAS, as a condition of development, the developer FCB Building Partners I, L.P., is required to complete the installation of street frontage improvements along Harney Lane; and

WHEREAS, at this time, Century Meadows One, Unit No. 2 Subdivision east of Century Meadows Two, Unit No. 4, as shown on Exhibit A attached, is also under construction, and when both subdivisions are complete, the properties at 1683 and 1749 West Harney Lane will be the only properties on the north side of Harney Lane between Ham Lane and Mills Avenue without street frontage improvements; and

WHEREAS, staff recommends that the frontage improvements along these properties be completed at this time, and the developer of Century Meadows Two, Unit No. 4 has agreed to include the frontage improvements for these properties in their project; and

WHEREAS, the improvements include curb, gutter and asphalt concrete pavement, and the developer is eligible for reimbursement by the City for these improvements in conformance with Lodi Municipal Code §16.40 Reimbursement for Construction; and

WHEREAS, staff estimates the cost of the work to be $49,040.74, and the developer will be reimbursed based on verified claims for the work done by the developer's contractor when the improvements are complete and accepted by the City; and

WHEREAS, in order to construct the frontage improvements along 1683 and 1749 West Harney Lane, additional street right-of-way dedication on Harney Lane and public utility easements behind the right of way are required from the owner, Nick Farros; and

WHEREAS, the owner has agreed to dedicate the right-of-way (10 feet) in exchange for the frontage improvements, which include relocation of one existing tree, relocation of a wood fence, and installation of a new driveway as shown on Exhibit B attached hereto; and

WHEREAS, in addition, a chain link fence will be installed along the existing orchard. The cost of the work on the Farros property is estimated to be $9,340.00, and the owner will be reimbursed based on verifiable claims for the improvements when the project is complete; and

WHEREAS, the developer has furnished the City with the Addendum Agreement and has provided improvement security for the additional work in Harney Lane; and

WHEREAS, staff therefore recommends that the City Council take the following action with regard to the Century Meadows Two, Unit 4, Tract No. 3272, development:

1. Approve the Addendum to the Improvement Agreement for the Public Improvements of Century Meadows Two, Unit 4, Tract No. 3272, and direct the City Manager and City Clerk to execute the Addendum to the Improvement Agreement on behalf of the City; and

2. Appropriate $58,400.00 from the Local Street Impact Fees fund to reimburse the developer for the additional Harney Lane street frontage improvements and the owner for the private improvements necessitated by the Harney Lane work.

The City Council of the City of Lodi hereby finds as follows:

1. That the Addendum to the Improvement Agreement for the Public Improvement of Century Meadows Two, Unit 4, Tract No. 3272, is hereby approved and further authorizes the City Manager and City Clerk to execute said Addendum.

2. That $58,400.00 is hereby appropriated from the Local Street Impact Fees fund to reimburse the developer for the additional Harney Lane street frontage improvements and the owner for the private improvements necessitated by the Harney Lane work.

Dated: January 7, 2004

==========

I hereby certify that Resolution No. 2004-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 7, 2004 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

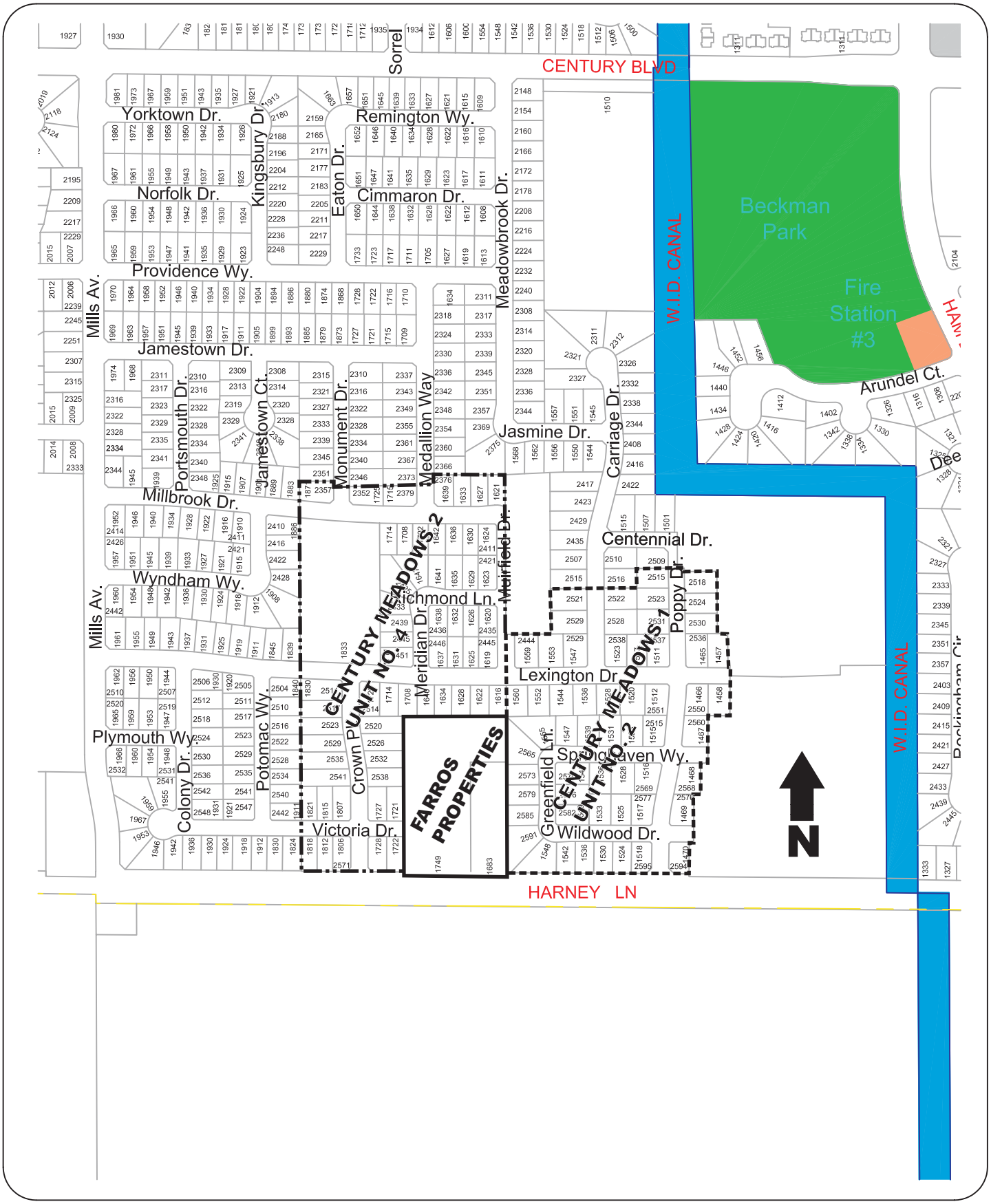
ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

CITY OF LODI

PUBLIC WORKS DEPARTMENT

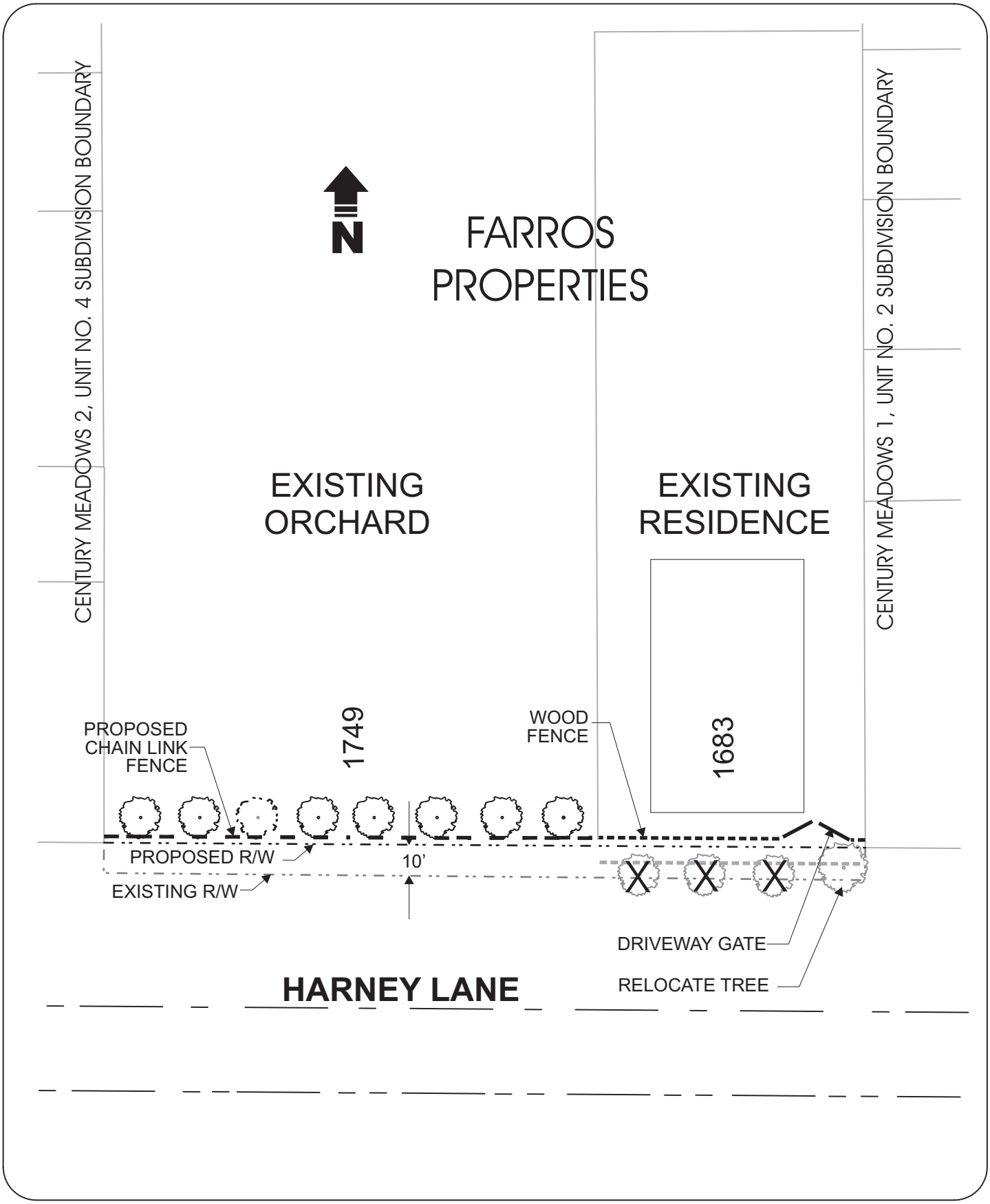
EXHIBIT A



CITY OF LODI

PUBLIC WORKS DEPARTMENT

EXHIBIT B



AGENDA ITEM E-10

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: **Approve the Improvement Agreement for the Public Improvements at 312 and 316 South Sacramento Street and Appropriate Funds for Applicable Reimbursements ($29,000)**

MEETING DATE: **January 7, 2004**

PREPARED BY: **Public Works Director**

RECOMMENDED ACTION: That the City Council approve the Improvement Agreement for the Public Improvements at 312 and 316 South Sacramento Street (APN 045-310-02 and 045-310-03), direct the City Manager and City Clerk to execute the Agreement on behalf of the City, and appropriate funds for the applicable reimbursements.

BACKGROUND INFORMATION: The developer, Vic Meyers, Inc., has applied to the City for a building permit (B08903) to construct a new office/warehouse building at 312 and 316 South Sacramento Street, as shown on Exhibit A.

Dedication of street right-of-way and installation of street improvements along the Sacramento Street street frontage is required as a condition of the building permit issuance. Since the developer will be replacing the majority of the curb, gutter and sidewalk fronting the subject parcels, staff requested that the east side of Sacramento Street be widened from the northerly boundary of the developer's property to Lodi Avenue to improve the alignment of the Sacramento Street/Lodi Avenue intersection. The project improvements include widening the east side of Sacramento Street from Lodi Avenue to 300 feet south of Lodi Avenue, which includes the frontage of the City-owned parcel at 2 East Lodi Avenue. The developer agrees to install all the required concrete work in this portion of Sacramento Street in conformance with the engineered improvement plans, as shown on Exhibit B. Since the developer's project at 312 and 316 South Sacramento Street does not include any asphalt concrete work, the developer proposed that the street pavement portion of the work be installed by others. Staff feels this is a reasonable request. Staff will make arrangements for the asphalt concrete work when the curb and gutter along the east side of this portion of Sacramento Street is complete.

The developer is entitled to reimbursement by the City for the improvements along the frontage at 2 East Lodi Avenue, in conformance with LMC §16.40 Reimbursement for Construction. Based on the developer's contract bid prices for the concrete work and the estimate for asphalt concrete work provided by the staff, staff requests that Council appropriate $29,000.00 for the required reimbursement to the developer ($9,378.98) and an additional $17,621.02 for the asphalt concrete work for a total of $27,000. The appropriation includes 10% contingency.

The developer has furnished the City with the necessary agreements, guarantees and insurance certificates for the proposed project.

FUNDING: IMF – Local Streets $29,000.00

_____
Vicky McAthie, Finance Director

_____
Richard C. Prima, Jr.
Public Works Director

Prepared by Lyman Chang, Associate Civil Engineer
RCP/LC/pmf
Attachments
cc: Senior Civil Engineer Fujitani Associate Civil Engineer, Chang Vic Meyers, Inc.

APPROVED: _____
H. Dixon Flynn, City Manager

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

RESOLUTION NO. 2004-____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THE IMPROVEMENT AGREEMENT FOR THE PUBLIC IMPROVEMENTS AT 312 AND 316 SOUTH SACRAMENTO STREET, FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE THE IMPROVEMENT AGREEMENT ON BEHALF OF THE CITY OF LODI, AND FURTHER APPROPRIATING FUNDS FOR THE APPLICABLE REIMBURSEMENT

==========

WHEREAS, Developer Vic Meyers has applied for a building permit to construct a new office/warehouse building at 312 and 316 South Sacramento Street, as shown on Exhibit A attached; and

WHEREAS, dedication of street right-of-way and installation of street improvements along the Sacramento Street street frontage is required as a condition of the building permit issuance; and

WHEREAS, since the developer will be replacing the majority of the curb, gutter and sidewalk fronting the subject parcels, staff requested that the east side of Sacramento Street be widened from the northerly boundary of the developer's property to Lodi Avenue to improve the alignment of the Sacramento Street/Lodi Avenue intersection; and

WHEREAS, the project improvements include widening the east side of Sacramento Street from Lodi Avenue to 300 feet south of Lodi Avenue, which includes the frontage of the City-owned parcel at 2 East Lodi Avenue; and

WHEREAS, the developer agrees to install all the required concrete work in this portion of Sacramento Street in conformance with the engineered improvement plans, as shown on Exhibit B attached hereto; and

WHEREAS, since the developer's project at 312 and 316 South Sacramento Street does not include any asphalt concrete work, the developer has proposed that the street pavement portion of the work be installed by others. Staff will make arrangements for the asphalt concrete work when the curb and gutter along the east side of this portion of Sacramento Street is complete; and

WHEREAS, the developer is entitled to reimbursement by the City for the improvements along the frontage at 2 East Lodi Avenue in conformance with Lodi Municipal Code §16.40 Reimbursement for Construction; and

WHEREAS, staff therefore recommends that the City Council take the following action with regard to the project by Vic Meyers, Inc.:

1. Approve the Improvement Agreement for the Public Improvements at 312 and 316 South Sacramento Street, and direct the City Manager and City Clerk to execute the Improvement Agreement on behalf of the City of Lodi; and

2. Appropriate $29,000.00, which includes 10% contingency, from the IMF - Local Street fund for the required reimbursement to the developer of $9,378.98, and an additional $17,621.02 for the asphalt concrete work provided by staff.

The City Council of the City of Lodi hereby finds as follows:

1. Hereby approves the Improvement Agreement for the Public Improvements at 312 and 316 South Sacramento Street, and direct the City Manager and City Clerk to execute the Improvement Agreement on behalf of the City of Lodi; and

2. Hereby appropriates $29,000.00, which includes 10% contingency, from the IMF - Local Street fund for the required reimbursement to the developer of $9,378.98, and an additional $17,621.02 for the asphalt concrete work provided by staff.

Dated: January 7, 2004

==========

I hereby certify that Resolution No. 2004-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 7, 2004 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

PROPOSED BUILDING FOR:
VIC MYERS, INC.
312/316 SACRAMENTO STREET - LODI, CALIFORNIA 95240

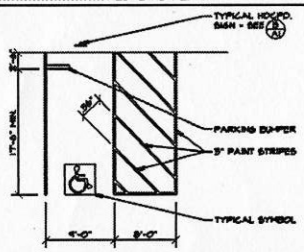
THIS PROJECT SHALL COMPLY WITH THE REQUIREMENTS OF TITLE-24, THE 1998 C.B.C., C.M.C., C.P.C. AND C.E.C., AND ALL LOCAL ORDINANCES.

PROJECT DATA:

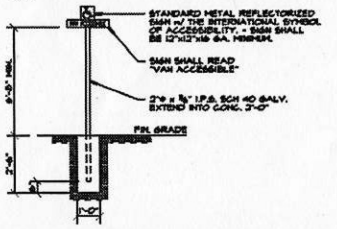
PROJECT OWNER	JIM & KAREN MUNRO P.O. BOX 864 LODI, CALIFORNIA 95241
PROJECT LOCATION	312/316 SACRAMENTO ST LODI, CALIFORNIA 95240
PROJECT DESCRIPTION	OFFICE / WAREHOUSE
OCCUPANCY	B / S1
CONSTRUCTION TYPE	VN
SPRINKLERS	NO
AREAS:	
FIRST FLOOR	3,555 S.F.
2nd FLOOR STORAGE	1,180 S.F.
TOTAL PROPOSED	4,735 S.F.
PARKING REQUIRED (1 SPACE PER 750 S.F.)	15 SPACES
PARKING PROVIDED	15 SPACES
UTILITIES:	
WATER	PUBLIC FACILITIES
SEWER	PUBLIC FACILITIES
STORM DRAIN	PUBLIC FACILITIES

SHEET INDEX:

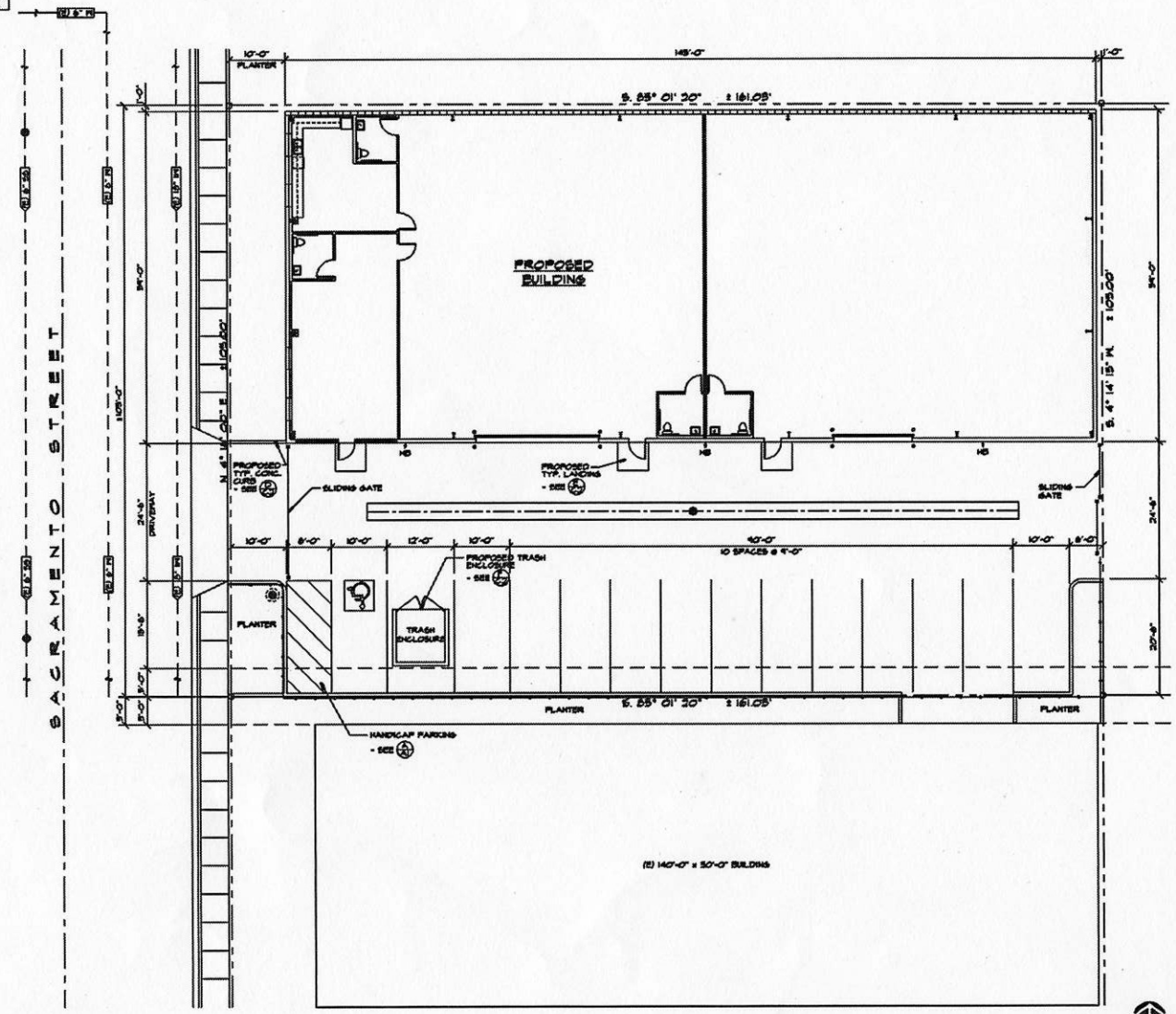
A1	COVER SHEET, SITE PLAN
A2	FLOOR PLAN, INTERIOR ELEVATIONS
A3	ENLARGED FLOOR PLAN
A4	EXTERIOR ELEVATIONS
A5	HANDICAP STANDARDS
S1	FOUNDATION PLAN, GENERAL NOTES
S2	FOUNDATION DETAILS
S3	TYPICAL SECTIONS
S4	FRAMING DETAILS
C1	GRADING PLAN
C2	SITE DETAILS
E1	ELECTRICAL PLAN
P1	PLUMBING PLAN



A/A1 HANDICAP SPACE
NOT TO SCALE



B/A1 HANDICAP SIGN
NOT TO SCALE



SITE PLAN

REVISIONS

MIKE SMITH ENGINEERING, INC.
4 NORTH MAIN STREET
LODI, CALIFORNIA 95240

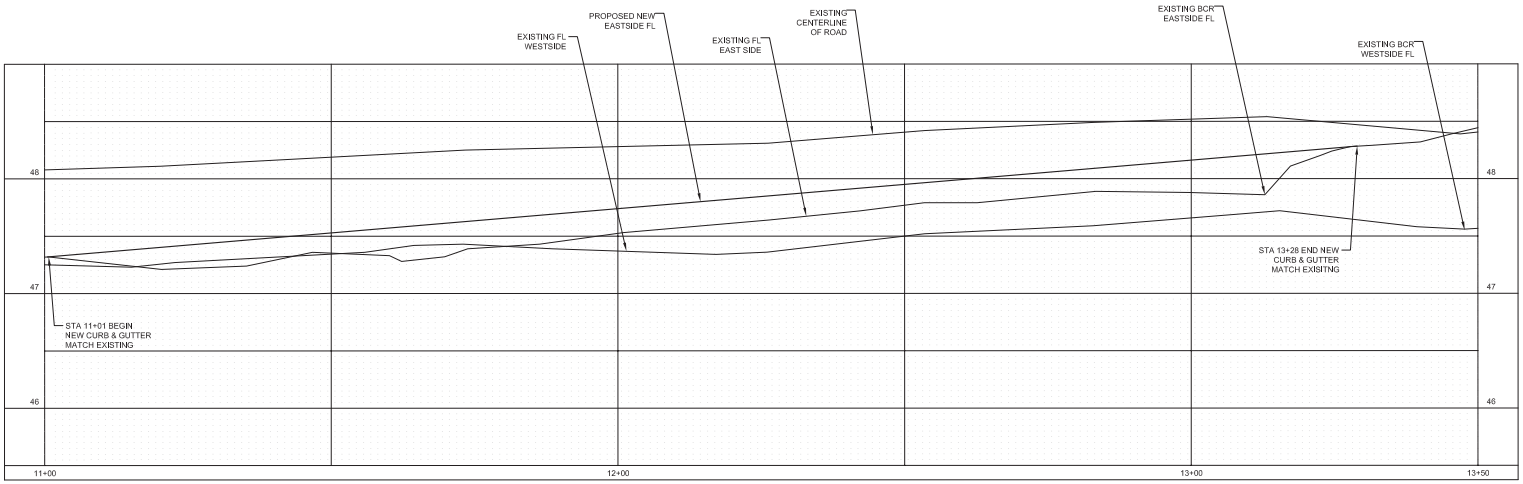
TITLE: COVER SHEET SITE PLAN

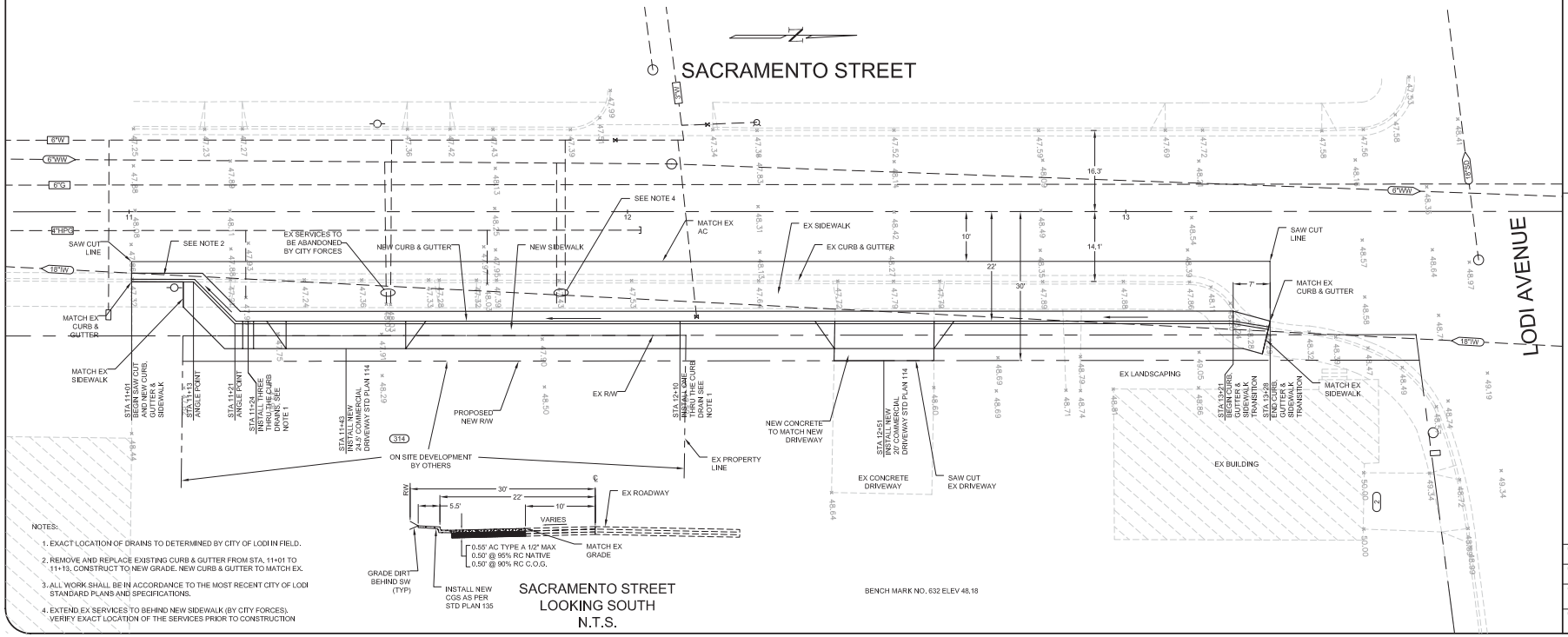
PROJECT: PROPOSED BUILDING FOR: VIC MYERS, INC. LOCATION: 312 SACRAMENTO STREET LODI, CALIFORNIA 95240

REGISTERED PROFESSIONAL ENGINEER MICHAEL W. SMITH NO. C044590 EXP. 3-31-06 STATE OF CALIFORNIA

DRAWN	LMA
CHECKED	MS
DATE	11/15/02
SCALE	AS NOTED
JOB NO.	02207
SHEET	A1

EXHIBIT A





NOTES:

1. EXACT LOCATION OF DRAINS TO DETERMINED BY CITY OF LODI IN FIELD.
2. REMOVE AND REPLACE EXISTING CURB & GUTTER FROM STA. 11+01 TO 11+13, CONSTRUCT TO NEW GRADE. NEW CURB & GUTTER TO MATCH EX.
3. ALL WORK SHALL BE IN ACCORDANCE TO THE MOST RECENT CITY OF LODI STANDARD PLANS AND SPECIFICATIONS.
4. EXTEND EX SERVICES TO BEHIND NEW SIDEWALK (BY CITY FORCES). VERIFY EXACT LOCATION OF THE SERVICES PRIOR TO CONSTRUCTION

NO.	REVISION	DATE	BY

DRAWN: LC
DESIGN: MC/KG
HORIZONTAL SCALE: 1" = 10'
VERTICAL SCALE: 1" = 1/2'
PROJECT NUMBER: 003D058

CITY OF LODI
PUBLIC WORKS DEPARTMENT
221 WEST PINE STREET
LODI, CALIFORNIA 95240
PHONE (209) 333-6706
FAX (209) 333-6710
E-MAIL petitgrp@lodi.gov
WEB SITE www.lodi.gov

SACRAMENTO STREET
EAST SIDE
300 FEET SOUTH OF LODI AVENUE

PLAN SET: 1 of 1
SHEET NO.: C1
DRAWING NO.: 003D058-01

EXHIBIT B

AGENDA ITEM E-11

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt resolution approving a rental agreement between the City of Lodi and Richard and Teresa Mojica, dba Mojica's Batting Cages, for use of 125 E. Elm Street, Unit D, Lodi

MEETING DATE: January 7, 2004

PREPARED BY: Parks and Recreation Director

RECOMMENDED ACTION: That the City Council adopt a resolution approving the rental agreement between the City of Lodi and Richard and Teresa Mojica, dba Mojica's Batting Cages for use of 125 E. Elm Street, Unit D, Lodi.

BACKGROUND INFORMATION: The City of Lodi owns the above referenced property and has rented Unit D to Mr. Mojica for the purpose of conducting a batting cage business since the building's purchase in 2000. The current rental agreement expired December 31, 2003. The rental rate for 2003 was $728.99.

Staff recommends entering into a two-year agreement with Mr. Mojica for a monthly rental of $775, with rent adjusted annually based upon the Consumer Price Index.

FUNDING: Will be absorbed in the current budget.

Tony Goehring
Parks and Recreation Director

TG/SB:tl

Attachments

cc: City Attorney

APPROVED: _____
H. Dixon Flynn, City Manager

RENTAL AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2004 by and between the CITY OF LODI, a municipal corporation, hereinafter called Owner, and Richard & Teresa Mojica, dba Mojica's Batting Cages hereinafter called Tenant.

WITNESSETH:

1. PROPERTIES: That for and in consideration of the rents to be paid, and the covenants to be faithfully kept and performed by said Tenant, said Tenant does hereby rent from said Owner, 125 East Elm Street, Unit D, Lodi, California for the operation of Mojica's Batting Cages.

2. TERM: The term of this Agreement shall be for a period of two (2) years, commencing January 1, 2004 and terminating December 31, 2005.

3. RENT: In consideration of said Agreement, Tenant agrees to pay to Owner as rent for the demised premises $775.00 per month, due and payable by the 1st day of each month. A late charge of $60.00 may be assessed for any payment more than 10 days past due. Rental payments shall be directed to the City of Lodi, Attn: Parks & Recreation Department, 125 N. Stockton Street, Lodi, California, 95240, for processing and shall be paid without prior notice or demand.

4. USE/USE PROHIBITED: The property shall be used solely for the purpose of carrying on the business of Mojica's Batting Cages. Tenant shall not use any portion of the premises for purposes other than those specified, and no use shall be made or permitted to be made upon the premises, nor acts done, which will increase the existing rate of insurance upon the property, or cause cancellation of insurance policies covering said property. Tenant shall not conduct or permit any sale by auction on the premises.

5. ORDINANCES AND STATUTES: It is further understood and agreed by Tenant that Tenant must comply with all present and future laws, ordinances, rules, and regulations promulgated by any governmental authority of competent jurisdiction regulating this type of business during the tenancy and any extension thereof. Tenant shall use and occupy said premises in a quiet, lawful, and orderly manner. The commencement or pendency of any state or federal court abatement proceeding affecting the use of the premises shall, at the option of the Owner, be deemed a breach hereof.

6. SIGNS: Owner reserves the exclusive right to the roof, side and rear walls of the Premises. Tenant shall not construct any projecting sign or awning without prior written consent of Owner which consent shall not be unreasonably withheld. It is agreed that Tenant will post "Hours of Operation" signs on the doors of the building. All signs and locations of signs must be approved by the City of Lodi Parks & Recreation Director. All costs associated with the purchase and installation of signs shall be the responsibility of Tenant.

7. ABANDONMENT OF PREMISES: Tenant shall not vacate or abandon the premises at any time during the term hereof, and if Tenant shall abandon or vacate the premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant left upon the premises shall be deemed to be abandoned, at the option of Owner.

8. TRADE FIXTURES: Any and all improvements made to the premises during the term hereof shall belong to the Owner, except trade fixtures of the Tenant. Tenant may, upon

termination hereof, remove all his trade fixtures, but shall repair or pay for all repairs necessary for damages to the premises occasioned by removal.

9. DESTRUCTION OF PREMISES: In the event of a partial destruction of the premises during the term hereof, from any cause, Owner shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing government laws and regulations, but such partial destruction shall not terminate this Agreement, except that Tenant shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Tenant on the premises. If such repairs cannot be made within sixty (60) days, Owner, at his option, may make the same within a reasonable time, this Agreement continuing in effect with the rent proportionately abated as aforesaid, and in the event that Owner shall not elect to make such repairs which cannot be made within sixty (60) days, this Agreement may be terminated at the option of either party.

   In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, Owner may elect to terminate this Agreement whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this Rental Agreement.

   In the event of any dispute between Owner and Tenant with respect to the provisions hereof, the matter shall be settled by arbitration in such a manner as the parties may agree upon, or if they cannot agree, in accordance with the rules of the American Arbitration Association.

10. INSOLVENCY: In the event a receiver is appointed to take over the business of Tenant, or in the event Tenant makes a general assignment for the benefit of creditors, or Tenant takes or suffers any action under any insolvency or bankruptcy act, the same shall constitute breach of this Agreement by Tenant.

11. REMEDIES OF OWNER ON DEFAULT: In the event of any breach of this Agreement by Tenant, Owner may, at his option, terminate the Rental Agreement and recover from Tenant: (a) the worth at the time of award of the unpaid rent which was earned at the time of termination; (b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided; (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and (d) any other amount necessary to compensate Owner for all detriment proximately caused by Tenant's failure to perform his obligations under the Rental Agreement or which in the ordinary course of things would be likely to result therefrom.

   Owner may, in the alternative, continue this Agreement in effect, as long as Owner does not terminate Tenant's right to possession, and Owner may enforce all his rights and remedies under the Rental Agreement, including the right to recover the rent as it becomes due under the Rental Agreement. If such breach continues, Owner may, at any time thereafter, elect to terminate the Rental Agreement.

   Nothing contained herein shall be deemed to limit any other rights or remedies which Owner may have.

12. RELATIONSHIP OF PARTIES: It is understood and agreed that the relationship between the parties is that of landlord and tenant and not as a party or agent of Owner. Tenant, shall carry Worker's Compensation Insurance and observe all laws and regulations applicable to employers.

13. BUILDING MAINTENANCE: Building Maintenance (Janitorial Services) shall be the responsibility of Tenant.

14. ASSIGNMENT AND SUBLETTING: Tenant shall not assign this Agreement or sublet any portion of the premises without prior written consent of the Owner, which shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void and, at the option of the Owner, may terminate this Agreement.

15. ENTRY AND INSPECTION: Tenant shall permit Owner or Owner's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same.

16. MAINTENANCE, REPAIRS, ALTERATIONS OR ADDITIONS: Tenant acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Tenant shall, at his own expense and at all times, maintain the premises in good and safe condition, including plate glass, and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Tenant shall be responsible for all repairs required, excepting the roof, exterior walls, structural foundations, and common areas which shall be maintained by Owner. No repairs, alterations or additions to the premises shall be made without prior written consent of Owner. Prior to the commencement of any substantial repair, improvement, or alteration, Tenant shall give Owner at least two (2) days written notice in order that Owner may post appropriate notices to avoid any liability for liens. Tenant shall not commit any waste upon the premises, or any nuisance or act which may disturb the quiet enjoyment of any tenant in the building. Any concerns shall be submitted in writing to the Parks & Recreation Director, City of Lodi, P. O. Box 3006, Lodi, CA 95241.

17. SURRENDER OF PREMISES: Tenant shall, at the termination of the Agreement hereby created, or upon the earlier termination hereof for any reason, or upon the extension of the term herein set forth, quit and surrender said premises in good order, condition, and repair, reasonable wear and tear and acts of God or fire excepted.

18. FEES: Tenant shall pay all license fees, or other fees or taxes, including possessory interest taxes, levied by any governmental agency which may be imposed upon the business of Tenant or its subtenant conducted upon the premises.

    If any of the above charges are assessed against the real property, and because of said assessment, the Owner pays the same, which Owner will have the right to do regardless of the validity of any such levy, the Tenant, upon demand, will repay to Owner all taxes and other assessments so levied against Owner which are due by the Tenant.

19. UTILITIES: Tenant agrees that he shall be responsible for the payment of all utilities, including water, gas, electricity, heat and other services delivered to the premises. During the term of this Agreement, and any extension thereof, it is understood and agreed by the parties hereto that Tenant shall be responsible for the installation, maintenance and cost of any telephone lines that are required to operate their business, at no cost to the Owner.

20. MECHANIC'S LIEN: Tenant agrees to keep said premises free from all liens and claims of mechanics, laborers, material suppliers, and others for work done, and material

furnished, and Tenant shall not create, or suffer to be created, any lien or encumbrance on said premises.

21. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE: Tenant, at his expense, shall maintain plate glass and public liability insurance including bodily injury and property damage insuring Tenant and Owner with minimum coverage of $1,000,000 each occurrence. More particularly described as follows:

Tenant agrees to indemnify and save harmless Owner from and against all claims of whatever nature arising from any act, omission, or negligence of Tenant or Tenant's contractors, licensees, agents, servants, or employees, or arising from any accident, injury, or damage whatsoever caused any person, or to the property of any person, occurring during the term thereof, in or about the demised premises where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the part of Tenant or Tenant's agents or employees. This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including attorney's fees incurred in or in connection with any such claim or proceeding brought thereon and the defense thereof.

Tenant agrees to maintain in full force during the term hereof a policy of public liability insurance under which Tenant is named as insured, and containing an additional named insured endorsement naming Owner as an additional insured, and under which the insurer agrees to indemnify and hold Tenant and Owner harmless from and against all costs, expenses, and liability arising out of, or based upon, any and all property damage, or damages for personal injuries, including death, sustained in accidents occurring in or about the premises, where such accident, damage, or injury, including death, results, or is claimed to have resulted, from any act or omission on the part of Tenant, or Tenant's agents or employees. The minimum limits of such insurance shall be $1,000,000.00 (One Million Dollars). In addition to the additional named insured endorsement on Owner's policy of insurance, said insurance policy shall be endorsed to include the following language:

> "Insurance as is afforded by the endorsement for additional insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

To the maximum extent permitted by insurance policies which may be owned by Owner or Tenant, Owner and Tenant, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist.

A duplicate or certificate of said public liability and property damage insurance policy containing the above-stated required endorsements shall be delivered to Owner within ten (10) days after the issuance and each renewal of said policy. This paragraph, and all other provisions of this Agreement, shall apply and be construed as applying to any subtenant of Tenant.

22. BANKRUPTCY, RECEIVERSHIP, AND INSOLVENCY: If Tenant should make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or be adjudicated bankrupt or insolvent, or permit a receiver to be appointed to take possession of a substantial portion of its assets or of the premises, and such bankruptcy, insolvency, or receivership proceeding shall not be dismissed within ninety (90) days, then Owner may, without notice or demand, terminate this Agreement and forthwith reenter and

repossess the properties, and remove all persons therefrom, and under no circumstances shall this Agreement be assignable or transferable by operation of law.

23. ATTORNEY'S FEES: In case suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee, the amount of which shall be determined by the court in such suit and added to and become a part of the judgment therein.

24. WAIVER: Failure of Owner to insist upon performance of any of the terms or conditions of this Agreement in any one or more instances shall in no event be construed as a waiver or a relinquishment of its right to future performance thereof, and Tenant's obligations to such future performance shall continue in full force and effect. The receipt by Owner of rent, with the knowledge of the breach of any agreement or condition hereof, shall not be determined to be a waiver of any such breach.

25. NOTICES: Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to Tenant at the premises, or Owner at the address shown below, or at such other places as may be designated by the parties from time to time.

OWNER:	**TENANT:**
Parks & Recreation Director City of Lodi P. O. Box 3006 Lodi, California 95241	Richard Mojica and Teresa E. Mojica 511 E. Sonora Avenue Lodi, California 95240

26. HOLDING OVER: Any holding over after the expiration of this Agreement, with the consent of Owner, shall be construed as a month-to-month tenancy at a rental of $1,400.00 per month, otherwise in accordance with the terms hereof, as applicable.

27. TIME: Time is of the essence of this Rental Agreement.

28. HEIR, ASSIGNS, SUCCESSORS: This Rental Agreement is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.

29. COST O FLIVING INCREASE: The rent provided for in paragraph 3 shall be adjusted effective upon the first day of the month immediately following the expiration of 12 months from date of commencement of the term and upon the expiration of each 12 months thereafter in accordance with changes in the U.S. Consumer Price Index for All Urban Consumers (1982-84=100) hereinafter called the "CPI". The monthly rent shall be increased to an amount equal to the monthly rent set forth in paragraph 3 multiplied by a fraction the numerator of which is the CPI for the second calendar month immediately preceding the adjustment date and the denominator of which is the CPI for the second calendar month preceding the commencement of the lease term. Provided, however, in no event shall the monthly rent be less than the amount set forth in paragraph 3.

30. OWNER'S LIABILITY: The term "Owner" as used in this paragraph, shall mean only the owner of the real property. In the event of any transfer of such title or interest, the Owner named herein (or the grantor in case of any subsequent transfers) shall be relieved of all liability related to Owner's obligations to be performed after such transfer. Provided, however, that any funds in the hands of Owner or Grantor at the time of such transfer

shall be delivered to Grantee. Owner's aforesaid obligations shall be binding upon Owner's successor's and assigns only during their respective periods of ownership.

31. ACCEPTANCE OF PREMISES: Tenant has examined the premises, knows the conditions thereof, and accepts possession thereof in their condition.

32. CONTRACT: This written agreement constitutes the entire contract between the Tenant and Owner, and no representation or agreement, unless expressed herein, shall be binding on the Tenant or Owner.

IN WITNESS WHEREOF, Owner and Tenant have executed this Agreement on the date and year first above written.

CITY OF LODI, a municipal corporation
Hereinabove called "Owner"

_____
H. DIXON FLYNN
City Manager

ATTEST:

_____
Susan J. Blackston
City Clerk

Dated:_____

Approved at to Form:

_____
Randall A. Hays
City Attorney

Richard Mojica and Teresa E. Mojica
dba Mojica's Batting Cages
hereinabove called "Tenant"

By_____
RICHARD MOJICA
511 E. Sonora Avenue
Lodi, California 95240

By_____
TERESA E. MOJICA

RESOLUTION NO. 2004-____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING RENTAL AGREEMENT BETWEEN THE CITY OF LODI AND RICHARD & TERESA MOJICA, dba MOJICA'S BATTING CAGES, FOR USE OF 125 E. ELM STREET, UNIT D, AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENT ON BEHALF OF THE CITY OF LODI

==========

NOW, THEREFORE, BE IT RESOLVED, that the Lodi City Council hereby approves the Rental Agreement between the City of Lodi and Richard & Teresa Mojica, dba Mojica's Batting Cages, for use of 125 E. Elm Street, Unit D; and

BE IT FURTHER RESOLVED, that the terms of the Rental Agreement shall be $775.00 per month for the period commencing January 1, 2004 and terminating December 31, 2005; and

BE IT FURTHER RESOLVED, that the monthly rental amount will be adjusted annually based upon the Consumer Price Index; and

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

Dated: January 7, 2004

==========

I hereby certify that Resolution No. 2004-____ was passed and adopted by the Lodi City Council in a regular meeting held January 7, 2004 by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

AGENDA ITEM E-12

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt a resolution authorizing the City Manager to extend the consulting services agreement with McDonald Partners, Inc. through June 2004 to provide bulk power cost modeling and strategic services to the Electric Utility Department ($70,000) (EUD)

MEETING DATE: January 7, 2004

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the City Manager to extend the consulting services agreement with McDonald Partners, Inc. through June 2004, to provide bulk power cost modeling and strategic services to the Electric Utility Department ($70,000)

BACKGROUND INFORMATION: The City of Lodi Electric Utility Department (EUD) has relied on the Northern California Power Agency (NCPA) to handle most of its seasonal energy needs. In the past, energy prices were based on production costs. Now, energy prices are market driven. Markets have not been as volatile as 2001, but recent price volatility shows that we are beyond the low prices following the 2001 crisis. Market risk is still viable. It is the intent of the EUD to reduce our exposure to market prices and lock in a stable and competitive energy rate for our customers.

NCPA uses a sophisticated production cost model to optimize the value of NCPA resources for the ten NCPA pool members. Lodi is a member of the NCPA pool and has traditionally benefited from the cost modeling provided to all members. NCPA must continue to focus on the entire NCPA pool. It is the EUD's intent to drastically limit our exposure to the vagaries of the existing energy market place. In that regard, we have previously retained the technical expertise of McDonald Partners, Inc. developing a financially based production cost model. The arrangement, which we are asking the Lodi City Council to approve, provides for a number of tasks to be performed by McDonald Partners.

- Maintain Lodi Electric's Resource Planning Model.
- Analyze and provide recommendations related to power market strategies to reduce market risk.
- Assist in negotiating agreements and evaluating the credit risk of energy suppliers.
- Meet in Lodi on a monthly basis to review strategies.

The contract amount will cover work through June 2004.

FUNDING: 160603.7323

Funding Approval: _____
Vicky McAthie, Finance Director

APPROVED: _____
H. Dixon Flynn, City Manager

Alan N. Vallow
Electric Utility Director

PREPARED BY: Boris Prokop, Power and Rates Manager

ANV/BP/lst

Attachments

cc: City Attorney

CITY COUNCIL

LARRY D. HANSEN, Mayor
JOHN BECKMAN
Mayor Pro Tempore
SUSAN HITCHCOCK
EMILY HOWARD
KEITH LAND

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6702
FAX (209) 333-6807
cityclrk@lodi.gov

H. DIXON FLYNN
City Manager

SUSAN J. BLACKSTON
City Clerk

RANDALL A. HAYS
City Attorney

December 2, 2003

McDonald Partners, Inc.
222 High Eagle Road
Alamo, CA 94507

Dear Sandra and Michael:

Lodi Electric proposes to continue the consulting services arrangement with McDonald Partners, Inc. (McDonald Partners) for the remainder of the 2003/2004 fiscal year in which McDonald Partners works with Lodi Electric staff to develop and execute strategies that are consistent with a goal of maintaining long-term price stability for Lodi Electric's customers. During this period, McDonald Partners will continue to work under the direction of the City of Lodi Electric Utility Director and will be responsible for developing and assisting in the implementation of comprehensive energy commodity management strategies including, but not limited to the following specific activities:

- Maintain Lodi Electric's Integrated Resource Planning Model to include current load forecasts, gas and power price forecasts, resource utilization, price risk exposure and budgetary impacts.
- Compare actual data to forecasts to monitor the accuracy of the Integrated Resource Model.
- Make available McDonald Partners' proprietary forward gas and power curve data on a quarterly basis throughout the engagement.
- Negotiate enabling agreements with credit-worthy gas, power, and financial products suppliers.
- Perform and maintain counter party credit analyses.
- Monitor Lodi Electric's mark-to-market exposure/liability on term contracts.
- Identify opportunities and recommend transactions for utilization of Lodi Electric physical assets including Lodi's share of the COTP and the Lodi Gas Storage Project.
- Recommend appropriateness of physical and financial hedging strategies for natural gas, power, and debt management.
- Monitor gas and power markets on a regular basis and identify potential transaction structures.
- Develop term sheets, solicit bids/offers from a pool of providers and analyze provider proposals.
- Provide transaction follow up to ensure proper deal confirmation, scheduling, accounting, and billing.
- Meet in Lodi on a monthly basis to review strategies.

Proposed fee: $11,500 per month for the remainder of fiscal year 2003/2004. Should additional meetings be required, incremental meeting time will be billed at $150/hour. Either party may cancel at any time on thirty days written notice.

All information related to this assignment will be held in strictest confidence. No work shall be performed by anyone other than Sandra or Michael McDonald without the express written approval of Lodi Electric.

In addition to the fees proposed above, all out-of-pocket expenses (which shall include, but not be limited to, travel, lodging, telephone, overnight mail, postage and copying) shall be for the account of Lodi Electric. Fees and out-of-pocket expenses will be billed monthly.

If the terms of this engagement as set forth in this letter are satisfactory, kindly sign the acceptance and return an original to me at the above address. If you have any questions or need additional information, please call me at (209)-333-6762. I look forward to working with you on this assignment.

MCDONALD PARTNERS, INC.

_____
Sandra McDonald, Principal

CITY OF LODI

_____
H. Dixon Flynn, City Manager

APPROVED AS TO FORM

_____
Randall A. Hays, City Attorney

ATTEST

_____
Susan Blackston, City Clerk

McDonald Partners Activity Report
City of Lodi
July 1, 2003 through December 31, 2003

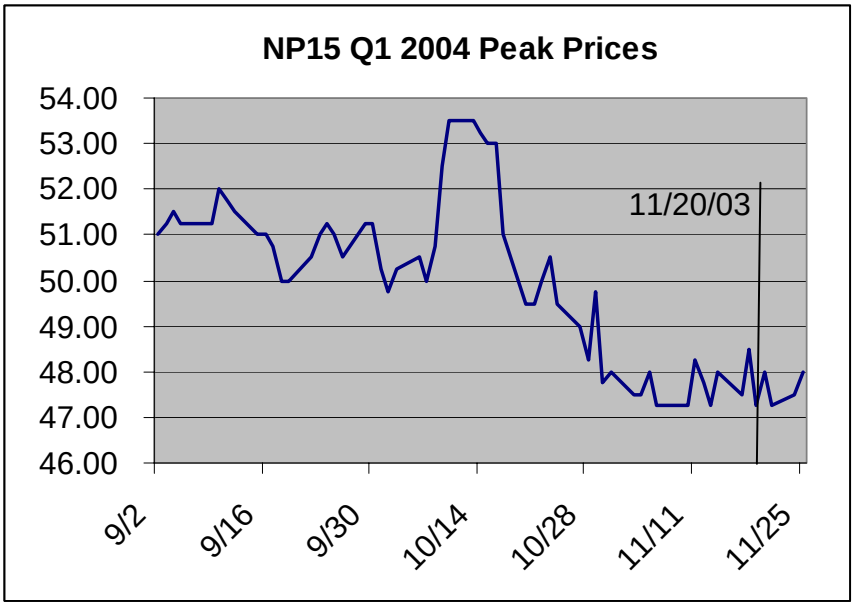
1. **Third Quarter Resource Deficiency:** In the summer of 2003, McDonald Partners, projected that Lodi would require 15 MW of additional energy during off peak hours for the months of July, August, and September and an additional 10 MW of energy during on peak hours in August. In mid-June, McDonald Partners recommended that Lodi solicit bids for energy from power suppliers to satisfy these requirements. McDonald Partners managed the solicitation process which resulted in purchases of the required off peak energy at a price of $43.75/MWh and on peak energy at a price of $61.75/MWh. These purchases allowed Lodi to take advantage of attractively priced off peak energy and to avoid exposure to on peak energy price volatility during August when prices in prior years have exceeded $100/MWh.

2. **Seattle Exchange:** In March 2003, NCPA staff recommended an arrangement for the return of winter 03-04 energy to Seattle whereby the Participants would return a fixed amount of on-peak energy at NP 15 instead of the actual amount of energy the contract required to be delivered at COB. To compensate for incremental volumes at NP15 and the price differential between COB and NP15, the Participants were offered a payment of $100,000. McDonald Partners recommended that Lodi not take part in this arrangement since (i) Lodi's short position permits Lodi to purchase energy to deliver at COB without utilizing the COTP or paying ISO exit charges, and (ii) the $100,000 offered to the Seattle Exchange participants was substantially less than the transaction was worth from Lodi's perspective. The transaction was ultimately executed on behalf of other NCPA participants, which left Lodi with the actual return obligation at COB during December 2003 and the first quarter of 2004.

   In early October, Lodi was offered an opportunity to "cash out" its SCL delivery obligation for a price of $49.75/MWh for all contract hours. To maximize Lodi's negotiating leverage, McDonald Partners located the only seller able to provide energy in a south to north direction at COB and used this leverage to negotiate a cash-out price of $47.60/MWh. The $2.15/MWh lower price represents a savings to Lodi of $78,000.

Had Lodi executed the spring transaction as proposed by NCPA, Lodi Electric would have received approximately $17,000 for the spread between COB and NP15 on the return quantities. By waiting and negotiating its own transaction, Lodi realized an incremental $30,000 ($47,000 total) relative to participating in the spring transaction and locking in its NP15 delivery obligation on the same day the cash-out transaction occurred.

3. **December and 1st Quarter Resource Deficiency**: Lodi Electric is expected to require approximately 40,000 MWh of purchased energy during the month of December and the first quarter of 2004. McDonald Partners monitored market prices for these periods throughout the fall and recommended that Lodi solicit bids for energy in mid-November. As the graph below illustrates, Lodi Electric executed its winter transactions at near market lows. Lodi Electric benefited by approximately $40,000 for each dollar saved from waiting. Had Lodi locked in when prices spiked in Mid-October, the utility's purchased power bill would have been nearly $200,000 higher.



In addition to monitoring overall market prices for this period, McDonald Partners also monitored the price spread between COB and NP 15 to determine whether it was cost effective to purchase Lodi's energy needs at COB rather than NP15. Since price spreads between these two delivery points seemed attractive, McDonald Partners conducted a bid process in which five firms were asked to price a variety of products at both delivery points. In a series of eleven transactions, Lodi purchased for its own load

and maximized its COTP entitlement during those hours when the COB/NP 15 price differential made purchasing at COB advantageous. The transactions resulted in a net purchase price of $39.40/MWh (including the benefit of excess sales) and a savings of $140,000 relative to simply purchasing Lodi's energy requirements at NP15.

4. **Digester Project**: Lodi was recently approached by a company in the business of installing anaerobic digesters and electric generators to convert agricultural waste to electrical energy. McDonald Partners is providing the City with independent economic analysis of this opportunity.

5. **NCPA Proposals:** McDonald Partners continues to analyze various proposals brought forward by NCPA staff or other member participants regarding operation or price risk management of NCPA resources. Currently, McDonald Partners is analyzing a proposal from the City of Alameda regarding the STIG plant located adjacent to the White Slough Water Treatment Facility.

6. **Enabling Agreements:** In order to ensure the best possible price for power purchases and sales, McDonald Partners has increased the number of suppliers with whom the City has transaction enabling agreements and credit approvals in place from one to five.

7. **Lodi Gas Storage Project:** Lodi was granted storage capacity in the Lodi Gas Storage Project for a ten-year period as a result of support the City provided during the licensing process for that project. McDonald Partners has assisted the City in analyzing the City's options for use of that capacity and is working with Lodi's attorneys to resolve legal issues with the capacity contract. Once the contact is signed, McDonald Partners will assist the city in optimizing the value of this asset.

RESOLUTION NO. 2004-____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXTEND THE CONSULTING SERVICES AGREEMENT WITH MCDONALD PARTNERS, INC., TO PROVIDE BULK POWER COST MODELING AND STRATEGIC SERVICES TO THE ELECTRIC UTILITY DEPARTMENT

==========

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to extend the Consulting Services Agreement with McDonald Partners, Inc., to provide bulk power cost modeling and strategic services to the Electric Utility Department, in an amount not to exceed $70,000.00 through June 30, 2004.

Dated: January 7, 2004

==========

I hereby certify that Resolution No. 2004-____ was passed and adopted by the Lodi City Council in a regular meeting held January 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

AGENDA ITEM E-13

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: **Adopt resolution authorizing the City Manager to allocate a Public Benefits Program grant in the amount of $25,000 to Schaefer Systems International, Incorporated for a process cooling equipment demand-side management project (EUD)**

MEETING DATE: **January 7, 2004**

PREPARED BY: **Electric Utility Director**

RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the City Manager to allocate a Public Benefits Program grant in the amount of $25,000 to Schaefer Systems International, Incorporated for a process cooling equipment demand-side management project.

BACKGROUND INFORMATION: Schaefer Systems International, Incorporated, located at 1250 E. Thurman Street, is a manufacturer of heavy plastic refuse containers. These containers (including containers for recycling, yard waste and garbage) are purchased by municipalities throughout the western United States, and are utilized here in Lodi as well.

In an effort to reduce energy consumption, Schaefer Systems personnel elected to replace an aging process chiller and related equipment, with a new, highly efficient Thermal Care process cooling system. The equipment (Model TXW240 Water Cooled Central Chiller) is designed to provide some 250 tons of cooling capability, with water temperature at a consistent 50 degrees, at approximately 605 gallons per minute. The process chiller is critical equipment for a plastics injection molding facility, as the chilled water is utilized to immediately cool the finished product (in this manufacturing case, the finished product is refuse containers). Once the chilled water has completed its task, it is pumped back to a cooling tower, brought back down to 50 degrees, and reused. The previous chiller system was a manual operated process, with less chilled water capacity and longer warm water exchange or cool down time. Energy efficiencies are gained in the new process equipment because of the following: computer-controlled interface technology (with manual override capabilities), built-in variable frequency drives for the systems pumps and motors, along with a fan-cooled tower supply pump, allowing for a more rapid water cool down cycle.

With the new process cooling system, Schaefer Systems International will reduce energy consumption (depending upon monthly hours of operation) from a minimum of 10 percent, to as high as 20 percent. Having replaced the inefficient process cooling system, Schaefer Systems International representatives are now investigating the potential of a new process or manufacturing line that would also be energy efficient.

The Electric Utility Department respectfully recommends approval of this Public Benefits grant as a qualifying component of the City of Lodi's Public Benefits Program, under the category of demand-side management or energy conservation.

APPROVED: _____
H. Dixon Flynn, City Manager

FUNDING: 164605 Public Benefits (Category: Demand-side Management)

Funding Approval: _____
Vicky McAthie, Finance Director

_____
Alan N. Vallow
Electric Utility Director

PREPARED BY: Rob Lechner, Manager of Customer Service & Programs

ANV/RL/lst

cc: City Attorney

RESOLUTION NO. 2004-____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO PROVIDE A PUBLIC BENEFITS PROGRAM GRANT TO SCHAEFER SYSTEMS INTERNATIONAL, INCORPORATED

==========

WHEREAS, the state has mandated that beginning January 1, 1998, the City of Lodi is obligated to fund various programs through a Public Benefits Charge (PBC) based on a historical electric revenue requirement; and

WHEREAS, the requirement amounts to approximately $1M per year that must be dedicated to qualifying programs such as energy efficiency. A further stipulation is that these efforts must be done on the customer's side of the meter in order to qualify; and

WHEREAS, the City of Lodi's Public Benefits Program is comprised of four segments or customer groups: commercial/industrial, residential, community/non-profit, and municipal; and

WHEREAS, Schaefer Systems International, Incorporated, located at 1250 E. Thurman Street, is a manufacturer of heavy plastic refuse containers, used for recycling, yard waste and garbage, and are purchased by municipalities throughout the western United States; and

WHEREAS, in an effort to reduce energy consumption, Schaefer Systems personnel elected to replace an aging process chiller and related equipment, with a new, highly efficient Thermal Care process cooling system. The equipment (Model TXW240 Water Cooled Central Chiller) is designed to provide some 250 tons of cooling capability, with water temperature at a consistent 50 degrees, at approximately 605 gallons per minute. The process chiller is critical equipment for a plastics injection molding facility, as the chilled water is utilized to immediately cool the finished product (in this manufacturing case, the finished product is refuse containers). Once the chilled water has completed its task, it is pumped back to a cooling tower, brought back down to 50 degrees, and reused; and

WHEREAS, the previous chiller system was a manual operated process, with less chilled water capacity and longer warm water exchange or cool down time. Energy efficiencies are gained in the new process equipment because of the following: computer-controlled interface technology (with manual override capabilities), built-in variable frequency drives for the systems pumps and motors, along with a fan-cooled tower supply pump, allowing for a more rapid water cool down cycle; and

WHEREAS, with the new process cooling system, Schaefer Systems International will reduce energy consumption (depending upon monthly hours of operation) from a minimum of 10 percent, to as high as 20 percent.

WHERES, the Electric Utility Department respectfully recommends approval of this Public Benefits grant as a qualifying component of the City of Lodi's Public Benefits Program, under the category of demand-side management or energy conservation.

NOW, THEREFORE, BE IT RESOLVED, that the Lodi City Council hereby authorizes the City Manager to provide a Public Benefits Program Grant in the amount of $25,000.00 to Schaefer Systems International, Incorporated for a process cooling equipment demand-side management project.

Dated: January 7, 2004

==========

I hereby certify that Resolution No. 2004-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

AGENDA ITEM E-14

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt the Memorandum of Understanding between City of Lodi and Lodi Police Mid-Management Organization (LPMO)

MEETING DATE: January 7, 2004

PREPARED BY: Human Resources Director

RECOMMENDED ACTION: That the City Council adopts the Memorandum of Understanding between the City of Lodi and Lodi Police Mid-Management Organization (LPMO).

BACKGROUND INFORMATION: In June, 2003, the City Council accepted the tentative agreement with LPMO. The agreement was subsequently ratified by the LPMO. A Memorandum of Understanding has been prepared and is now brought back to the City Council for formal adoption.

FUNDING: N/A

Respectfully submitted,

_____
Joanne M. Narloch, Human Resources Director

cc: City Attorney
Chet Somera, LPMO President

APPROVED: _____
H. Dixon Flynn, City Manager

RESOLUTION NO. 2004-____

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF LODI AND LODI POLICE
MID-MANAGEMENT ORGANIZATION

==========

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby adopts the Memorandum of Understanding between the City of Lodi and the Lodi Police Mid-Management Organization, as shown on Exhibit A attached hereto; and

BE IT FURTHER RESOLVED that said Memorandum of Understanding shall be effective July 21, 2003 through June 30, 2006.

Dated: January 7, 2004
==========

I hereby certify that Resolution No. 2004-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

MEMORANDUM OF UNDERSTANDING

BETWEEN

CITY OF LODI

AND

LODI POLICE MID-MANAGEMENT ORGANIZATION (LPMO)

JULY 21, 2003 – JUNE 30, 2006

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City of Lodi

And

Lodi Police Mid-Management Organization

2003-2006

CHAPTER 1 - SALARIES AND OTHER COMPENSATION

ARTICLE I - SALARY AND TERM

1.1 Effective July 21, 2003, all classifications shall receive 50% of an equity adjustment as shown in Attachment A. Effective July 20, 2004, all classifications shall receive the other 50% of the equity increase as shown in Attachment A.

1.2 Effective the first pay period in which July 1, 2003 falls, employees will receive a cost of living adjustment based upon the consumer price index (CPI-W), San Francisco-Oakland-San Jose. The increase will be no less than 2% and no greater than 4% and calculated using the most recent twelve month average that is available and issued by the Department of Labor as of June 15, 2003. Effective the pay period in which July 1, 2004 and 2005 occur, cost of living adjustments will be adjusted using the same methodology as stipulated above.

1.3 The terms and conditions of this MOU shall continue in effect during the term of this MOU. The parties agree the term is July 21, 2003 through June 30, 2006.

1.4 The parties mutually agree to commence negotiations no later than three (3) months prior to the expiration of the MOU.

1.5 The City and LPMO mutually agree that the salary survey cities shall be as follows:

*Chico	*Merced	*Tracy
*Clovis	*Modesto	*Turlock
*Davis	*Redding	*Vacaville
*Fairfield	*Roseville	*Visalia
*Manteca	*Stockton	*Woodland

ARTICLE II - UNIFORM ALLOWANCE

2.1 The City agrees to provide a uniform allowance of $900.00 annually to be increased as follows:

January 1, 2004: Increase to $950.00

2.2 The uniform allowance shall be paid quarterly in conjunction with regular pay checks in the months of March, June, September, and December and shall be for the previous three months.

2.3 The City agrees to repair or replace uniforms damaged or destroyed on duty unless gross negligence can be shown on the part of the employee. Receipts shall be required prior to reimbursement.

ARTICLE III – BI-LINGUAL PAY

3.1. Employees designated by the Department Head and approved by the City Manager who have passed a bi-lingual proficiency examination administered by the City shall receive a monthly bi-lingual premium of $200.00.

ARTICLE IV – COMPENSATORY TIME

4.1 Employees may accrue compensatory time in lieu of overtime pay. The accrual rate for compensatory time shall be one and one-half hours for each hour of overtime time worked.

4.2 No more than eight (80) hours of compensatory time may be carried on the books at any time.

4.3 An employee's decision to elect compensatory time instead of overtime pay is irrevocable.

4.4 Upon separation, the employee will be paid at the employee's current hourly rate or the average of the last three years, whichever is higher, for the remaining compensatory balance.

ARTICLE V – COURT TIME

5.1 Employees scheduled to make court appearances during off-duty hours, on scheduled days off, or when on graveyard shift, shall be compensated at the rate of time and one-half for actual hours involved in such appearances. In no event shall they be paid for less than three hours.

5.2 Court appearances which are within two hours of the beginning of a shift or within one hour of the end of the shift shall be compensated at the time and one-half rate. Such appearances shall be reported as contiguous shift extensions.

5.3 Cancellation of scheduled appearance must be made at least two hours before said scheduled appearance or the minimum three hours shall be paid.

5.4 Employees who receive a subpoena to appear in court, shall notify their supervisor of the appearance date and time in order to provide the Watch Commander time to review the schedule to determine if rest period time is required, or additional staff will be needed.

ARTICLE VI– PERFORMANCE INCENTIVE BONUS

6.1 Definition

A Performance Incentive Bonus (PIB) is a monetary reward for meritorious performance above and beyond what is expected and required of all employees who satisfactorily meet the standards of their job.

Said bonus will be $1,000 for those employees who have completed the service requirements of ten (10) years, and $2,000 for those employees who have completed the service requirements of twenty (20) years.

Said bonus is not a part of base salary. Receipt of bonus for one year does not affect the following year. Employees must submit a new application for each year they wish to be considered for the PIB.

It is understood that said bonus is discretionary, and based upon meritorious performance as described in the PIB evaluation criteria.

Employees who are granted a PIB by the evaluation committee, will be issued a separate check for the appropriate amount in November of each year of this contract.

6.2 Eligibility

To be eligible to apply for the bonus, employees must meet the following minimum qualifications:

1. Employees must have completed at least ten (10) full years of service at the rank of Police Officer or higher with the City of Lodi by the beginning of the preceding time period being evaluated (i.e. to be eligible for consideration in November of 2003, an employee will have to have had to complete ten (10) full years of service by June 30, 2003)

2. Employees must have, at a minimum, a satisfactory rating in all areas evaluated on the performance evaluation.

3. Employees must possess an Intermediate Post Certificate.

4. Employees must have completed at least one Special Assignment or collateral duty assignment.

5. Employees must not have received discipline issued beyond an oral reprimand or an Employee Performance Observation (EPO).

6. Employees must not have received a positive drug test.

7. Employees must be at work at least eight months during the qualifying period.

Employees must have met the above mentioned minimum qualifications by the beginning of the preceding time period being evaluated.

6.3 Evaluation of Applications (Process)

The PIB process will consist of a committee evaluation, conducted on a annual basis and will be based upon the preceding year's evaluation (July-June), and the events, activities, and actions during the same time period.

The LPMO and Police Chief will mutually agree upon the composition of the evaluation committee.

Applications for a PIB must be made in writing on the designated application form within the time period allotted by the evaluation committee.

Applicants will be evaluated only upon written documentation including but not limited to what is provided in applicants' application, their performance evaluation and any actions and events during the rating period including but not limited to the following: attendance, disciplinary actions, service awards, commendations, etc.

The decision of the committee will be relayed to each applicant in writing. The vote of the committee shall be in confidence. Members of the committee are obligated to maintain confidentiality in respect to all committee processes including voting. No committee member shall disclose to any person outside the committee any discussion of the committee or information on voting or specific votes of committee members.

The decision of the evaluation committee to grant or deny a PIB is final and binding, may not be appealed, and is not subject to any grievance procedure.

ARTICLE VII – SPECIAL ASSIGNMENT PAY

7.1 Employees assigned to SWAT or Sergeants assigned to the Detective Bureau or Office of Professional Standards (OPS) shall receive an allowance equal to 4.5% of their normal base pay. It is mutually agreed that assignments to the Detective Bureau or SWAT are at the sole discretion of the Chief of Police. No employee has the right to such assignment. Employees in such positions acknowledge, as does the LPMO, that employees may be transferred or reassigned from their position on a non-punitive basis and that they have no right to appeal from such transfer or reassignment.

ARTICLE VIII – OUT OF CLASS PAY

8.1 Employees in this bargaining unit who are designated by the Chief of Police to work in a higher level classification shall be paid an additional 5% of the employee's regular salary.

ARTICLE IX - CALL BACK PAY

9.1 Officers called to appear for work within two hours of the beginning of a shift, or one hour after the shift, shall receive overtime at the rate of time and one-half. Such appearances shall be reported as contiguous shift extensions. If the appearance begins more than two hours before or more than one hour after the scheduled shift, the employee will be credited a minimum of three hours at the time and one-half rate.

When an officer is ordered back to work on an "as soon as possible" basis and reports within thirty minutes, the officer shall be compensated from the time of the call.

CHAPTER 2 – BENEFITS AND INSURANCES

ARTICLE X – EMPLOYEE ASSISTANCE PROGRAM

10.1 Employees, their spouses, and dependent children are entitled to three (3) free visits per year per family member with a licensed clinical social worker through "Options." This may be supplemented by medical insurance after exhaustion of the three (3) free visits.

ARTICLE XI - DEFERRED COMPENSATION

11.1 Employees may participate in the City's Deferred Compensation Plan

11.2 City matches up to a maximum of 2.0% of base salary. The City will match up to maximum of 3.0% of base salary effective the pay period in which 1/1/04 falls.

ARTICLE XII - FLEXIBLE SPENDING ACCOUNT

12.1 Employees shall have the option of participating in the Flexible Spending Account (Section 125 Plan). Employees may elect to participate in;

a) Premium Conversion
b) Non-reimbursed Health Care
c) Dependent Care Reimbursement

12.2 Elections for the calendar year will be made each December, or if a change in family status occurs. Money not used by the end of each calendar year will be forfeited by the employee.

ARTICLE XIII - CHIROPRACTIC

13.1 Chiropractic services may be received by employees and dependents. This benefit allows up to a maximum of 40 visits per calendar year. Co-payments for services are $10.00.

ARTICLE XIV - EDUCATION INCENTIVE

14.1 Effective upon ratification, Education incentives will be available to eligible employees as follows:

Bachelor's Degree: $200.00 per month
Advanced Post: $200.00 per month

ARTICLE XV - OVERTIME

15.1 The following special provisions for the payment of overtime will apply to Police Sergeants and Police Lieutenants. Employees shall be compensated for overtime at the time and one-half rate for time worked due to emergencies. Emergencies shall be determined by the appropriate department head and include but are not limited to such events as:

- The necessity to cover scheduled shifts;
- Direct supervision of crews assigned to work during normal days off to accommodate the public:
- Break down of equipment and/or systems requiring the presence of the mid-manager in order to restore service.

15.2 Overtime pay shall not be paid for the following:

- Staff meetings
- Special projects
- Conferences and seminars - except as noted below
- Appearances before City Council and commissions,
- Public information presentations,
- Activities involved with the completion of normal activities or programs such as budgets, inventory, annual financial closings, labor negotiations, and recreation programs.

15.3 All overtime must be approved by the department head. Any deviations from these guidelines must be approved in advance by the department head and the City Manager.

15.4 Upon promotion into a Mid-Management position only previously accrued compensatory time must be paid or used prior to the promotion.

15.5 Police Lieutenants and Sergeants shall be compensated for overtime hours necessitated by attending State mandated training and for work on special events as designated by the Chief of Police or Division Commander.

15.6 The classification of Police Captain is deemed exempt from overtime and is not eligible for overtime pay under this article unless such overtime is required during a declared state of emergency and expenditure is mandated for reimbursement to the City of Lodi.

ARTICLE XVI - RETIREMENT

16.1 The City of Lodi provides retirement benefits through the Public Employees Retirement System. Employees shall receive the following retirement benefits.

Police Safety

3% @ 50 plan

- 1959 Survivors Benefit – Third Level
- Employee's 9% paid by City
- Credit for Unused Sick Leave
- Military Service Credit as Public Service
- Single Highest Year

ARTICLE XVII - SICK LEAVE CONVERSION

17.1 Employees hired prior to July 1, 1994, after 10 years with the City and only upon retirement, may convert their accumulated sick leave time to medical insurance premiums or cash under the following options:

OPTION #1 - *"Bank"*

The number of accumulated hours shall be reduced by 16-2/3% and the remaining balance converted into days. The days are then multiplied by the current monthly premium being paid for the employee and, if applicable, his/her dependents. Fifty percent of that dollar amount will be placed into a "bank" to be used for medical insurance premiums for the employee, and if applicable, his/her dependents. For each year of employment over 10 years, 2.5% will be added to the 50% used in determining "bank" amount. Total premiums shall be paid from the Bank until its depletion, at which time the conversion benefit stops.

EXAMPLE:

Lt. John Smith retires with 25 years of service and 1800 hours of unused sick leave:

Sick Leave Hours - 1800 x 16⅔%(reduced per MOU) = 299.99
1800 minus 299.99 = 1500.01
1500.01 divided by 8 (coverage factor) = 187.5
187.50 times 87.5% (% of coverage) = 164.1
164.1 times 694.86(current medical premium) = $114,026.52

Employees may also use their banks money to purchase Dental and/or Vision Insurance at the current premiums until their bank is depleted.

OPTION #2 - *"Conversion"*

The number of accumulated hours shall be multiplied by 50% and converted to days. The City shall pay one month's premium for employee and dependents for each day after conversion. For each year of employment in excess of 10 years, 2.5% shall be added to

the 50% before conversion. The amount of premium paid shall be the same as the premium paid by the City at the time of retirement. Any differences created by an increase in premiums must be paid for by the employee.

EXAMPLE:
Lt. John Smith retires with 25 years of service and 1800 hours of unused sick leave:

Sick Leave Hours - 1800 divided by 8 (coverage factor) = 225
225 times 87.5 (% of coverage) = 196.88
196.88 divided by 12(yrs) = <u>16.4 total years of coverage</u>

<u>OPTION #3 - *"Cash-Out"*</u>
A retiring employee will be able to choose a cash pay-off of accumulated sick leave at the rate of 30% of base pay per hour.

<u>OPTION #4 – "*Service Credit*"</u>
A retiring employee will be able to convert unused sick leave to service credit for Cal PERS retirement purposes.

17.2 Employees hired after July 1, 1994 will not have the option of converting unused sick leave time into medical insurance premiums or cash as referenced in OPTION 1-3. The only option available to these employees is OPTION #4 "PERS CREDIT".

17.3 In the event an active employee dies before retirement and that employee is vested in the Sick Leave Conversion program (10 years) the surviving dependents have an interest in one-half (1/2) the value of the bank as calculated in section 17.1.

17.4 The City shall allow a surviving dependent of a retiree enrolled in the Sick Leave Conversion program to purchase medical insurance at the employee only premium for the same period as if the retiree had not died.

17.5 A retiree or surviving dependent, upon expiration of City-paid coverage, if any, has the option of purchasing at the prevailing rate additional medical insurance for an unlimited amount of time.

17.6 Out of area retirees may receive reimbursement for medical insurance premiums up to the City's liability as specified in Section 17.1; Option #2.

17.7 Only one City of Lodi employee may carry dependent coverage for another City employee, therefore, upon retirement the employee may re-enroll as an individual into the health plan in order to take advantage of the Sick Leave Conversion program.

17.8 A retiree or surviving dependent may purchase dental and vision insurance at the City group rate through the Sick Leave Conversion options.

ARTICLE XVIII - EXECUTIVE PHYSICAL EXAMINATION

18.1 Employees may elect to receive an annual executive physical examination in accordance with the provisions of the City's medical insurance plan to include any and all of the following procedures as applicable and as deemed necessary by the employee's physician:

- A complete office examination
- Urinalysis
- Pap smear
- EKG (resting)
- An executive blood panel
- Mammogram
- Chest X-ray

18.2 Employees shall be reimbursed for costs not covered by the medical insurance for the procedures referenced in 18.1 only. Any additional tests judged necessary shall be the responsibility of the employee. Employees must submit all related receipts, attached to a claim voucher, to the Finance Department for reimbursement.

ARTICLE XIX - MEDICAL INSURANCE

19.1 All employees are offered medical insurance (including pharmaceutical) for themselves and dependents through Cal PERS-Medical Plans. City shall pay 100% premium for employee only up to the highest HMO available in our geographical area. Effective as soon as administratively possible, employees will be responsible for a share of cost of their medical premiums as follows: a) Employees with no dependents – $0.00 monthly, b) Employees with one dependent - $80.00 monthly, c) Employees with more than one dependent - $104.00 monthly. Employees selecting a PPO or other available plan shall also be responsible for the difference in cost between the highest HMO and the selected plan, in addition to the specified employee share of cost. Any employee is otherwise covered by a medical plan and chooses not to utilize the full extent of medical coverage available to him or her, as applicable, to his or her dependent(s) may opt to receive the following: $25.00 per pay period paid into the employees deferred compensation account if not covering eligible dependents or if no coverage is elected $71.15 per pay period will be deposited into the employees deferred compensation account. This section shall not be construed to allow individuals without dependents to receive any portion of the dependent premium.

ARTICLE XX - DENTAL INSURANCE

20.1 Employees are provided fully paid family dental insurance.

20.2 Maximum benefits are $1,000 for each family member enrolled into the dental plan, per calendar year. There is a $25 deductible plus co-insurance features.

ARTICLE XXI - VISION INSURANCE

21.1 Employees are provided with family vision care insurance through *Vision Service Plan*. Services and amount of coverage are outlined in the VSP Summary of Benefits.

ARTICLE XXII - LIFE INSURANCE

22.1 As soon as administratively possible, employees are provided with *term life and accidental death/dismemberment* insurance up to $25,000. These benefits decrease after age 70 on a sliding scale, depending on age.

22.2 Employees are provided with $100,000 of *accident insurance* while traveling on City business outside the City limits. Spouses are only covered while accompanying the City employee on City business, or while conducting business on behalf of the City.

ARTICLE XXIII - SURVIVORS MEDICAL BENEFITS

23.1 The City shall pay 100% of the premiums for health and dental benefits described in this MOU for the surviving spouse and any minor children of any member of the POAL who is killed or dies during the performance of official duties. Premiums will be paid at the current rate in effect at the time of the member's death. Premiums will continue to be paid by the City until such time as the surviving spouse is covered by other insurance or remarries, and for dependent children of the member killed in the line of duty until such time as either:

(1) the children become adults, or
(2) the children are covered under other alternative medical coverage provided by and through the surviving spouse or the person who he/she remarries.

ARTICLE XXIV - TUITION REIMBURSEMENT

24.1 Employees shall receive the following:

1) Tuition costs, up to a maximum of $1,804 per fiscal year, to be paid upon the satisfactory completion of course work.

2) The full cost of books required for courses taken.

The maximum amount reimbursed is based on fees for two courses of study at California State University Sacramento. This maximum amount will be updated annually. A fiscal year is the period between July 1 and June 30. The final date of class shall determine the fiscal year in which that course falls.

This section will be applied toward registration fees at an accredited College or University. Course work must be part of a program of study toward obtaining an Associate of Arts, Bachelors, or any higher degree.

CHAPTER 3 - LEAVES

ARTICLE XXV - VACATION LEAVE

25.1 Employees hired prior to July 1, 1994 shall receive the following vacation benefits:

Beginning with:

Date of Hire:	3.08 hours per pay period	(10 days per year)
6th year	4.62 hours per pay period	(15 days per year)
12th year	5.23 hours per pay period	(17 days per year)
15th year	6.16 hours per pay period	(20 days per year)
21st year	6.47 hours per pay period	(21 days per year)
22nd year	6.78 hours per pay period	(22 days per year)
23rd year	7.09 hours per pay period	(23 days per year)
24th year	7.40 hours per pay period	(24 days per year)
25th year	7.71 hours per pay period	(25 days per year)

25.2 Employees hired after July 1, 1994 shall receive the following vacation benefits:

Beginning with:

Date of Hire:	3.08 hours per pay period	(10 days per year)
6th year	4.62 hours per pay period	(15 days per year)
12th year	5.23 hours per pay period	(17 days per year)
15th year/above	6.16 hours per pay period	(20 days per year)

25.3 Employees promoting into a Mid-Management position will follow the vacation schedule referenced in articles 25.1, or 25.2, depending on their initial employment with the City of Lodi

25.4 Vacation leave shall be used in increments of not less than quarter hours. Employees may accumulate a maximum of twice the employee's annual vacation accrual. If and when the accrual cap is reached, no additional vacation hours will be accumulated until the employee's vacation usage brings the accumulated number of hours under the cap. This policy is incorporated into the MOU as Attachment B.

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ARTICLE XXVI - ADMINISTRATIVE LEAVE

26.1 Employees will be given 80 hours of administrative leave per calendar year. Leave shall be taken in increments of not less than quarter hours. Balances must be used prior to December 30 or they will be lost.

26.2 New employees or employees becoming eligible due to a promotion receive administrative leave on a prorated basis, with eight hours granted for each full calendar month remaining in the calendar year with a maximum of 80 hours.

26.3 Employees separating mid-year will receive a cash pay out for unused Administrative Leave on a prorated basis in accordance with 26.2.

26.4 Employees are eligible to cash out up to 40 hours of their current Administrative Leave balance in any calendar year except in the months of May and June. A request to cash out Administrative Leave must be in writing and submitted to the Finance Department.

ARTICLE XXVII - HOLIDAYS

27.1 All employees shall receive 125 hours of floating holidays. Effective January 1, 2004, the hours will be increased to 135.

27.2 All employees assigned to a 40 hour work week shall observe fixed holidays as shown:

New Year's Day	-	January 1
Martin Luther King Jr. Day	-	3rd Monday in January
Presidents Day	-	3rd Monday in February
Memorial Day	-	Last Monday in May
Independence Day	-	July 4th
Labor Day	-	1st Monday in September
Thanksgiving Day	-	4th Thursday in November
Day after Thanksgiving	-	Friday following Thanksgiving Day
Christmas Day	-	December 25th

27.3 Holiday hours shall be taken in increments of not less than quarter hours and may not be carried into the following calendar year.

27.4 If hired or separated mid-year, employee shall be credited or debited with fixed holidays remaining plus floating holidays per the following schedule:

Four Floating Holidays:

Month Hired or Separated			Days added	Days Subtracted
Jan	Feb	March	4	3
April	May	June	3	2
July	Aug	Sept	2	1
Oct	Nov	Dec	1	0

ARTICLE XXVIII - SICK LEAVE

28.1 Sick Leave is earned at the rate of 4.62 hours per pay period with no limit on the amount that can be accrued. Sick leave shall be taken in increments of not less than quarter hours.

ARTICLE XXIX – FAMILY AND MEDICAL LEAVE

29.1 The City of Lodi will comply with the requirements of the federal Family and Medical Leave Act of 1993 (FMLA) and the California Family Rights Act of 1993 (CFRA), as defined in California Government Code Sections 12945 et seq. and reflected in the City's Policy and Procedures Manual.

ARTICLE XXX - CATASTROPHIC LEAVE

30.1 Catastrophic leave is available to employees is accordance with the Administrative Policy and Procedure dated February 5, 2003.

ARTICLE XXXI - BEREAVEMENT LEAVE

31.1 Bereavement leave is available to employees in accordance with the Administrative Policy and Procedure dated May 1, 1995.

ARTICLE XXXII – LEAVE OF ABSENCE

32.1 Leave of Absences are available to employees in accordance with the Administrative Policy and Procedure dated May 1, 1995.

CHAPTER 4 - ORGANIZATION/CITY ISSUES

ARTICLE XXXIII - PROBATION

33.1 Employees have a probationary period of one year. During probation, new hires have the same rights and privileges as regular employees, except that:

- City and employee may mutually agree to an extension of the probationary period up to six additional months.
- Employee serves "at will" and rejection during probation cannot be grieved.

New hires and promotional appointments shall be eligible for a merit increase at the completion of probation.

ARTICLE XXXIV - PERSONAL LIABILITY

34.1 Employees shall be indemnified and held harmless by the City against all costs, legal expenses, and liability arising out of decisions made in their capacity for the City of Lodi and/or from any cause of action for property damage, or damages for personal injury, including death, sustained by person(s) as a result of a decision made in their capacity, except that:

A. The City is not required to but may provide for the defense of an action or proceeding brought against an employee or former employee if the City determines that:

1. The act or omissions was not within the scope of their employment; or

2. They acted or failed to act because of actual fraud, corruption, or actual malice; or

3. The defense of the action or proceeding by the City would create a conflict of interest between the City and the employee or former employee.

B. The City is not required to but may pay any claim of judgment for punitive or exemplary damages under the following circumstances:

1. The judgment is based on an act or omission of an employee or former employee acting within the course and scope of their employment as an employee of the City.

2. At the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the City.

3. Payment of the claim of judgment would be in the best interests of the City.

ARTICLE XXXV- GRIEVANCE PROCEDURE

35.1 Disputes involving the following subjects shall be determined by the Grievance Procedures established herein:

A. Interpretation or application of any of the terms of this agreement, including Exhibits thereto, Letter of Agreement, and formal interpretations and clarifications executed by the Association and City.

B. Disputes as to whether a matter is proper subject for the Grievance Procedure.

C. Disputes which may be of a "class action" nature filed on behalf of the Association or the City.

35.2 Class action Grievances shall be submitted in writing from the LPMO's President to the City Manager or vice versa.

35.3 STEP ONE

Discussion between the employee, the Association Representative and the Department Head, who will answer within fifteen work days. This step shall be taken within thirty days of the date of the action complained of, or the date the grievant became aware of the incident which is the basis of the grievance.

35.4 STEP TWO

If a grievance is not resolved in Step One, Step Two shall be the presentation of the grievance, in writing, by the Association Representative to the City Manager, who shall answer, in writing, within fifteen work days of receipt of the grievance. The City Manager's decision shall be final and binding. Step Three shall be taken within fifteen work days of the date of the answer in Step Two.

ARTICLE XXXVI - DISCIPLINARY PROCEDURE

36.1 Basis: The City may discipline any employee in City service. Discipline may include discharge, demotion, suspension, reduction in pay, or oral or written reprimand. Only regular employees shall have the right to hearing and appeal as described in this section.

36.2 FLSA Exempt Employees: With respect to employees in classification deemed exempt from the overtime requirements of the Fair Labor Standards Act ("FLSA") disciplinary suspensions pursuant to this policy shall be administered in accordance with the salary basis test under the FLSA's governing regulations.

36.3 Cause: Causes for discipline of any regular employee may include, but shall not be limited to the following:

A. Improper or unauthorized use or abuse of sick leave.

B. Excessive absenteeism that prevents reasonable availability for assigned duties.

C. Absence without authorized leave; repeated tardiness to assigned work station; leaving assigned work without authorization; failure to report to work after a leave of absence has expired, or after a leave has been disapproved or revoked.

D. Misconduct; willful or negligent violation of the personnel rules, resolutions, and/or other related ordinances including written departmental rules, regulations, and policies.

E. Insubordination;

F. Acceptance of gifts or gratuities in connection with or relating to the employee's duties.

G. Conviction of a felony or misdemeanor involving moral turpitude. A plea or a verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude in deemed to be a conviction.

H. Fraud or the submission of false information related to employment application, payroll, or any work-related record or report.

I. Soliciting outside work for personal gain during the conduct of City business; engaging in outside employment for any business under contract with the City; or participating in any outside employment that adversely affects the employee's City work performance; or conducting personal business on City time.

J. Discourteous treatment of the public or City employees or disorderly conduct on City property or on City business including fighting, or using profanity, intimidation, abusive or threatening language.

K. Conduct that interferes with the reasonable management, operation and discipline of the City or any of its departments or divisions or failure to cooperate with superiors or fellow employees.

L. Engaging in political activities while on duty, in uniform or using the authority associated with City employment.

M. Violation or neglect of safety rules or practices.

N. Behavior, either during or outside the duty hours, which is of such a nature that it causes discredit to the City or one of its operating services.

O. Discrimination, including harassment, against other employees or members of the public on the basis of race, color, national origin, religious creed, ancestry, sex, sexual preference, marital status, age or physical handicap.

P. Inefficiency, incompetence, or negligence in the performance of duties, including failure to perform or complete assigned tasks or training, in a prompt, competent, and reasonable manner.

Q. Refusal or inability to improve job performance in accordance with written or verbal direction after a reasonable trial period.

R. Refusal to accept and carry out reasonable and proper assignment from an authorized supervisor.

S. Unauthorized possession or use of controlled substances or alcohol on City property and/or at the worksite.

T. Intoxication, intemperance, or incapacity due to the use of controlled substances or alcohol while on duty.

U. Failure to obtain or maintain possession of the minimum qualifications for the position.

V. Careless, negligent, or improper use of City property, equipment or funds, including unauthorized removal, or use for private purpose, or use involving damage or unreasonable risk of damage to property.

W. Unauthorized release or use of confidential information or official records.

X. Participation in an illegal strike, work stoppage, slowdown, or other job action against the City.

Y. Inability to perform the duties of his/her job.

Z. Dishonesty.

AA. Sleeping on the job.

BB. Theft.

CC. Retaliation for actions protected by law.

DD. Failure to report loss of or damage caused to City equipment and/or facilities for which the employee was responsible.

EE. Threats of violence against City employees and/or City property.

36.4 Persons Authorized to Take Disciplinary Action: Employee discipline may be initiated by the City department head for cause against any employee under his/her supervision. Disciplinary actions in the form of termination or discharge shall be subject to final approval from the City Manager.

36.5 Notice (except in the case of oral or written reprimand): Notice of Intended Disciplinary Action shall be prepared in writing by the department head or designee proposing the discipline and shall be served on the employee in person or by registered or certified mail. Notice shall be served prior to the action becoming effective; however, where circumstances require immediate removal of the employee from the workplace, notice shall be provided within two (2) working days from the date the employee is removed from the workplace. Employees so removed shall be placed on paid leave pending

imposition of discipline. A copy of the Notice of Intended Disciplinary Action shall also be filed with the Human Resources Director. The written Notice of Intended Disciplinary Action shall contain the following information:

1. The specific type of disciplinary action;

2. The effective date of the action;

3. The specific reason(s) or cause(s) for the actions;

4. Notice that the employee may inspect copies of all materials upon which the action is based, and

5. Notice that the employee has the right to respond orally or in writing within ten (10) days to the department head initiating the disciplinary action. No hearing before the City Manager is available to review oral or written reprimands.

An employee who responds orally or in writing to the department head shall be entitled to meet in an informal conference with the department head or designee and shall be given the opportunity to rebut the charges against him/her or to state any mitigating circumstances. In the case of oral or written reprimand, the department head's decision shall be final. In the case of discharge, demotion, suspension, or reduction in pay, the department head or other City designee shall hear and consider the facts presented by the employee and shall thereafter submit a written recommendation to the City Manager to either impose, rescind or modify the proposed disciplinary action. The recommended proposed disciplinary action shall also be served on the employee. The recommendation shall contain:

6. The specific type of disciplinary action;

7. The specific reason(s) or cause(s) for the actions;

36.6 Final Notice of Disciplinary Action: Following review of the department head's recommendation and the determination by the City Manager, the City Manager shall prepare a Final Notice of Disciplinary Action, advising the employee of the action to be taken, its effective date, and the employee's appeal rights.

1. Disciplinary action shall become effective on the date stated in the Final Notice of Disciplinary Action, unless the date is otherwise extended by the City Manager.

2. The City Manager shall file a copy of the Final Notice of Disciplinary Action with the Human Resources Director. The Final Notice of Disciplinary Action shall be delivered personally to the employee or shall be sent by registered or certified mail.

36.7 Appeal of Disciplinary Action: In the event of a demotion, suspension or dismissal, and the affected employee is not satisfied with the decision rendered by the City Manager, the employee may appeal the decision. The employee may appeal disciplinary decisions by filing a written appeal with the Human Resources Director within fifteen (15) work days

following service of the Final Notice of Disciplinary Action. The written appeal shall contain a written reply to the charges against the employee and written request for an appeal hearing. The employee shall submit a copy of the appeal to the City Manager.

36.8 If an employee submits an appeal, the City shall refer the case to a neutral hearing officer selected through the California State Mediation and Conciliation Services to hear the appeal and submit an advisory decision to the City Manager. Selection of the hearing officer shall be made by the parties' mutually selecting a list of 7 neutral hearing officers from the office of the California State Mediation and Conciliation Services. Absent mutual agreement on a name on the list, the parties will strike names from the list for final selection of the hearing officer. The selected hearing officer shall adhere to the following standard of review and hearing procedures:

1. The appeal hearing shall be informal and strict rules of evidence shall not apply

2. The parties will have the right to present and cross-examine witnesses, issue opening and closing statements, and file written closing briefs. Witness testimony shall be under oath or affirmation.

3. The hearing officer may exclude testimony or evidence which he/she determines irrelevant or unduly repetitious.

4. Attendance at the appeal hearing shall be limited to those determined by the hearing officer to have a direct connection with the appeal. Witnesses normally would be present at the hearing only while testifying and should be permitted to testify only in the presence of the employee or his/her representatives and the City's representatives

5. The appeal hearing will be held on the City's premises.

6. In conducting the appeal, the hearing officer's authority/jurisdiction shall be limited to reviewing the factual basis supporting the discipline and determining that the factual basis was reached honestly, after a fair, appropriate and procedurally correct investigation and for reasons that were not arbitrary, discriminatory or pretextual. Should the hearing officer, conducting the review specified above, affirm the factual basis for the discipline decision, he/she may not substitute his/her judgment for that of management's as to the level of discipline imposed. In the event the hearing officer finds that the level of discipline is excessive, he/she may submit an advisory opinion concerning what he/she feels would be the appropriate level of discipline to the City Manager. Should the hearing officer not affirm the factual basis for the discipline, the normal remedy will be to remand the matter to the decision level where the error occurred for reevaluation and/or correction consistent with the hearing officer's findings. In such a case, the hearing officer will have the authority to retain jurisdiction over the appeal to ensure compliance with the remand decision.

7. The cost of the hearing officer shall be borne by the City. The parties will share equally the cost of the court reporter and each side will bear their respective costs of representation.

36.9 Any decision of the City Manager shall be final and binding.

36.10 Judicial review of any decision rendered under this section shall be governed by Code of Civil Procedure section 1094.5

36.11 For employees covered by the requirements of California Government Code section 3300 et. seq., the appeal procedures in this section shall be deemed to comply with and fully satisfy the right to an administrative appeal under Government Code section 3304.

Article XXXVII –CITY RIGHTS

37.1 It is further understood and agree between the parties that nothing contained in this MOU shall be construed to waive or reduce any rights of the City, which include but are not limited to , the exclusive rights to:

- Determine the mission of its constituent departments, commissions, and boards
- Set standards of service
- Determine the procedures and standards of selection for employment
- Direct its employees
- Maintain the efficiency of governmental operations
- Determine the methods, means, and personnel by which government operations are conducted
- Take all necessary actions to carry out its mission in emergencies
- Exercise complete control and discretion and the technology of performing its work.

City Rights also include the right to determine the procedures and standards of selection for promotion, to relieve employees from duty because of lack of work or other legitimate reasons, to make and enforce standards of conduct and discipline, and to determine the content of job classifications; provides, however, that nothing herein may be read to extend the term of the MOU nor to supplement negotiations as a means for arriving at terms for a successor MOU.

Article XXXVIII – EMPLOYEE REPRESENTATION

38.1 This Memorandum of Understanding (MOU) is entered into between representatives of the City of Lodi (City) and representatives of the Lodi Police Mid-Management Organization (LPMO).

The parties hereto acknowledge and agree that this MOU constitutes the result of meeting and conferring in good faith as contemplated by Section 3500 et seq., of the Government Code of the State of California, and further acknowledge and agree that all matters upon which the parties reached agreement are set forth herein.

Both parties each certify without reservation that an adequate opportunity has been afforded its bargaining representatives to propose and vigorously advocate all negotiable subject matter_during the course of collective bargaining preparatory to signing this agreement. The City will meet and confer before changing a policy or rule that is subject to meet and confer under the Meyers-Milias-Brown Act (MMBA).

The terms and conditions of this MOU shall continue in effect during the term of this MOU.

The City and the LPMO agree and understand that if any section of the MOU conflicts with the terms and conditions of employment stated in other authorities, such as personnel rules, administrative policy and procedure, city resolutions, or city ordinances, etc. any ambiguity will be resolved in favor of the MOU language. If the MOU is silent on any issue, the applicable document (i.e. policy manual or rules for personnel administration) is controlling. State and Federal laws will be adhered to.

The City agrees to recognize LPMO representatives for the purpose of representing members of the LPMO on all matters relating to the administration of this MOU, and upon the request of an employee, on adverse actions and other matters which may be or are on appeal in accordance with the discipline article of this MOU.

ARTICLE XXXIX - EMPLOYEE RIGHTS

39.1 The City agrees that all disciplinary actions shall be taken in a timely manner, recognizing that imposing discipline, grieving such discipline, investigations, and criminal proceedings may preclude timely action. This process also includes investigations of the complaint, recommending discipline to the office of the Police Chief, and the imposition of discipline.

39.2 The City shall abide by the Public Safety Officers Procedural Bill of Rights (Government Code Section 3300 et seq.), and such is hereby incorporated into this MOU.

39.3 It is understood by both parties that the LPMO, in addition to any other rights herein specified, has the following rights:

1. To represent its members before the City regarding wages, hours, and other terms and conditions or employment

2. To receive timely written notice of changes to or adoption of any rule or regulation directly relating to wages, hours and other terms and conditions of employment.

3. With an employee's written consent, an authorized LPMO representative shall be permitted, upon request, to inspect the employee's official departmental personnel file during normal business hours. Such review shall not interfere with normal business of the Department.

The City agrees to recognize the LPMO representatives for the purpose of representing employees on all matters relating to the administration of this MOU; and, upon the request of an employee on adverse actions and other matters which may be or are on appeal in accordance with Article XXXVI of this MOU.

39.4 The City agrees to provide each represented employee with copies of special orders, general orders, training bulletins, departmental rules and regulations, and a copy of this MOU.

39.5 The City agrees not to interfere or in any way discriminate against an employee for exercising his/her right to belong to an employee organization or to exercise his/her rights under this MOU. The LPMO similarly agrees that it will not interfere with or discriminate against employees for exercising rights to belong or refrain from belonging to, supporting, or participating in the activities of an employee organization.

39.6 Both the City and the LPMO agree that no employee shall be subjected to any discrimination by the City or fellow employees in any matter relating to hiring, promotion, assignment, wages, or conditions or employment because of age, sex, creed, color, or national origin. Alleged discriminatory acts are subject to the City's Policy and Procedure regarding Discrimination, not the grievance procedure.

ARTICLE XXXX – REST PERIOD

40.1 The intent of the rest period is to ensure that the employee is adequately rested for his/her assigned work shift.

a. Employees will receive a continuous eight hour rest period immediately preceding or immediately following their scheduled court appearance or other departmental assignment(s), if less than eight hours has elapsed during:

1) the time period that employee's regular work shift ends and his/her scheduled appearance/assignment time; or

2) the time period that officer is dismissed and his/her regular work shift begins.

This rest period will not be charged to the employee.

b. If an employee receives approval to take the remaining portion of his or her scheduled shift off, the employee's leave balances will be charged for the entire shift (as if no rest period has occurred).

c. The rest period does not apply when an employee is scheduled for court or appearance/assignment the day immediately following a day off.

ARTICLE XXXXI - CHANGES IN THE MOU

41.1 The City and the LPMO agree to reopen this MOU and to renew Meeting and Conferring on the subjects set forth herein during the term of this MOU in the event that any provision of this MOU is modified by statute or by a competent order of a court in such a way as to affect either the employees or the City. In such event, all remaining provisions of the MOU shall continue in full force and effect unless and until they are also modified by statute or competent order of a court or agreement of the City and the LPMO.

ARTICLE XXXXII - SEVERABILITY

42.1 In the event that any provision of this MOU is found by a court of competent jurisdiction to be invalid, all other provisions shall be severable and shall continue in full force and effect.

CHAPTER 5 – WORK HOURS

ARTICLE XXXXIII - HOURS OF WORK

43.1 Employees shall work a "10-4" plan. Alternate work schedules may be developed and authorized by the Chief of Police.

43.2 It is mutually agreed that the City has the sole right to assign personnel, to establish hours of work and work schedules, to make changes to those schedules, to schedule employees off on compensatory time, and to schedule holidays and vacations, all depending on the needs of service.

43.3 The City and LPMO mutually agree that split shifts are very stressful and may cause health problems. Consequently, supervisors and managers shall not work split shifts except during cases of an emergency nature.

43.4 All employees in the classification of Police Lieutenant or Police Sergeant assigned to Patrol shall select annually, beginning in the month of September, for at least a one year period, their preferred team assignment, days off sequence, holidays, and vacations on the basis of their seniority and the needs of the service. Seniority shall be defined as follows: Total time in service in the classification rank. Should a member of the LPMO leave membership for any reason and return to membership within twelve months, seniority shall be as if the member never left.

ATTACHMENT A

Effective June 23rd, 2003, a 2.5% COLA will be implemented according to the following table:

Classification	Step A	Step B	Step C	Step D	Step E
Police Sergeant	4,714.50	4,950.22	5,197.73	5,457.62	5,730.50
Police Lieutenant	5,421.86	5,692.96	5,977.60	6,276.49	6,590.31
Police Captain	6,234.71	6,546.44	6,873.77	7,217.45	7,578.33

Effective July 21st, 2003, a Salary Adjustment (first increment) will be implemented according to the following table:

Classification	Step A	Step B	Step C	Step D	Step E
Police Sergeant	4,888.61	5,133.04	5,389.69	5,659.17	5,942.13
Police Lieutenant	5,743.31	6,030.47	6,331.99	6,648.59	6,981.02
Police Captain	6,891.97	7,236.57	7,598.39	7,978.31	8,377.23

Effective July 20th, 2004, a Salary Adjustment (second increment) will be implemented by adding dollars to the salary schedule according to the following table:

Classification	Step A	Step B	Step C	Step D	Step E
Police Sergeant	174.11	182.82	191.96	201.56	211.64
Police Lieutenant	321.44	337.51	354.39	372.11	390.72
Police Captain	385.73	405.02	425.27	446.53	468.86

CITY OF LODI **ATTACHMENT B**
ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

SUBJECT: :VACATION LEAVE – *Policy*

DATE ISSUED: :

SECTION: :V

SECTION 1: PURPOSE

The purpose of this policy is to provide guidance in the implementation of vacation leave.

SECTION 2: ELIGIBILITY

Each probationary and regular full-time employee in the classified service earns vacation benefits in accordance with his/her length of continuous service and in accordance with the provisions of approved memorandum of understanding or management pay plan.

Provisional, temporary, part-time, seasonal, or emergency employees shall not accrue vacation.

SECTION 3: ACCRUAL

Vacation benefits are earned in accordance with an employee's appropriate memorandum of understanding or statement of benefits.

Employees earn full vacation leave credits for any pay period in which they are in a full pay status for the equivalent of one-half or more of their regularly scheduled work hours. Hours of vacation leave are credited at the approved rate in accordance with the terms of the appropriate memorandum of understanding.

The maximum amount of unused vacation hours that an employee may accrue, at any give time is twice the employee's annual vacation entitlement. Whenever an employee's unused, accrued vacation has reached this maximum accrual amount, the employee shall stop accruing any additional vacation. Accrual will automatically resume once the employee uses some vacation and the accrual balance falls below the maximum accrual amount.

Under extenuating circumstances, requests to accrue vacation leave over the maximum may be authorized by the City Manager. Requests must be; a) submitted in writing, b) include justification

for the exception, and c) be recommended for approval by the Department Head. The City Manager has sole discretion to approve or deny such requests.

SECTION 4: SCHEDULING

Dates of vacation may be requested by the employee, but are subject to the approval of the Department Head. Approval of vacation leave is at the discretion of the Department Head given considerations such as departmental procedures for request and approval, workloads, scheduling, seniority, and in accordance with terms of the appropriate memorandum of understanding.

SECTION 5: UTILIZATION

After six (6) months of continuous service, an employee may request utilization of vacation leave.

Vacation leave may be taken in quarter hour increments. Employees are not permitted to take vacation leave in excess of their accumulated balance.

Employees on vacation leave shall be considered in full-pay status, and continue to accrue seniority, sick leave, and vacation leave credit.

SECTION 6: HOLIDAYS FALLING DURING VACATION

When a holiday or day observed in lieu of a holiday occurs on a day on which an employee is taking vacation such employee shall not be charged as using vacation for that day. The employee's compensation for that day shall be holiday and he/she shall not be paid or charged for vacation.

SECTION 7: ILLNESS OR ACCIDENT DURING VACATION

An illness or accident during a regularly approved and scheduled vacation period may be converted to sick leave when the following action is taken:

The employee, immediately upon return to duty, submits to his/her Department Head a written request for sick leave and, if requested, a written statement signed by the employee's attending physician certifying to the nature and dates of the employee's physical disability.

SECTION 8: COMPENSATION FOR VACATION LEAVE UPON SEPARATION FROM SERVICE

An employee who leaves City employment shall be compensated at his/her current rate of pay for vacation accrued but not taken up to the date of termination.

Employees planning their resignation or retirement may request permission to take a terminal vacation to the limit of their accumulated vacation leave balances. Such planning involves the submission of a written request to the Department Head for approval.

SECTION 9: CHARGEABLE ABSENCES TO VACATION LEAVE

Other than for the purposes of taking a vacation, an employee may elect to charge an approved leave of absence to vacation leave. Such absences are subject to approval from an employee's Department Head, and in accordance with the City of Lodi Administrative Policy and Procedure for Leave of Absence and the appropriate memorandum of understanding.

AGENDA ITEM E-15

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: **Adopt Resolution Amending Traffic Resolution 97-148 by Approving the Conversion from Yield to Stop Controls at the Following Three Intersections:**
- **Chestnut Street at Pleasant Avenue**
- **Chestnut Street at School Street**
- **Tamarack Drive at Lee Avenue**

MEETING DATE: **January 7, 2004**

PREPARED BY: **Public Works Director**

RECOMMENDED ACTION: That the City Council adopt a resolution amending Section 2 of Traffic Resolution 97-148 by approving the conversion from yield to stop controls at the three intersections listed below and shown on Exhibit A.
- Chestnut Street at Pleasant Avenue
- Chestnut Street at School Street
- Tamarack Drive at Lee Avenue

BACKGROUND INFORMATION: The above intersections have been reviewed based on citizen complaints received and accident history.

The Public Works Department's guideline related to traffic controls at four-legged minor street intersections is to control the street with less traffic with either yield or stop signs. Where yield signs exist, consideration should be made to convert the controls to stop signs when there is one or more accidents in a three-year period correctable by conversion to stop signs, and the Safe Approach Study guidelines are satisfied. The Safe Approach Study considers the intersection layout and any permanent obstacles (i.e., trees or structures) in the driver's line of sight while approaching the yield sign. When these obstacles require the driver approaching the yield sign to slow to 10 mph or below to see cross-street traffic, a stop sign should be considered.

In the past three years, there has been at least one accident correctable with the conversion from yield signs to stop signs at each of these intersections. The Safe Approach Study was performed, and based on the study results, we recommend Council approve the conversion from yield signs to stop signs at these three intersections.

The cost to replace the yield signs and legends with stop signs and legends at the three intersections is approximately $1,275.

FUNDING: Street Maintenance Account

_____
Vicky McAthie, Finance Director

_____
Richard C. Prima, Jr.
Public Works Director

Prepared by Rick Kiriu, Senior Engineering Technician - Traffic
RCP/RSK/pmf
Attachment

cc: City Attorney
City Engineer
Senior Traffic Engineer
Police Chief
Street Superintendent
Concerned Citizens

APPROVED: _____
H. Dixon Flynn, City Manager

RESOLUTION NO. 2004-____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THE CONVERSION OF YIELD SIGNS TO STOP CONTROLS ON CHESTNUT AT PLEASANT AVENUE, CHESTNUT STREET AT SCHOOL STREET, AND TAMARACK DRIVE AT LEE AVENUE, AND THEREBY AMENDING TRAFFIC RESOLUTION NO. 97-148, SECTION 2

==========

WHEREAS, the intersections of Chestnut at Pleasant Avenue, Chestnut Street at School Street, and Tamarack Drive at Lee Avenue have been studied based on citizens' complaints received and accident history; and

WHEREAS, the Public Works Department's guideline relative to traffic controls at four-legged minor street intersections is to control the street with less traffic using either yield or stop signs. Where yield signs exist, consideration should be made to converting them to stop signs when there is one or more accidents in a three-year period correctable by the conversion to stop signs; and

WHEREAS, the Safe Approach Study considers the intersection layout and any permanent obstacles, i.e., trees or structures, in the driver's line of sight while approaching the yield sign; and when these obstacles require the driver approaching the yield sign to slow to 10 mph or below to see cross-street traffic, a stop sign should be considered; and

WHEREAS, staff recommends that the City Council approve the conversion from yield signs to stop signs at the intersections of 1) Chestnut Street at Pleasant Avenue, 2) Chestnut Street at School Street, and 3) Tamarack Drive at Lee Avenue.

BE IT RESOLVED that the City Council of the City of Lodi does hereby approve the conversion from yield signs to stop signs at the intersections of 1) Chestnut Street at Pleasant Avenue, 2) Chestnut Street at School Street, and 3) Tamarack Drive at Lee Avenue, as shown on Exhibit A attached; and

BE IT FURTHER RESOLVED that City of Lodi Traffic Resolution No. 97-148, Section 2 "Stop Intersections," is hereby amended by the conversion from yield signs to stop signs at the intersections of 1) Chestnut Street at Pleasant Avenue, 2) Chestnut Street at School Street, and 3) Tamarack Drive at Lee Avenue.

Dated: January 7, 2004

==========

I hereby certify that Resolution No. 2004-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

2004-____

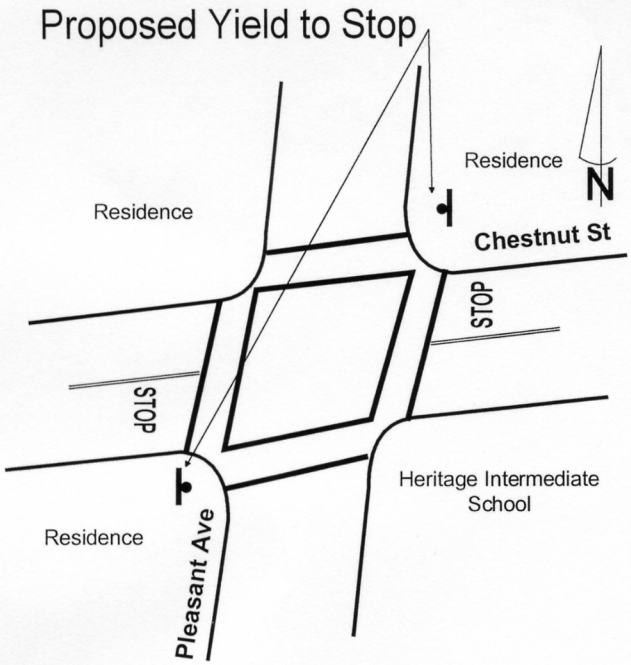
Exhibit A

CITY OF LODI

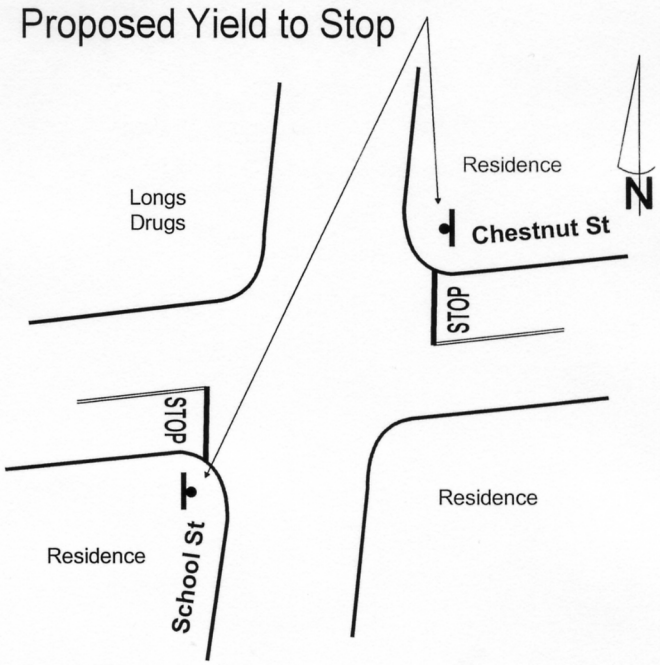
PUBLIC WORKS DEPARTMENT

Chestnut Street at Pleasant Avenue
Chestnut Street at School Street
Tamarack Drive at Lee Avenue

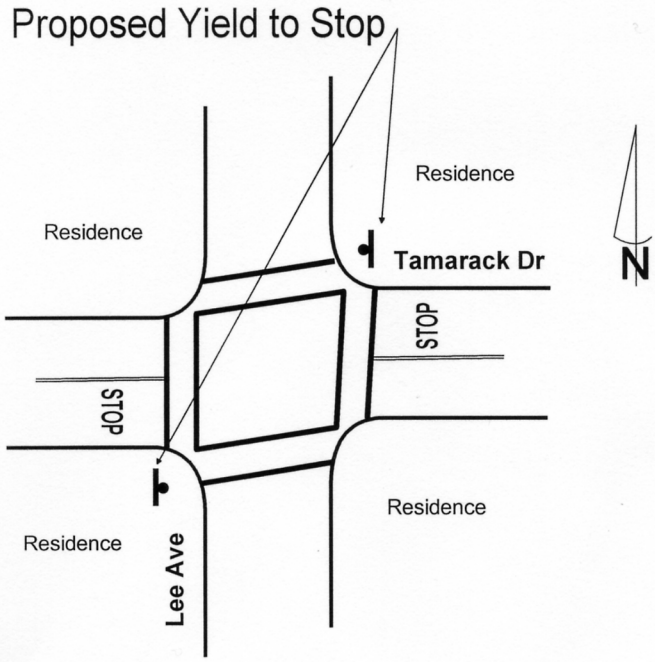
Proposed Yield to Stop



Chestnut Street at Pleasant Avenue



Chestnut Street at School Street



Tamarack Drive at Lee Avenue

yields.Ds4

AGENDA ITEM E-16

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Introduce Ordinance Repealing and Re-enacting Lodi Municipal Code Chapter 12.06 Downtown Lodi Business Improvement Area No. 1, Section 12.06.090, "Collection of Benefit Fee," and Chapter 3.01 Business Tax Certification, Section 3.01.460, "Enforcement," Relating to Collection and Enforcement of Various Fees.

MEETING DATE: January 7, 2004

PREPARED BY: City Attorney

RECOMMENDED ACTION: That the City Council introduce ordinance amending the collection procedures for unpaid Business Improvement Area (BIA) assessments and business taxes.

BACKGROUND INFORMATION: Currently, the failure to pay business taxes and BIA assessments is subject to punishment by citation as an infraction and a misdemeanor, respectively. Absent legislative authority, citations may only be issued by a peace officer. Based upon experience issuing citations for unpaid assessments, Lodi Police Department requested that the City Attorney's Office draft these revisions to the Lodi Municipal Code to authorize a Finance Department employee to issue citations. The revision will serve to appropriately direct public safety resources to those areas where they are most needed.

During review of the ordinance, various departments noted other areas for improvement. First, unpaid BIA assessments are subject to a misdemeanor prosecution while unpaid business taxes are punishable as an infraction. Since the two violations are of equal degree, the City Attorney's Office recommends that the BIA assessment violation be lowered to an infraction.

The revisions also include the Finance Department's recommendations to clarify the due dates and late penalties attendant to late payment of BIA assessments.

FUNDING: None Required.

Respectfully submitted,

Randall A. Hays
City Attorney

Attachments

cc: Kevin Bell, Finance Department

APPROVED: _____
H. Dixon Flynn, City Manager

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI REPEALING AND REENACTING LODI MUNICIPAL CODE SECTIONS 12.06.070, "EXCLUSIONS FROM BENEFIT FEES," 12.06.090, "COLLECTION OF BENEFIT FEE," AND 3.01.460, "ENFORCEMENT," RELATING TO EXCLUSIONS, COLLECTION, AND ENFORCEMENT OF VARIOUS FEES

==========

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

SECTION 1. Section 12.06.070 Exclusions from Benefit Fees - is hereby repealed and reenacted as follows:

A. No person or business shall be required to pay a fee based on a residential use of the property within the area, or a nonprofit organization as defined by Section 501(c)(3) or 501(c)(6) of the Internal Revenue Service Code located within the area.

SECTION 2. Section 12.06.090 Collection of Benefit Fee - is hereby repealed and reenacted as follows:

Section 12.06.090 Collection of Benefit Fee/Enforcement of Benefit Fee:

A. The benefit fee authorized by this chapter, for Lodi businesses (Section 12.06.050 hereof), shall be billed and collected once each year on January 1st and shall be delinquent on January 31st of each year. City will bill and collect the fees, at no charge to the area, and forward all funds collected to the area within thirty days of such collections. Late payment penalties shall be applied to businesses that are delinquent at the rate of 10% of the benefit fee per month on the first day of each month after the delinquency thereof; provided, however, the total amount of such penalty to be added shall, in no event, exceed 100% of the amount of the benefit fee due. At such time as late payment penalties equate to thirty percent of the total annual fee, action shall be taken to recover such delinquent fees. Costs of this recovery shall be borne by the business owing the fee and late penalties.

B. The Finance Director shall diligently enforce the provisions of this Chapter. For purposes of such enforcement, the Finance Director and the Finance Technicians (or equivalent position as it may be renamed from time to time) are "officers" who may issue citations to violators of this chapter pursuant to Chapter 1.08 of the Lodi Municipal Code.

C. Any person who violates any provision of this chapter is guilty of an infraction and is subject to punishment as provided in Chapter 1.08 of the Lodi Municipal Code.

SECTION 3. Section 3.01.460 Enforcement - is hereby repealed and reenacted as follows:

A. Duties of the Finance Director. It shall be the duty of the Finance Director to enforce each and all of the provisions of this chapter. For purposes of such enforcement, the Finance Director and Finance Technicians (or equivalent position as it may be renamed from time to time) are "officers" who may issue citations to violators of this Chapter pursuant to Chapter 1.08 of this code.

B. Inspections. The Finance Director, in the exercise of the duties imposed by the provisions of this section, and acting through deputies of duly authorized assistants, shall have the right to enter and examine all places of business free of charge during normal business hours to ascertain whether the provisions of this chapter are being complied with.

C. Penalty for Violation. Any person who violates any provision of this chapter by transacting and carrying on any business, trade, vocation, enterprise, establishment, occupation, or calling in the city without first having procured a business tax certificate is guilty of an infraction and is subject to punishment as provided for in Chapter 1.08 of the Lodi Municipal Code.

SECTION 4. 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, 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 all liability for damages, except as otherwise imposed by law.

SECTION 5 - 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 6. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 7. 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 _____, 2004

_____
SUSAN HITCHCOCK
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk
==========

State of California
County of San Joaquin, ss.

I, Susan J. Blackston, 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 January 7, 2004 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 2004, 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.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

RANDALL A. HAYS
City Attorney

AGENDA ITEM E-17

CITY OF LODI
COUNCIL COMMUNICATION

AGENDA TITLE: Introduce Ordinance Amending Lodi Municipal Code Chapter 9.08 "Offenses Against Property" by Repealing and Re-enacting Section 9.08.150 - "Vehicles."

MEETING DATE: January 7, 2004

PREPARED BY: City Attorney

RECOMMENDED ACTION: That the City Council introduce ordinance amending Lodi Municipal Code Chapter 9.08 to make parking without permission on private property an infraction rather than a misdemeanor and making towing mandatory.

BACKGROUND INFORMATION: Lodi Police Department has received numerous complaints from merchants along Kettleman Lane concerning cars parked in their customer lots for sale. These amendments are intended to make it easier for Lodi Police Department to respond and resolve the problem.

FUNDING: None Required.

Respectfully submitted,

Randall A. Hays
City Attorney

APPROVED: _____
H. Dixon Flynn, City Manager

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING TITLE 9 – PUBLIC PEACE, MORALS AND WELFARE, CHAPTER 9.08 "OFFENSES AGAINST PROPERTY" BY REPEALING AND REENACTING SECTION 9.08.150 OF THE LODI MUNICIPAL CODE RELATING TO VEHICLES

==========

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

SECTION 1. Section 9.08.150 "Vehicles" of the Lodi Municipal Code is hereby repealed and reenacted to read as follows:

9.08.150 Vehicles.

No person shall stop, park, or leave standing a vehicle at any time within or upon any posted property without written permission of the owner, tenant, or the occupant in legal possession or control thereof. Vehicles parked in violation of this requirement shall be removed at the vehicle owner's expense. Violations of this requirement are deemed to be an infraction.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care 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. 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 January, 2004

_____
LARRY D. HANSEN
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

==========

State of California
County of San Joaquin, ss.

I, Susan J. Blackston, 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 January 7, 2004, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held _____, 2004, , 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.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

RANDALL A. HAYS
City Attorney

AGENDA ITEM E-18

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: **Set a Public Hearing for January 21, 2004, to consider the reallocation of $50,000 of unobligated Community Development Block Grant (CDBG) funds to the Salvation Army**

MEETING DATE: **January 7, 2004**

PREPARED BY: **Community Development Director**

RECOMMENDED ACTION: That the City Council set a Public Hearing for January 21, 2004, to consider the reallocation of $50,000 of unobligated CDBG funds from a completed project to the Salvation Army.

BACKGROUND INFORMATION: The City is considering reallocating unobligated CDBG funds from a completed project to the Salvation Army for acquisition and project cost related to the shelter portion of the Hope Harbor Shelter Facility, located at 622 N. Sacramento Street.

The City Council has previously allocated $200,000 to the Salvation Army for acquisition and renovation of the food bank portion of the facility. The allocation to be considered at this Public Hearing is a new and separate project from what has been considered before and represents $50,000 of the City's pledge of $250,000 toward the Salvation Army's new shelter facility.

FUNDING: $50,000 Acct.# 458216 LOD 01-16 Lodi Lake Handicapped Acc. Trail

_____
Vicky McAthie, Finance Director

_____
Konradt Bartlam
Community Development Director

KB/jw

cc: City Attorney
SJC Community Development
Salvation Army

APPROVED: _____
H. Dixon Flynn, 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.

AGENDA ITEM H-01a

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: **Denial of Verified Claim(s) against the City of Lodi**

MEETING DATE: **January 7, 2004**

PREPARED BY: **Risk Management**

RECOMMENDED ACTION: To approve by motion action, denial of the following verified Claim filed against the City of Lodi.

(A) Charles Mauch DOL: June 24, 2003

BACKGROUND INFORMATION: Following review of verified claims filed against the City of Lodi, The City's contract administrator, DB Claims and Human Resources Staff, recommend the City deny the subject claim(s).

FUNDING: None Required

_____
Kirk Evans, Risk Manager

Attachments

cc: City Attorney
DB Claims

APPROVED: _____
H. Dixon Flynn, City Manager

AGENDA ITEM H-03a

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Appointing Four Additional Members To The Community Separator / Greenbelt Task Force

MEETING DATE: January 7, 2004

PREPARED BY: City Clerk

RECOMMENDED ACTION: That the City Council adopt a resolution appointing four additional members to the Community Separator / Greenbelt Task Force.

BACKGROUND INFORMATION: At the City Council meeting of December 3, 2003, the City Council unanimously created the Community Separator / Greenbelt Task Force for the purpose of identifying ways to maintain a community separator and preserving agricultural land/open space between Lodi and Stockton. The City Council additionally appointed 15 members to the Task Force and authorized that each Council Member be allowed to make one additional appointment to the Task Force (for a total of 19 members). The following names have been submitted as recommendations for appointment:

Name	Recommended by:
Kevin Sharrar	Mayor Hansen
Bruce Fry	Mayor Pro Tempore Beckman
Bill Cummins	Council Member Howard
Carl Fink	Council Member Land

It is recommended that Council discuss and take appropriate action on the appointment of the remaining four members of the Community Separator / Greenbelt Task Force.

FUNDING: None required.

Susan J. Blackston
City Clerk

SJB/JMP

APPROVED: _____
H. Dixon Flynn, City Manager

council/councom/GreenbeltTF2.doc

RESOLUTION NO. 2004-____

A RESOLUTION OF THE LODI CITY COUNCIL
APPOINTING FOUR ADDITIONAL MEMBERS
TO THE COMMUNITY SEPARATOR /
GREENBELT TASK FORCE

WHEREAS, the Lodi City Council, at its meeting of December 3, 2003, adopted Resolution No. 2003-230 establishing the Community Separator / Greenbelt Task Force and appointing 15 members to the Task Force; and

WHEREAS, it was set forth in the resolution that each Council Member shall be allowed to make one additional appointment (for a total of 19 members) to the Task Force; and

WHEREAS, each Council Member has submitted to the City Clerk his/her recommendation for appointment.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council that it hereby appoints the following four additional members to the Community Separator / Greenbelt Task Force:

Kevin Sharrar
Bruce Fry
Bill Cummins
Carl Fink

Dated: December 3, 2003

I hereby certify that Resolution No. 2004-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

AGENDA ITEM H-03b

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Appointment To The San Joaquin Partnership

MEETING DATE: January 7, 2004

PREPARED BY: City Clerk

RECOMMENDED ACTION: That Council, by motion action, appoint a member of the Lodi City Council to serve on the San Joaquin Partnership.

BACKGROUND INFORMATION: The City Clerk's Office received a letter from Council Member Keith Land (filed) resigning as the Delegate to the San Joaquin Partnership. Currently, Mayor Pro Tempore John Beckman serves as the Alternate to the Partnership.

The San Joaquin Partnership meets on the 4th Thursday of each month at 8:00 a.m. at the Partnership's Office, located at 2800 W. March Lane, Suite 470, Stockton.

It is recommended that, following discussion, the City Council appoint a member of the Lodi City Council to fill this vacancy.

FUNDING: None required.

Susan J. Blackston
City Clerk

SJB/JMP

APPROVED: _____
H. Dixon Flynn, City Manager

council/councom/AppointSJPartnership.doc

AGENDA ITEM H-03c

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Post For Expiring Terms On The Site Plan And Architectural Review Committee

MEETING DATE: January 7, 2004

PREPARED BY: City Clerk

RECOMMENDED ACTION: That Council, by motion action, direct the City Clerk to post for the following vacancy on the Site Plan and Architectural Review Committee.

BACKGROUND INFORMATION: Two terms on the Site Plan and Architectural Review Committee are due to expire in January 2004. It is, therefore, recommended that the City Council direct the City Clerk to post for the expiring terms below.

Site Plan and Architectural Review Committee

Donald P. Kundert	Term to expire January 1, 2004
Roger Stafford	Term to expire January 1, 2004

State statute 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.

FUNDING: None required.

Susan J. Blackston
City Clerk

SJB/JMP

APPROVED: _____
H. Dixon Flynn, City Manager

council/councom/Posting1.doc

AGENDA ITEM I-01

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Update regarding audit (agreed-upon services) of Envision Law Group's billings.

MEETING DATE: January 7, 2004

PREPARED BY: Deputy City Manager

RECOMMENDED ACTION: That the City Council receive an update regarding the audit of agreed-upon procedures of Envision Law Group's billings.

BACKGROUND INFORMATION: At the request of Mayor Hansen, this item is placed on the agenda to allow for a verbal update regarding the status of the audit of the Envision Law Group's billings.

FUNDING: Not applicable

Janet S. Keeter
Deputy City Manager

JSK/sl

APPROVED: _____
H. Dixon Flynn, City Manager

AGENDA ITEM I-02

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: **Review Options for Conducting a Public Survey and Authorize the City Manager to Negotiate such Services as Determined by Council**

MEETING DATE: **January 7, 2004**

PREPARED BY: **Deputy City Manager**

RECOMMENDED ACTION: That Council review options for conducting a public survey and authorize the City Manager to negotiate such services as determined by Council.

BACKGROUND INFORMATION: Council Members, both present and past, have periodically brought up the issue of surveying the public to ascertain project and service priorities along with other related questions. This matter was once again discussed during the December 17, 2003 Council meeting in relation to the City Manager's budget presentation. The City of Lodi is looking at a possible shortfall of $4.7 million over the next 15 months if the State does not backfill the Vehicle License Fee revenues. Staff indicated that the City of Roseville engaged the services of DataCycles to prepare and conduct a survey in response to an anticipated $11 million budget shortfall. DataCycles additionally compiled the survey results for presentation purposes and established a relationship with the City of Roseville for ongoing survey tasks.

The City of Roseville's survey can be found at http://www.roseville.ca.us. The purpose of Roseville's survey was three-fold: 1) Prioritize the City's General Fund services from the residents' point-of-view 2) Provide qualitative feedback (opinions and ideas) for their Community Standards and Visioning Committee and 3) Establish an e-mail and address list for an Online Citizens' Advisory Panel. The survey allowed for results to be submitted either electronically via the Internet or via a hard copy through the mail. The City of Roseville is extremely satisfied with the work product as presented by DataCycles and is using the information for budget discussions and decisions.

Attached for Council's information is a proposal from DataCycles along with a copy of the City of Roseville's survey results and information from their web site. DataCycles has proposed a fee ranging from $26,660 - $29,715 depending on certain options which will be discussed during the staff presentation. DataCycles proposes a multi-phased survey process: Phase I to include surveying 4,000 randomly selected voters who voted in the last election. Phase II to include surveying all utility customers. Additionally, the survey process will generate approximately 1000 – 1300 Online Citizens Advisory Panel members that the City can use for future Lodi community feedback projects.

APPROVED: _____
H. Dixon Flynn, City Manager

Staff has also evaluated the possibility of preparing a survey in-house. Because of the intricacies and nuances of preparing and wording the questions and the details involved with facilitating and processing the survey, it is staff's recommendation that the survey not be done by City staff. The information which will be gleaned from an independent party will be essential to the City Manager to make sound decisions regarding budget priorities. The survey results will be a tool for the City Manager to use for directing staff regarding budget matters.

One final comment regarding options for conducting a survey is worth noting. The Lodi News-Sentinel has informally offered to allow the City to include a survey in the newspaper with details to be worked out if the City is interested in pursuing this option. Staff will attempt to garner more information regarding this option prior to the January 7, 2004 Council meeting.

Staff is prepared to recommend that Council engage the services of DataCycles to facilitate the surveys for the City of Lodi. Staff has met with and spoken with Mr. Steve Childs from DataCycles, a number of times and has additionally spoken with the City of Roseville regarding their satisfaction with DataCycles. Due to the outstanding reference from the City of Roseville, and the quality work product from DataCycles, staff would recommend that Council authorize the City Manager to negotiate a service agreement with DataCycles for the services noted in their attached proposal. Mr. Childs has indicated that they will expedite the project to ensure that results are available to the City of Lodi by April 2, 2004 for budget meetings.

FUNDING: All funds

_____
Vicky McAthie, Finance Director

_____
Janet S. Keeter
Deputy City Manager

JSK/sl

Attachments

DataCycles
Real-time Insight for Business Change

SCOPE OF SERVICES AND PRICE QUOTATION

PROJECT: Budget Priorities Study: Random Sample of Voters; Utility Customers
PREPARED FOR: City of Lodi
PRESENTED TO: Dixon Flynn / Janet Keeter
PREPARED BY: Steve Childs
PROPOSAL DATE: December 30, 2003

This document outlines proposed work to be conducted by DataCycles on behalf of the City of Lodi. It involves two phases of a survey of Lodi residents that will help to determine how General Fund City services should be prioritized for future funding. In addition, this work will generate approximately 1000-1300 Online Citizens Advisory Panel members for future Lodi community feedback projects. The first phase of the work is a survey of Lodi registered voters who voted in the last election. The second phase involves opening up the survey to all residents of Lodi, promoted through City of Lodi utility bills and in local media, as determined by the City.

A. Project Objectives

1. Create metrics on key services provided to Lodi residents through the City's General Fund. Gather supporting qualitative feedback.
2. Identify and compare service priorities of random sample of Lodi voters with those of general Lodi residential utility customer population.
3. Create awareness of General Fund expenditures and trade-offs; "Buy-in" for service cuts; community involvement in the budget and planning process.
4. From survey respondents, create an "Online Citizens Advisory Panel" to use for other community outreach feedback projects.
5. Gather qualitative feedback on key benefits/distractions to living in Lodi. (Optional – subject to survey length).

B. Reporting Requirements for Voters and Utility Customers (from collected data):

1. Average score ranking of services.
2. Composition score ranking of services.
3. High-low score ranking of services.
4. Text comments by service area.
5. Count of text comments by service area, ranked.
6. Demographic information.
7. Comparison of service rankings between General population (Utility Customers) and Random Sample (Lodi Voters).

C. Survey Audiences to Include:

1. Random selection of Lodi voters (4000) who voted in last election, one per household. (Phase 1)
2. All Lodi Utility Customers. (Phase 2)

D. Project Timetable: (L= Lodi; D = DataCycles)

- 1/07 – Lodi City Council: Go/no go decision. (L)
- 1/09 – Scope of Services, Agreements, Timelines approved. (L)
- 1/16 – Draft of services submitted, draft of postcard copy, and Lodi logo (L)

- 1/19 – Lodi establishes business reply permit with Lodi post office. (L)
- 1/21 – Revised draft of copy for postcard and utility stuffer submitted. (D)
- 1/23 – Voter list is acquired in Excel format for survey. (D)
- 1/24 – Final list of services approved for survey. (L&D)
- 1/24 -- Draft survey introduction to DataCycles (1-2 paragraphs) (L)
- 1/27 – Final postcard copy and layout, permit #, and address list to printer. (D)
- 1/30 – Survey URL's assigned. (D)
- 1/30 – Preview Survey online. (D&L)
- 2/03 – All survey changes and final layout approved. (L)
- 2/04 – First survey postcard mails to voter sample. (D)
- 2/09 – Draft copy of utility bill copy submitted. (D)
- 2/11 – Final utility bill copy approved. (L)
- 2/11 – Reminder postcard mails to voter sample. (D)
- 2/13 – Utility inserts and invoice message copy to mailing house. (L&D)
- 2/16 – Lodi coordinates PR effort for 2/23 launch for general survey.
- 2/23 – Press releases appear in local media. (L)
- 2/23 – General survey launches to Lodi utility customers. (L&D)
- 3/22 – Utility invoice messaging and inserts terminated (one month cycle). (L)
- 3/31 – Both surveys are closed. (D)
- 4/02 – Reports to Lodi (Format PDF, Excel, Word). (D)

E. <u>Audience Identification Requirements:</u>

[Note: Through Aristotle, a national database company of voters, 4,000 unique residential names and addresses are to be randomly selected from a list of Lodi residents who voted in the last election, one individual per household. Aristotle will provide the following information to DataCycles in Excel, with one row per participant, one column for each information field listed below:

A. <u>Lodi Voters (for mailing)</u>
(To be provided in Excel to DataCycles)
1. First Name of Voter
2. Last Name of Voter
3. Street Address
4. Apartment #
5. City, State
6. Zip (9 digit preferred)

F. <u>Description of Services:</u>

DataCycles will, with the assistance of Lodi project leads where necessary, provide the following services for this project as outlined in paragraphs A through E:

Project configuration Create an information model (registration process and survey) for the purpose of measuring the importance of Lodi services and related information. This includes final question development, messaging, rating and scoring methods, data segmentation, and reporting requirements.
Survey Design and Layout Develop appropriate design and layout of the online registration and survey forms, coded in HTML.
Test and Validate Model Using a group of 3-8 Lodi management staff, conduct a live test (preview) to gather feedback on the draft survey form, and then incorporate suggestions into final model.

Audience Configuration Determine audience segmentation, prepare specs on participant data, and configure the audience list for postcard mailing. Manage participant registration process and migrate registered participants into survey audience, checking for duplicates, proper emails, etc.
Project Management and Data Collection Manage the data collection, participant correspondence, bounced mail, data and audience security, and participant anonymity.
Reporting Summarize participant status and project stats; provide online access to real-time data, project data exports in Excel, and offline report summaries of scores and text comments.
Related Services Assist in drafting copy for postcards used to sample Lodi residents; coordinate production schedule. (Paper version of survey and manual data input of paper survey responses can be provided at additional, nominal charge.)

DataCycles specializes in achieving high survey response rates while collecting practical, actionable information from employee and customer populations. DataCycles is a hybrid information consultancy, in that our online information gathering and analysis is generated by proprietary software technology, while our information modeling and survey design is done through consultation with the client in a collaborative process in which the customer retains final approval. DataCycles represents to its clients only that it will provide a set of useful, qualitative data that can assist in business decision-making, leaving interpretation of the data to the client.

Confidentiality: Information collected in response to survey requests and any identifiable information or audience data will not be sold or otherwise shared with third parties by DataCycles except as provided in our subscription agreement (for example: industry standard procedures for e-mail messaging or as required by applicable laws) without the prior written consent of Subscriber. Subscriber agrees that identities of survey participants (or identifying information) will not be disclosed to Subscriber where participant confidentiality or anonymity has been promised in survey notices or in any messaging related to these projects. Confidential opt-in advisory panel lists generated from this study are DataCycles' property and will remain in DataCycles' custody at all times, available for use by the City of Lodi in subsequent feedback projects that are managed and conducted by DataCycles, subject to normal project fees.

G. Pricing[1]

DataCycles:

Annual Subscription to DataCycles Service (1/9/04 – 1/8/05)		$ 2,750 ($3,000 deferred[2])
Phase 1	Budget Priorities Study: Random Sample of Lodi Voters	$14,000
Phase 2	Budget Priorities Study: Lodi Utility Customers	$ 6,000 (40% discount[3])
Total DataCycles Fees		**$22,750**

Estimated Production Costs[4] (based on actual bids):

Postcard Mailings:		
Design, print, and mail 4,000 postcards X 2 mailings		$1,700
Outbound presorted first-class postage (.19 each)		$1,520
Voter list rental for 2 mailings ($25/m X 4K X 2)		$ 200
Return postage from postcard mailings		$ 340
Design and create paper survey		$ 150
Data Input from paper surveys		$ 580
Subtotal Postcard production costs	$4,490	
Utility Bill Insert:		
Design, print, and ship 25K bill inserts w/ reply card		$1,265
Return postage from insert reply card		$ 445
Data Input from paper surveys		$ 765
Subtotal Postcard production costs	$2,475	

Total Estimated Production Costs **$ 6,965**

Total DataCycles and Production Costs **$29,715**

Cost Reduction options:

If Lodi performs data input from estimated 925 paper surveys[5]**:** **$28,370**

If, in addition, utility insert/reply card is not used[6]: **$26,660**

Pricing Footnotes:

1. Original DataCycles price estimate was $29,750 plus production expenses of approximately $8,000, or a total of $37,750. In an effort to work with the City of Lodi, this proposal reflects a $7,000 price reduction of DataCycles' fees, $3000 of which is deferred and will not be charged unless Lodi performs subsequent work with DataCycles. There is no markup on any production and mailing costs.
2. Subscription is normally $5,750 per annum. In an effort to shave costs, we have deferred $3,000 until Lodi chooses to conduct additional studies with DataCycles.
3. Normal price for this phase is $10,000.
4. Prices shown are from recent bids from a reliable printer and mailer in Sacramento. Final amounts may vary slightly, and postage amounts are determined by exact number of inbound/outbound pieces. DataCycles will coordinate printing and mailing, but actual invoices will be sent directly to Lodi from printer. City of Lodi will be responsible for depositing money in its own business reply permit account in Lodi. Outgoing mail will use the mailing house's permit in Sacramento.

5. DataCycles outsources paper survey data input at $20/hour. Approximately 110 surveys can be entered in an 8 hour shift.
6. The insert reply card in the utility bill stuffer is the only method of allowing customers to request a paper survey without calling a phone number. It is possible to print a message on utility bills with a survey URL, and a phone number to request paper surveys, but this requires Lodi staff to transcribe hundreds of requests from voicemail, as opposed to the more efficient and accurate method of typing names and addresses from reply cards. In addition, not having the insert will reduce responses by half for this portion of the study, thereby reducing the advisory panel counts for future studies.

Fees include all services described in paragraphs A – F. Special reporting needs, change orders, or delays in timeline caused by the City of Lodi may incur additional fees. Prices assume timely access to relevant City of Lodi personnel in order to develop appropriate information models, and assistance in maintaining timelines. Consulting time has been estimated with each project in accordance with the timeline outlined. (Fees assume one in-person meeting at end of project between DataCycles and Lodi personnel). If the project requires additional reporting, presentations, consulting, or meetings, DataCycles will provide such services at $200/hr including travel time and expenses.

Fees are estimates subject to approval of timeline, project objectives and reporting requirements (as indicated by acceptance of this scope of services and quotation). Project fees are separate from the annual subscription fee, and assume that the City of Lodi will receive reply cards for paper survey requests, generate a name and address mailing list from these cards, and will copy, collate, and mail paper surveys and color-coded, stamped, return envelopes. This project is authorized and performed only under a valid subscription.

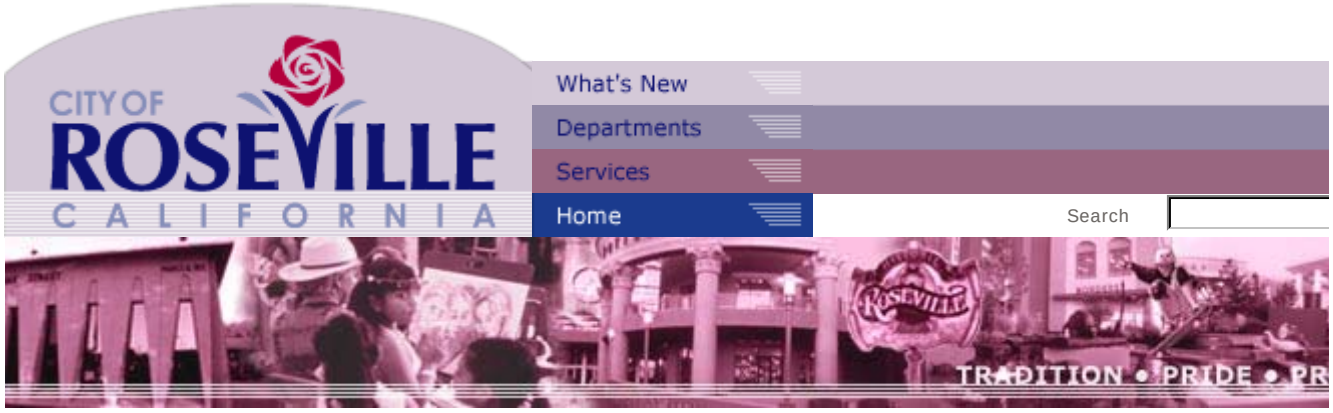
Fees estimated are based in part on information provided by the Subscriber, and are believed to be sufficient to cover all required services. If additional expenses become known, the Subscriber will be notified in advance and will have the opportunity to approve such expenses.

Payment Terms: The subscription fee and Phase 1 of project fees will be invoiced on 1/12/04, net 30 days. The remaining fee for Phase 2 ($6,000) will be invoiced on 3/1/04, net 30 days. All production and mailing costs will be invoiced directly from printer/mailer to the City of Lodi. Postage amounts must be deposited by the City of Lodi by the deadlines noted in the timeline in paragraph D. Data input, if managed by DataCycles, will be invoiced when incurred and fees are due upon receipt.
On-line Access: A unique user name and password will be issued to the Subscriber allowing on-line access to project results. Additional reports and an optional data export will be provided to Subscriber off-line. Subscriber assumes responsibility for preventing unauthorized distribution of user name and passwords, which provide authenticated access to the Subscriber's data in the DataCycles system.

Accepted By: **Date:**

_____ _____

Janet Keeter
Deputy City Manager
City of Lodi



Community Surveys

The Results are In!

City-wide Services Survey Complete

Parallel to the establishment of the Community Standards & Visioning Committee, the City contracted with DataCycles, an independent consulting firm, to conduct an on-line citizen survey.Respondents were asked to log on and complete a survey rating what they feel are the important General Fund services, programs, and facilities.

DataCycles conducted both a random sampling of the City's 40,000 electric utility customers, a general survey open to all residents. From the random sample, a total of 1,506 households responded both on-line and via a paper version. The survey was then opened up to the genera public in August with all responses due by September 5, 2003. This second survey produced a of 1690 responses, again from both on-line and paper versions.

As a separate project, DataCycles created an On-Line Citizens Advisory Committee. Responder either the random sample or the general survey were asked if they would like to be sent speci questions in the future for their input. Questions that are posed at the Community Standards & Visioning Committee can be e-mailed to the on-line survey group, who can respond via e-mail DataCycles for compilation and submittal to the City. A total of 1,500 residents said they woul agree to receiving periodic mini-surveys via e-mail.

Results for the first On-Line Citizens Advisory Panel surveys will be released in the near future One-half of the OCAP members were asked what they thought about circulation in Roseville an region. The other half are being asked to review the City's website and rank future services th might be provided on-line.

All information from individual households will be kept strictly confidential and reported to the as tabulated data with no defining characteristics that will allow individuals to be identified.

The use of technology and the proprietary software of DataCycles have proven very effective i other Northern California cities that have asked their citizenry to comment on current issues. T survey instruments will be very important tools to provide information when the Community Standards Advisory Committee and the Council are determining policies to guide the future of Roseville's General Fund services, programs, and facilities.

Print E-Mail a friend

Staff Report - Survey Results

Survey Results

Rankings

- Random Sample Ranking of General Fund Services
- Random Sample Comparison With General Survey
- Random Sample Ranking and Score Composition
- Random Sample Essetial and Not Important Scores
- Random Sample Demographics
- General Survey Demographics

Comments

Random Sample

- Random - Rec, Library & Communication
- Random Econ Development, CDD & Roads
- Random Public Safety
- Random Parks Facilites Misc
- Random New Services

General Survey

- General - Rec, Library & Communication
- General Econ Development , CDD & Roads
- General Public Safety
- General Parks Facilites Misc
- General New Services

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(916) 774-5200

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AGENDA ITEM I-03

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Authorizing Staff To Solicit Proposals For A Catering Service And Rental Contract For Hutchins Street Square Facilities And Authorizing The City Manager To Reject Or Award The Contract

MEETING DATE: January 7, 2004

PREPARED BY: Charlene Lange, Community Center Director

RECOMMENDED ACTION: Adopt resolution authorizing staff to solicit proposals for a catering service and rental contract for Hutchins Street Square facilities and authorizing the City Manager to reject or award the contract.

BACKGROUND INFORMATION: In addition to renting facilities for conferences, weddings, and private parties, Hutchins Street Square also produces many special public events. Many, if not all, of these events require the services of a food caterer, liquor license, and/or concession personnel. In order to streamline services, provide added value to clients, and generate additional revenue for the City, it would be advantageous to secure the services of an on-site caterer. By renting kitchen and small office space to a catering vendor at market rate, the City could realize additional revenue. This service would not be a mandatory requirement for any rental; however, it would certainly be a convenience for clients if they so choose to use the on-site caterer. Also, any catering services secured by private rentals of Square facilities would be charged back to the renter. A copy of the RFP is attached.

FUNDING: None – no funding is required for this proposal.

_____
Charlene J. Lange
Community Center Director

CJL/TS

Attachment

APPROVED: _____
H. Dixon Flynn, City Manager

council/councom/HSScatering.doc

Request for Proposals
-
Food Catering Services & Rental Contract
at
Hutchins Street Square
in
The City of Lodi, California
(Specification No. _____)

Notice is hereby given that the Purchasing Officer of the City of Lodi, California, will receive sealed proposals pursuant to Specification No. _____ at the Finance Department, City Hall Annex, 212 West Pine Street, Lodi, CA 95240, (P.O. Box 3006, Lodi, CA 95241-1910) not later than

11:00 a.m. Friday, January 30, 2004

at which time they will be publicly opened in the Public Works Conference Room, City Hall, 221 West Pine Street, Lodi, California, and provided to the City of Lodi Community Center Administration for evaluation.

Proposals received after said time will not be considered. Each proposal shall be submitted in a sealed envelope plainly marked

Proposal: Food Catering Services & Rental Contract - Hutchins Street Square
Due January 30, 2004

The Request for Proposals is intended to be used to qualify and select a firm to rent space at, and to provide on-site food catering services for events at Hutchins Street Square, 125 South Hutchins Street, Lodi, CA.

Individuals or firms submitting proposals must have demonstrable knowledge and experience with providing catering services.

The City of Lodi reserves the right to accept such proposal as may be deemed most advantageous to the City, the right to waive any informality in a proposal, and the further right to reject any and all proposals.

Technical questions regarding this project may be directed to Tea Silvestre, Community Center Director, telephone number (209) 333-6782.

Joel E. Harris
Purchasing Officer
City of Lodi

PROPOSAL INSTRUCTIONS

I. ADMINISTRATIVE INFORMATION.

1. Proposer's Responsibilities

The City of Lodi will receive sealed proposals to qualify and select a firm to provide catering services for the City of Lodi at Hutchins Street Square, 125 South Hutchins Street, Lodi, CA.

Responses to this Request for Proposal must be received by the City of Lodi no later than

11:00 a.m. Friday, January 30, 2004

Proposals must be clearly marked "Proposal – Food Catering Services & Rental Contract – Hutchins Street Square; Due January 30, 2004", and should be delivered to

City of Lodi:
Attn: Purchasing Officer

(If delivered by FedEx, UPS, or courier):
212 West Pine Street
Lodi CA 95240

(If delivered by mail):
P O Box 3006
Lodi CA 95241-1910

Proposals received after 11:00 a.m. Friday, January 30, 2004 will be returned to the proposer unopened.

Proposer should read and understand the information and instructions for responding to this Request for Proposal.

Proposer shall comply with all federal, state and local laws, ordinances and regulations that in any manner affect this project.

Proposer shall provide satisfactory proof of liability, casualty and workers' compensation insurance in amounts and with coverage satisfactory to protect both Proposer and the City of Lodi from claims, damages or issues by any employee of vendor or City of Lodi which may arise from the use of information provided in the Proposal, or from damages under any contract awarded as a result of this RFP. Any confidential information, or information protected by copyright, patent, or trademark, included in Proposal submitted by any individual or firm should be clearly noted as such.

Upon evaluation of qualifications and proposals, the City of Lodi may select a firm to provide catering services as specified in "Specifications - Scope of Work" Upon selection, the City of Lodi may enter into negotiations with selected contractor for determination of contract terms and pricing.

Failure to respond to any requirements outlined in this Request for Proposal, or failure to enclose copies of the required documents, may disqualify the proposal. Companies declining to submit a proposal in response to this request should so advise the Purchasing Officer, in writing, to preclude exclusion from future proposal requests.

The City of Lodi reserves the right to reject any or all proposals.

2. Pre-Proposal Conference

A pre-proposal conference is scheduled for 10:00 a.m. on Tuesday, January 13, at Hutchins Street Square. All properly licensed contractors or firms planning to submit a proposal in response to this RFP should be in attendance.

3. Proposal Format

Proposal shall be submitted in bound or booklet form, computer-generated or typewritten, with information presented in the following order: (1) Letter of Introduction on Company Letterhead, to include company background, office location and mailing addresses, telephone and FAX numbers, company principals and primary contact(s) for the City. Cover letter shall also include information regarding size of staff, description of equipment, staff training programs, and a discussion of past or current delivery of similar services; (2) A detailed outline of services to be provided; (3) Cost of services; (4) Not less than four references from present and former clients; (5) Statement of Insurance Coverage; (6) Copies of current permits and licenses held, to do business in the State of California, San Joaquin County and the City of Lodi; and (7) Signature page, with State License number.

Unless otherwise called for, one (1) copy of the Proposal shall be submitted.

4. Interpretation

If any person contemplating the submittal of a proposal is in doubt as to the proposal procedures, such proposer should contact the Project Manager for clarification. Any interpretation or correction of this RFP will be made only by addendum sent to those who have received this RFP. The City of Lodi will not be responsible for any other explanation or interpretations of the RFP.

5. Withdrawal of Proposal

Any proposer may withdraw a proposal, either personally or by written request, at any time prior to the scheduled closing time for receipt of proposals in response to this RFP. No proposer may withdraw a proposal after the time and date set for the opening thereof.

6. Multiple Proposals

No person, firm, or corporation shall be allowed to file or be interested in submitted multiple proposals for the same work or services unless alternative proposals are requested.

7. Addenda

Acknowledgment of receipt of any addendum issued during this RFP process shall be indicated in the RFP response, and shall be made a part of any agreement made between the City of Lodi and the selected contractor pursuant to this RFP.

8. Opening of Proposals

All proposals, regardless of any irregularities or informalities, will be opened and only the name of the proposer (individual, firm, or corporation) shall be read into the public record at the time and place set forth in the Request for Proposals. Late (delivered) proposals will not be accepted.

Proposers or their authorized representatives may be present at the opening of the responses to the RFP.

9. Disputes

In case of discrepancy between words and figures, words shall prevail during the evaluation; provided, however, that the City reserves the right to construe any proposal according to its true intent where it contains a patent mistake.

10. Evaluation of Proposals

Proposals will be evaluated on content and presentation, with emphasis on verifiable experience in providing similar services, and on extent of proposed services. Consideration will also be given to size of staff, training programs, equipment provided, proposed costs, references, and prior experience (if any) with the City.

11. Decision to Reject

The City reserves the right to reject any or all proposals for any reason, or for no reason, to re-advertise for proposals, or to cancel a proposal listing and elect to perform the project or work itself. The City reserves the right to reject as non-responsive any proposal which is incomplete, modified, unsigned, or illegible or which is not otherwise submitted in accordance with the requirements of this Request for Proposal.

12. Scope of Services

Proposer shall be deemed an independent contractor and not an agent, subcontractor or employee of the City. Proposer shall not enter into a subcontract agreement without the City's prior consent. The services required are specified herein as "III. Specifications" and are incorporated herein by this reference.

13. Invoicing and Verification of Costs

Invoices submitted by selected service provider shall include sufficient detail to provide verification of the invoiced amount, and shall include all applicable supporting documentation.

Properly documented invoices shall be submitted to

City of Lodi - Hutchins Street Square
125 South Hutchins Street
Lodi CA 95240

II. SPECIAL CONDITIONS

1. Licensing of Food Catering Service

Service provider shall hold a valid State of California license at the time proposal is submitted, and, if awarded a contract for services subsequent to this RFP, shall ensure that such license remains in effect during the period of the contract.

2. Force Majeure

Performance of the required services shall be pursued with due diligence in all requirements hereof; however, neither party shall be liable for any delay or nonperformance due to causes not reasonably within its control. In the event of any delay resulting from such causes the time for performance and payment hereunder shall be extended for a period of time reasonably necessary to overcome the effect of such delays. In the event of any delay or nonperformance caused by such uncontrollable forces, the party affected shall promptly notify the other in writing of the nature, cause, date of commencement thereof and the anticipated extent of such delay, and shall indicate whether it is anticipated that the completion dates would be affected thereby.

3. Insurance

The selected service provider must provide a certificate of insurance in a form acceptable to the City Risk Manager prior to entering into any agreement made pursuant to this RFP. The service provider shall maintain such insurance as will cover and include the entire obligation assumed in the agreement as well as such insurance as will protect the service provider from claims and liability under Worker's Compensation Acts, personal liability, property damage, and all other claims for damages, including personal injury, and death, which may arise from operations under the agreement. Risk Manager: (209) 333-6704.

5. Records and Audits

Service provider shall maintain accurate and complete records specifically relating to the Services provided under the agreement. Service provider shall also keep records and books of account showing times and scope of services provided in the performance the agreement. City shall have the right to inspect and audit the books, records, and other items relating to the Agreement.

6. Scheduling:

Services shall be scheduled by the Hutchins Street Square administration. In most cases, notice of one week will be given prior to any requirement for catering services; but may include events with only 24 hours notice.

7. Subcontracting:

Should any proposer contemplate subcontracting any part of the work or services under the agreement, it shall submit with its proposal the name of the proposed subcontractor who shall perform any part of the work. It shall be understood that the service provider to whom the contract is awarded shall be fully and solely responsible for the named sub-

contractor and for the work done by the sub-contractor in any service assignment scheduled by the City of Lodi with the service provider.

8. Changes:

The agreement shall not be assigned or transferred without the written consent of City. No changes or variations of any kind are authorized without a written and signed amendment to the agreement. The proposed work or services shall be diligently prosecuted in accordance with the agreement. The agreement may be subject to extensions, reductions, or other revisions as may be necessary during the course of the Work, which shall be effectuated by Agreement Riders duly executed by the Project Manager.

9. Standard of Performance:

1.0 The selected service provider shall be required to unconditionally warrant that it shall use sound and professional principles and practices in accordance with the highest degree of skill and care as those observed by national firms of established good reputation as well as the current normally accepted industry standards, in the performance of services required herein. The performance of the service provider's personnel shall also reflect their best professional knowledge, skill and judgment.

2.0 If any failure to meet the foregoing warranty appears during the term of the agreement the City may terminate the agreement and require reimbursement of all expenses necessary to replace or restore such services.

10. Indemnity

The selected service provider hereby agrees to protect, indemnify, defend and hold harmless City, its officers, agents, and employees from any and all demands, claims or liability of any nature, including wrongful death, caused by or arising out of the service provider's officers', agents' or employees' negligent acts, errors, or omissions, or willful misconduct, or conduct for which the law may impose strict liability on the Proposer in the performance or nonperformance of the agreement.

11. Interest of Proposer

At all times the service provider shall be deemed to be an independent contractor and the proposer shall not be authorized to bind City to any contract or other obligation. Under the agreement, the service provider shall certify that no one who has or will have any financial interest under the agreement is an officer or employee of City.

12. Entire Agreement:

The agreement between City and the selected service provider will constitute the entire agreement of the parties hereto, and will supercede any previous agreement or understandings. The agreement may not be modified except in writing and executed by both parties.

13. Governing Law:

The laws of the State of California shall govern this RFP process and the agreement. All services provided to City shall comply with all policies, rules and regulations which may be in effect during the term of the agreement, as well as all federal, California and local statutes, ordinances, and regulations; and the venue of any actions, disputes, or claims brought thereunder shall be laid in or transferred to the County of San Joaquin in the State of California.

III. SPECIFICATIONS

It is the intention of the City of Lodi to award one contract to proposer(s) that can both reside on-site and provide the catering service at Hutchins Street Square. Based upon current usage, it is anticipated that the caterer would be required to provide the following services (this is not a preset schedule, but is intended as a guide).

a) The proposer must be available to provide group (i.e., 20 to 350 persons) food service for the following schedule: seven to ten (7 to 10) times per month, during normal business hours, Monday through Friday, 7 a.m. to 6 p.m.; in addition, proposer should be available to provide catering service for special events on weekends and evenings for larger groups (350 to 800 persons); and may elect to provide concession service for performing arts events and other public events.

b) Group reservations are made in advance through the Hutchins St. Square administrative office. HSS administration shall inform groups of their option to 1) have their own catering, or 2) contract with the food service provider.

c) Some groups attend the Square regularly each year. The groups that attend with some regularity include:
    a. Arts Commission – monthly art receptions (attendance 100-200 persons)
    b. Arts Commission – annual Art on the Square festival (attendance 1,000 to 2,000 persons)
    c. Chamber of Commerce - Sandhill Crane Festival (attendance 2,000 to 3,000 persons)
    d. Chamber of Commerce – State of the City luncheon (300 persons)
    e. Hutchins St. Square Foundation – Annual Christmas Fundraiser (450 persons)
    f. City of Lodi -- Meetings and Conferences (20 to 400 persons)
    g. Marlo Kerner – Night Time Live concerts (350 persons)

    Additionally, several other City and non-profit organizations use the Square at various times. HSS cannot commit to any definite volume during the contract period. The above mentioned groups may choose self service on some occasions.

d) **Menu.** Proposer should submit to HSS sample menus detailing the meals that they will include as choices for groups requesting food service. Include information on specialties that may be available in areas of ethnicity or preparation (e.g., no msg, vegetarian, special cuisines, etc). The menu should include a variety of standard meals, i.e., breakfasts to include cereal, eggs, toast, etc.; lunches to include sandwich combinations, salads, and other cold plates, with hot meal options such as hamburgers,

hot sandwiches, stew, casseroles, soups and; dinners to include soups, salads, hot sandwiches, stews, casseroles, spaghetti, main entree's such as chicken, fish, and beef, and some specialty items such as pizza, lasagna, enchiladas, and chow mein. Desserts and beverages should be offered as well. Beverages should include coffee, tea, milk, juice, iced tea, and soft drinks. Alcoholic beverages may also be included for special events. The items listed here are offered as a guide. The food service proposer should submit a recommended menu based upon these guidelines.

e) **Pricing.** Pricing should be competitive in the Lodi area. The pricing schedule should be included as response to the RFP. Prices should reflect per-person-per-meal amounts, and explain any minimum the proposer feels must be implemented.

f) **Equipment**. Kitchen facilities and storage will be provided by the Square. All other food preparation wares will be provided by proposer.

g) **Storage**. Proposer may store food staples and non-perishable items in cabinets and storage areas in kitchen. Note that not all cabinets or storage areas are equipped with locks, therefore proposer assumes responsibility for installing locks on cabinets and storage areas it desires to use that presently do not have locks. A master set of keys for all locks is to be maintained on site that the Square administrator could access should the need arise for access.

IV. FOOD SERVICE ISSUES

Proposers are encouraged to address the following items and include them as a guide for developing the content of your proposal. This is offered as a guide for issues to be covered that are of importance to the City and Hutchins St. Square administration. Additional topics addressed by the proposer are welcome.

a) Philosophy/Experience - Recognizing that the food and beverage service must operate at a select high level and be compatible with the arts concept, develop and illustrate the type of philosophy you will implement in conjunction with this service. Include details of previous food service experience in this type of environment with like size groups and clients.

b) Personnel Summary - Provide an overview of management, with description of staff to be assigned to provide the requested service. Describe the duties and responsibilities of the following positions as they relate to the City account: management/owner, supervisors, servers, kitchen staff/cooks, cleaning, etc. Illustrate these positions on an organizational chart.

c) Accounting/Billing Procedures - Describe the billing process to include direct billing with 30 day billing cycle. Describe billing statements and how orders will be handled – both with private rental clients and public events. This billing process will be determined and agreed to on final negotiation with successful vendor.

d) Menu Pricing - Food and beverage items should be reasonably priced to ensure quality of production and profit for vendor while not excessive for renters. Menu selections must be flexible during the term of this agreement to ensure renter satisfaction.

e) Performance Standards - Proposer shall provide and comply with all food industry standards and nutritional guidelines, in addition to adherence to safety and cleanliness standards.

f) Costs - Please provide detailed information pertaining to all costs, charges, incidental costs or any other costs to be considered pertaining to the implementation of this service. HSS will not consider any hidden costs or additional cost not addressed in this proposal. Proposers should provide costs in Section XI. Pricing Schedule.

g) Staffing. Proposer shall maintain an adequate staff at all times to ensure a high quality service operation on the Premises. Proposer shall identify one manager made known to HSS, in writing, by name to routinely review and inspect operations on the Premises.

h) Employee Conduct. Proposer shall ensure that its employees engage in appropriate conduct while working at the Premises. All personnel shall be subject to City regulations regarding personal behavior and use of City facilities, and shall be dismissed at the request of City for violations or for conduct inimical or offensive to the interests of City and its staff.

i) Compliance with Laws. The proposer shall at all times during the term of the Contract, and with respect to all phases of the performance of its obligations hereunder, comply with all applicable ordinances, laws, rules and regulations of the United States of America, the State of California, and of any political subdivision or agency, authority or commission thereof, which may have jurisdiction to pass laws, ordinances or make and enforce rules or regulations. The proposer shall also obtain and keep current all licenses and permits (whether Municipal, State or Federal) required to conduct its operation at the City, and pay promptly when due, all fees therefore. Copies of any inspection reports, notices, etc., from any municipal, state or federal agency shall be forwarded to the City within one day of receipt by proposer.

j) Rights of Entry Reserved. The City, by its officers, employees, agents, representatives and Proposers, shall have the right at all times to enter upon any or all portions of the Premises for the purpose of inspecting the Premises, observing the performance by the proposer of its obligations under this Contract, and posting notice provided by any law, rule or regulation of the City, State or Federal Government which the City deems to be for the protection of the City and/or the Premises, and for the doing of any act or thing which the City may be obligated or have the right to do under the Contract.

k) Customer Complaints. Proposer shall immediately resolve, without expense to or intervention of the City, all customer complaints received by proposer with respect to the operation of the food service. Any disagreement which cannot be resolved between proposer and a customer shall be referred to the designated City representative, whose decision will be final.

l) Use of kitchen by Groups. It is understood that from time to time a group may be allowed to use the kitchen to prepare its own food without service from the food proposer. Efforts will be made though by HSS to encourage use of the contracted caterers for increased business to them.

m) Rebate to HSS. Proposer may offer a percentage of gross sales of all bookings as a rebate to the City to defer the cost of utilities, trash removal and other maintenance.

n) Cleaning, Trash Removal, Pest Control. Proposer shall be responsible for cleaning of the dining hall and kitchen area to include, but not be limited to, proper trash disposal, cleaning of the equipment and other supplies, utensils, tables, floors, cabinets, storage areas, freezer, refrigerator, stoves, sinks, etc. The City shall be responsible for pest control of the kitchen and dining hall and shall provide a regular program for eliminating pests.

o) Personnel. The personnel shall have had at least one year experience in group food preparation and shall possess a current food handlers card, and any required licenses and permits to provide services in San Joaquin County.

p) Maintenance/Repairs. Proposer shall report any repair orders to the Square's maintenance personnel immediately. HSS Maintenance shall undertake to complete repairs in a timely manner, at the City's expense, however, should any repairs be needed as a result of proposer's negligence, proposer shall reimburse the Square for such repair.

q) Additional Requirements.

1. The proposer shall work with the City to implement additional food service programs and operate additional food facilities as requested by the City and as mutually agreed in writing, should the opportunity present itself and be of benefit to both parties.

2. All hot foods must reach the patron hot, and all cold foods must reach the patron cold.

3. High quality ingredients shall be used in all of the proposer's operations.

4. Any food appearing discolored, unappealing or not in a proper state of freshness shall not be served. The proposer shall adhere to the general food service industry guide; namely, if you are not willing to purchase or consume a product yourself, it should not be displayed. Left over food items served the previous day which cannot be maintained at the same level of freshness as when first served shall not be used.

5. Appropriate wrappings for foods are to be used as needed. Wrappings shall be both attractive and serviceable.

6. Housekeeping and sanitation programs shall meet the highest standards of cleanliness.

7. Display and serving areas shall be clean, sanitary, orderly and attractive at all times. The quality and appearance of food shall be observed by proposer prior to the start of each peak traffic or meal period, and as frequently thereafter as necessary for the duration of the serving period.

8. All proposer employees shall be instructed by the Proposer in proper:

a. Preparation methods and training
b. Sanitation standards
c. Dress (uniform) and identification

d. Personal habits and hygiene
e. Cleaning procedures
f. Customer services

9. Proposer's employees shall assist City personnel in the strict enforcement of City regulations.

Scope of Work:

1. Caterer(s) shall arrive at Hutchins Street Square one-half hour prior to the scheduled start time of the event, properly uniformed, with all necessary equipment to perform job satisfactorily, and shall notify event contact person upon arrival.

2. Caterer(s) will be required to act in an efficient, courteous, and professional manner at all times, on behalf of the City of Lodi.

3. Caterer(s) will be required to meet with Hutchins Street Square staff on a weekly basis to confirm scheduling.

SECTION V.
EVALUATION CRITERIA

Proposals will be evaluated on the following criteria, listed in order of their relative priority with most important listed first:

1. Quality and Expertise in the catering/food service business
    a. Availability of qualified staff to provide the service.
    b. Past experience and quality of service as rated by references.
    c. Years in the business.

2. Pricing Schedule
    a. Reasonableness of food prices and miscellaneous costs.

3. Other
    a. Quality and diversity of menus offered, including ethnic foods and special preparation.
    b. Additional services/benefits or special expertise offered that may be advantageous to the City.
    c. Overall responsiveness to terms, conditions, and requirements.

SECTION VII.
PRE-PROPOSAL MEETING & SITE TOUR

An optional tour of Hutchins Street Square and site visit of the facilities will be held at 10:00 A.M., P.S.T., on January 13, 2003 at Hutchins St. Square. Group to meet at the Oak Street entrance hall. Parking is available just outside the hall.

The purpose of this conference will be to clarify the contents of this Request for Proposal in order to prevent any misunderstanding of the City's intention and desires, and/or to give prospective suppliers an opportunity to review the site of the work. Any doubt as to the requirements of this Request for Proposal, or any apparent omission or discrepancy should be presented to the City representative at this conference. The City representative will then determine the appropriate action. If necessary, the City representative will issue a written amendment to the Request for Proposal. Oral statements or instructions shall not constitute an amendment to this Request for Proposal.

You do not have to send a representative to this pre-proposal conference. However, if you decide to not send a representative, then we may not know of your intent to participate in this solicitation, and so may not send you any written amendments to this Request for Proposal.

Further, we will assume that your failure to attend the pre-proposal conference is an indication that you expect us to review your proposal as if you had taken advantage of the pre-proposal conference.

RESOLUTION NO. 2004-____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING STAFF TO SOLICIT PROPOSALS FOR CATERING SERVICE AND RENTAL CONTRACT FOR HUTCHINS STREET SQUARE FACILITIES AND FURTHER AUTHORIZING THE CITY MANAGER TO AWARD OR REJECT THE CONTRACT

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WHEREAS, in addition to renting facilities for conferences, weddings, and private parties, Hutchins Street Square also produces many special public events; and

WHEREAS, many of these events require food services, caterer, liquor license and/or concession personnel; and

WHEREAS, in order to streamline services and provide added value to clients and generate additional revenue for the City, it would be advantageous to secure the services of an on-site caterer; and

WHEREAS, staff recommends soliciting proposals for a catering service and rental contract for Hutchins Street Square facilities, and further recommends authorizing the City Manager to reject or award the contract.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize staff to solicit proposals for a catering service at Hutchins Street Square, and further authorizes a rental contract for kitchen/office space at Hutchins Street Square, and

BE IT FURTHER RESOLVED that the City Council authorizes the City Manager to award or reject the contract; and

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

Dated: January 7, 2004

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I hereby certify that Resolution No. 2004-____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

SUSAN J. BLACKSTON
City Clerk

AGENDA ITEM I-04

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: **Update on White Slough Water Pollution Control Facility Improvements**

MEETING DATE: **January 7, 2003**

PREPARED BY: **Public Works Director**

RECOMMENDED ACTION: None needed, unless Council wishes to provide additional direction.

BACKGROUND INFORMATION: Following City Council approval on December 17 regarding equipment purchases, staff has continued to work on this and other aspects of the White Slough project. Staff wishes to update the Council on the purchases and discuss future actions on the project, including project financing and related issues.

FUNDING: N/A

_____
Richard C. Prima, Jr.
Public Works Director

RCP/pmf

cc: Del Kerlin, Wastewater Superintendent
West Yost & Associates

APPROVED: _____
H. Dixon Flynn, City Manager

AGENDA ITEM J-01

CITY OF LODI
COUNCIL COMMUNICATION

TM

AGENDA TITLE: Ordinance No. 1738 entitled, "An Ordinance of the City Council of the City of Lodi Amending Title 8 – Health and Safety – Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, by Repealing and Reenacting Section 8.24.010 – 'Definitions,' Subsection '2,' and 8.24.040 – 'Liability,' Subsection 'F,' to the Lodi Municipal Code Relating to Abatement Action Cost and Recovery Issues"

MEETING DATE: January 7, 2004

PREPARED BY: City Clerk

RECOMMENDED ACTION: Following reading by title, it would be appropriate for the City Council to adopt the attached Ordinance No. 1738.

BACKGROUND INFORMATION: Ordinance No. 1738 entitled, "An Ordinance of the City Council of the City of Lodi Amending Title 8 – Health and Safety – Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, by Repealing and Reenacting Section 8.24.010 – 'Definitions,' Subsection '2,' and 8.24.040 – 'Liability,' Subsection 'F,' to the Lodi Municipal Code Relating to Abatement Action Cost and Recovery Issues" was introduced at the regular City Council meeting of December 17, 2003.

Pursuant to state statute, an ordinance may be adopted five days after its introduction following reading by title.

This ordinance has been approved as to form by the City Attorney.

FUNDING: None required.

Susan J. Blackston
City Clerk

SJB/JMP

Attachment

APPROVED: _____
H. Dixon Flynn, City Manager

council/councom/Ordinance2.doc

ORDINANCE NO. 1738

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING TITLE 8 – HEALTH AND SAFETY – CHAPTER 8.24, COMPREHENSIVE MUNICIPAL ENVIRONMENTAL RESPONSE AND LIABILITY, BY REPEALING AND REENACTING SECTION 8.24.010 – "DEFINITIONS," SUBSECTION "2," AND 8.24.040 - "LIABILITY," SUBSECTION "F," TO THE LODI MUNICIPAL CODE RELATING TO ABATEMENT ACTION COST AND RECOVERY ISSUES

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

SECTION 1. Section 8.24.010 "Definitions" Subsection "2" of the Lodi Municipal Code is hereby repealed and reenacted to read as follows:

2. The term "abatement action costs" means:

A. at or in connection with any site (or any separate subdivision or area within a site) at which the city is not liable under 42 U.S.C.§ 9607 for the costs of response to site conditions resulting in whole or in part from the release or threatened release of hazardous substances to which the city has responded or is responding under this chapter, any and all legal, technical, or administrative fees and costs, and interest and other costs of financing incurred by the city in performing or preparing to perform an abatement action in compliance with the requirements of this chapter. The term "abatement action costs" shall specifically include, but shall not be limited to, any and all of the following costs incurred by the city:

i. to retain expert assistance in health, law, engineering, and environmental science, expert witness services and legal fees and reasonable costs of litigation (including, but not limited to, internal costs of the city attorney's office or outside legal counsel deemed necessary at the sole discretion of the city to effectively respond to conditions at and emanating from the site) to study, investigate, abate, remove, remediate, or respond to an actual or threatened environmental nuisance or any endangerment to the public health, welfare, or the environment that may be presented by an actual or threatened environmental nuisance;

ii. to investigate or respond to the existence, or threat of an environmental nuisance;

iii. to monitor, assess, or evaluate an environmental nuisance or any endangerment to the public health, welfare, or the environment that may be presented by an actual or threatened environmental nuisance;

iv. to prevent, minimize, or mitigate an environmental nuisance or any endangerment to the public health, welfare, or the environment that may be presented by an actual or threatened environmental nuisance;

v. to oversee and monitor the performance by any responsible party of any investigation or abatement action in response to a condition which is or may be an environmental nuisance;

vi. to review, comment on, or revise a responsible party's plans and proposals submitted pursuant to Section 8.24.050(E) or to oversee and monitor the performance by any responsible party of any of the monitoring and testing activities which may be required pursuant to Section 8.24.050(E);

vii. to prepare for or undertake necessary enforcement activity authorized by this Chapter 8.24, including the recovery of abatement action costs incurred or to be incurred by the city or any injunctive relief authorized by this chapter to respond to an environmental nuisance, including enforcement activity deemed necessary by the city to obtain information and site access authorized by this chapter; and

viii. costs of investigation and evaluation, as authorized by the city council, of such financing, with recourse to the maximum extent available solely against the present and future assets and recoveries pledged to comprehensive municipal environmental response fund or any sub-fund of the comprehensive municipal environmental response fund created by the city council as authorized by Section 8.24.070(A), as may be necessary and proper to accomplish the purposes set forth in this chapter; and

ix. costs of issuing, servicing, and retiring of any financing instruments authorized by the city council as provided in Section 8.24.070, with recourse to the maximum extent available solely against the present and future assets and recoveries pledged to the comprehensive municipal environmental response fund or any sub-fund of the comprehensive municipal environmental response fund created by the city council as authorized by Section 8.24.070(A); and

B. At or in connection with any site (or any separate subdivision or area within a site) to which the city has responded or is responding under this chapter, and at which the city is liable under 42 U.S.C.§ 9607 for the costs of response to site conditions resulting in whole or in part from the release or threatened release of hazardous substances, all such fees and costs included within the definition set forth in subsection 2(a) of this Section 8.24.010, except that such term shall not for purposes of this chapter include, at or in connection with any site (or any separate subsection or area within a site) to which this subsection 2(b) applies, any attorneys fees and costs, expert witness fees and costs or other litigation costs incurred or to be incurred by the city in the preparation or conduct of any litigation to recover abatement action costs pursuant to this chapter, or to secure judicial abatement of an environmental nuisance pursuant to this chapter.

C. Notwithstanding the provisions of subparagraphs (a) and (b) of this subsection 2, the term shall not include any costs incurred to compel compliance with an information demand issued pursuant to Section 8.24.050(B) of this chapter prior to the entry of a judicial order upholding that information demand, in whole or in part.

SECTION 2. Section 8.24.040 - "Liability" Subsection "F" of the Lodi Municipal Code is hereby repealed and reenacted to read as follows:

F. Recovery of Attorneys Fees By Prevailing Party Pursuant to California Government Code Section 38773.5.

1. Reasonable litigation expenses, including attorneys and expert witness fees and costs, and litigation costs may be recovered by the prevailing party in any action or administrative proceeding brought or continued in whole or in part pursuant to this chapter by the city attorney:

a. to recover abatement action costs incurred and to be incurred by the City of Lodi;

b. to secure or compel compliance with an Abatement Action Order issued pursuant to this chapter, to enforce an information demand, or an access, inspection or monitoring order, following a judicial order upholding the demand or order in whole or in part; or

c. to secure abatement of an actual or threatened endangerment to the public health, welfare, or the environment arising out of, in whole or in part, an actual or threatened environmental nuisance.

2. Notwithstanding Paragraph 1 of this Subsection F, the recovery of such fees and costs, including attorneys' fees, by the prevailing party is strictly limited to those individual actions or a proceeding in which the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees.

SECTION 3. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 4. 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 5. 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 6. Effect of On-going Actions. The effect of this Ordinance upon preceding or on-going actions or proceedings shall be determined in accord with the following provisions of this section 6:

(A) Notwithstanding the repeal of Section 8.24.010(2) and Section 8.24.040(F) of Title 8 of the Health and Safety Code by operation of sections 1 and 2 of this Act, any action taken pursuant to those Subsections shall remain in effect, and be subject to Chapter 8.24 (commencing with Section 8.24.010) of Title 8 of the Health and Safety Code, as including the subsections reenacted by section 1 of this Act.

(B) The repeal and reenactment of Section 8.24.010(2) and Section 8.24.040(F) of Title 8 of the Health and Safety Code by sections 1 and 2 of this Act shall not terminate, affect, or modify any proceeding, order, or agreement issued or entered into by the City, or any officer or employee of the City pursuant to Chapter 8.24, or any rights or obligations arising out of or pursuant to those provisions, and notwithstanding the effective date of this act, the provisions of Chapter 8.24 (commencing with Section 8.24.010) of Title 8 of the Health and Safety Code, as including the subsections reenacted by sections 1 and 2 of this Act, shall apply retroactively to those proceedings, orders, or agreements.

SECTION 7. 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 7th day of January, 2004

_____
LARRY D. HANSEN
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk
==========

State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1738 was introduced at a regular meeting of the City Council of the City of Lodi held December 3, 2003, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held January 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS –

NOES; COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. 1738 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

RANDALL A. HAYS
City Attorney

AGENDA ITEM J-02

CITY OF LODI
COUNCIL COMMUNICATION

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AGENDA TITLE: Ordinance No. 1739 entitled, "An Ordinance of the City Council of the City of Lodi Amending Title 8 – Health and Safety – Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, By Repealing and Reenacting Section 8.24.090 – 'Miscellaneous Provisions,' Subsections 'D' and 'E,' and Adding Subsection 'F' to the Lodi Municipal Code Relating to Availability of Contribution"

MEETING DATE: January 7, 2004

PREPARED BY: City Clerk

RECOMMENDED ACTION: Following reading by title, it would be appropriate for the City Council to adopt the attached Ordinance No. 1739.

BACKGROUND INFORMATION: Ordinance No. 1739 entitled, "An Ordinance of the City Council of the City of Lodi Amending Title 8 – Health and Safety – Chapter 8.24, Comprehensive Municipal Environmental Response and Liability, By Repealing and Reenacting Section 8.24.090 – 'Miscellaneous Provisions,' Subsections 'D' and 'E,' and Adding Subsection 'F' to the Lodi Municipal Code Relating to Availability of Contribution" was introduced at the regular City Council meeting of December 17, 2003.

Pursuant to state statute, an ordinance may be adopted five days after its introduction following reading by title.

This ordinance has been approved as to form by the City Attorney.

FUNDING: None required.

Susan J. Blackston
City Clerk

SJB/JMP

Attachment

APPROVED: _____
H. Dixon Flynn, City Manager

council/councom/Ordinance1.doc

ORDINANCE NO. 1739

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI AMENDING TITLE 8 – HEALTH AND SAFETY – CHAPTER 8.24, COMPREHENSIVE MUNICIPAL ENVIRONMENTAL RESPONSE AND LIABILITY, BY REPEALING AND REENACTING SECTION 8.24.090 – "MISCELLANEOUS PROVISIONS," SUBSECTIONS "D" AND "E," AND ADDING SUBSECTION "F" TO THE LODI MUNICIPAL CODE RELATING TO AVAILABILITY OF CONTRIBUTION

==========

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

SECTION 1. Section 8.24.090 – "Miscellaneous Provisions" Subsections "D" and "E" of the Lodi Municipal Code is hereby repealed and reenacted to read as follows:

D. Settlement Procedures and Consequences.

1. Settlement of Joint and Several Liability. Any person alleged by the city to be jointly and severally liable pursuant to this chapter, or any person who has been found to be jointly and severally liable pursuant to this chapter by a final and binding administrative order or final order of a court of competent jurisdiction, who has entered into an Effective Settlement, Administrative Settlement, or Judicially Approved Settlement shall not be liable for claims for contribution, equitable indemnity, or partial or comparative equitable indemnity regarding matters addressed in the settlement. Such settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it reduces the potential liability of the other jointly and severally liable parties that have not settled by the amount of the settlement. Unless the settlement qualifies as an Administrative Settlement (the final action validating and approving which has neither been stayed nor reversed by a court of competent jurisdiction) or as a Judicially Approved Settlement (the final order validating and approving which has neither been stayed nor reversed on appeal by a court of competent jurisdiction) pursuant to this subsection, the status of any settlement of all or any part of any joint and several liability imposed by this chapter as an Effective Settlement may be challenged in a civil action by any person not party to the settlement agreement whose rights or interests are or may be adversely affected by the settlement and whose claims against the settling party are not otherwise barred by operation of law.

2. Administrative Settlement. The validity of any settlement of all or any part of any joint and several liability or obligation imposed by or pursuant to this chapter (or any other liability that the city attorney is authorized to assert on behalf of the city or the people of the state of California related to protection of public health, welfare and the environment and which is not required by the general laws of the state of California to be judicially validated or reviewed for good faith purposes by another prescribed process that is exclusive of the processes available pursuant to this chapter) as an Effective Settlement may be determined by a final action of the city council validating and approving the settlement pursuant to the following methods that is applicable:

a. If at the time of the effective settlement there is not pending an administrative adjudicatory proceeding brought pursuant to this chapter to which the settling party is a respondent, by a resolution of the city council adopted at or following a properly noticed public meeting of the city council, provided that advance public notice of the council's consideration of the settlement for purposes of validating it as an Effective Settlement has been published in the Lodi News-Sentinel for at least two consecutive two-day periods commencing at least two weeks in advance of the scheduled meeting of

the city council at which the settlement will be considered. The notice required by this subsection 2.a shall provide the public with notice of the availability of the settlement for public review, the general nature of the pending settlement and its general effects if approval of the settlement as an Effective Settlement is granted, the date and time scheduled for city council meeting, and provide for an public comment period in advance of the council meeting of at least ten (10) days duration during which any person may submit written comments on the settlement to the city attorney for timely presentation to the city council, and of the opportunity of interested parties to attend the city council meeting and request time to present orally their views to the city council; or

b. If there is an administrative proceeding brought pursuant to this chapter to which the settling party is a respondent pending at the time of the effective settlement, by joint motion for approval of the settlement brought before the hearing officer by the city attorney and by the settling party or parties, provided that advance public notice of the motion has been published in the Lodi Sentinel for at least two consecutive two-day periods commencing at least two weeks in advance of the scheduled hearing before the hearing officer at which the motion for validation and approval of the settlement will be considered. The notice required by this subsection 2.b shall provide the public with notice of the availability of the settlement for public review, the general nature of the pending settlement and its general effects if approval of the settlement as an Effective Settlement is granted, the date, time and place scheduled for hearing, and provide for a public comment period in advance of the hearing of at least ten (10) days duration during which any interested members of the public may submit written comments on the settlement to the city attorney for timely presentation to the hearing officer together with the written responses of the settling parties, if any, and of the right of any person whose interests are or may be adversely affected by the settlement to petition the hearing officer for permissive leave to intervene in the proceedings for the sole purpose of protecting their interests that are or may be adversely affected by the settlement, which leave, if granted by the hearing officer, may be conditioned as the hearing deems proper in the interests of justice and as appropriate given the nature of matter pending before the hearing office and its actual or threatened adverse impact on the public health, welfare or the environment, and the right of interested members of the public to seek leave from the hearing officer, which leave is committed to the sole discretion of the hearing officer, to address the hearing officer on the record regarding the merits of the motion at the scheduled hearing. If timely and properly objected to by any party to the administrative proceeding (specifically including any person granted leave to intervene in the proceeding), the hearing officer's report and recommendation regarding the motion for approval and validation of the settlement, which shall be rendered and filed by the hearing officer on an expedited basis, shall, together with any timely objections to that report and recommendation, be brought before the city council for final action at its next public meeting held pursuant to the regularly applicable notice requirements.

3. Judicially Approved Settlement. The validity of any settlement of all or any part of any joint and several liability or obligation imposed by or pursuant to this chapter (or any other liability that the city attorney is authorized to assert on behalf of the city or the people of the state of California related to protection of public health, welfare and the environment and which is not required by the general laws of the state of California to be judicially validated or reviewed for good faith purposes by another prescribed process that is exclusive of the processes available pursuant to this chapter) as an effective settlement under this chapter may be judicially determined and finally resolved, as follows:

a. In an action brought by the city attorney in the name of the city pursuant to Part II, Title 10, Chapter 9 of California Code of Civil Procedure, Sections 860--870; or

b. If, at or within sixty days following the date of settlement, there is a judicial action pending between the settling party and the city in which the city has asserted one or more claims arising under this chapter, by joint motion brought in such pending action for judicial approval of the settlement, with such advance public notice, if any, deemed appropriate by the court of the availability of the settlement for public review, the general nature of the pending motion and its general effects if granted, the date and time scheduled for hearing of the motion, the available intervention procedures, and the opportunity for interested or affected members to submit comments on the settlement to the city attorney for timely presentation to the court, together with the city's response thereto.

4. Persons Not a Party to Settlement. If the city has obtained less than complete relief with respect to an Environmental Nuisance from a person who has resolved its liability to the city imposed pursuant to this chapter in an administrative or judicially approved settlement, the city may bring or continue an action against any person who has not resolved its liability imposed pursuant to this chapter with respect to such Environmental Nuisance.

E Contribution.

1. To the full extent authorized by, and subject to the terms and conditions set forth in, the general laws of the state of California, any person who is or may be liable to the City pursuant to this Chapter 8.24 for payment for, or performance of, some or all of an Abatement Action or other obligation imposed pursuant to this chapter, or for recovery of some or all of Abatement Action Costs incurred or to be incurred by the city, may seek contribution pursuant to the general laws of the state of California from any other person, specifically including the city, liable under this chapter for some or all of the same relief who has not obtained valid contribution protection that precludes by operation of law such contribution recovery from such person. Any contribution action brought under this subsection E.1 of this section 8.24.090, or concerning any liability arising pursuant to this chapter, shall be governed by the general laws of the state of California.

2. Notwithstanding the provisions of subsection E.1 of this section 8.24.090, if any court of competent jurisdiction determines that the general laws of the state of California do not provide for any legal process by which a person who is or may be jointly and severally liable to the city pursuant to this Chapter 8.24 for payment for or performance of some or all of an Abatement Action or other obligation imposed pursuant to this chapter, or for recovery of some or all of Abatement Action Costs incurred or to be incurred by the city, may seek contribution from any other jointly and severally liable parties, specifically including the city, then, and in that event only, such a contribution action may be commenced and maintained pursuant to this subsection E.2 of this section 8.24 .090 by: **(i)** any person who is or may be jointly and severally liable to the City pursuant to this Chapter 8.24 against any other jointly and severally liable or potentially liable party, specifically including the City, during or following any civil action commenced by the City Attorney pursuant to this Chapter 8.24; or **(ii)** a respondent to an administrative order issued pursuant to this chapter that has become final and binding and not subject to further direct judicial review who is in complete compliance with the requirements of that order against any other party who is also jointly and severally liable or potentially liable for some or all of the relief imposed by the order.

a. In any contribution action commenced or maintained pursuant to this subsection E.2 of this section 8.24.090, the court, in resolving contribution claims, may allocate Abatement Action Costs, the costs or performing Abatement Actions or other joint and several relief imposed pursuant to this chapter among liable parties using such equitable factors as the court determines are appropriate.

b. In resolving any contribution claims brought pursuant to subsection E.2(ii) of this section 8.24.090, the court shall give the highest priority to securing the expeditious and complete compliance with the terms and conditions of the final and binding administrative order and shall manage the proceedings in the contribution action so as to secure the uninterrupted, timely and complete compliance with the requirements of the final and binding administrative order.

c. Nothing in this subsection E.2 of this section 8.24.090 shall diminish the right, if any, of:

i. any person to bring an action for contribution under federal law or under the general laws of the state of California in the absence of a civil action commenced by the city attorney under this chapter; or

ii. a respondent to an administrative order issued pursuant to this chapter to bring an action for contribution under federal law or under the general laws of the state of California although such respondent is not in complete compliance with the requirements of that administrative order.

3. In any contribution action to apportion any liability arising under this chapter, the rights, if any, of a person who has resolved its liability to the city to recover contribution from other jointly and severally liable parties shall be subordinate to the direct rights of the city to seek and recover the relief authorized by this Chapter 8.24 from those same liable parties.

SECTION 2. Section 8.24.090 "F" – "Computation of Time" of the Lodi Municipal Code is hereby added to read as follows:

F. Computation of Time. In computing any period of time prescribed or allowed by this chapter, the day of the act, event, or default from which the designated period of time begins to run shall be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

SECTION 3. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 4. 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 5. 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 6. 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 7th day of January, 2004

_____
LARRY D. HANSEN
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

==========

State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1739 was introduced at a regular meeting of the City Council of the City of Lodi held December 17, 2003, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held January 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS –

NOES; COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. 1739 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

_____
RANDALL A. HAYS
City Attorney

AGENDA ITEM J-03

CITY OF LODI
COUNCIL COMMUNICATION

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AGENDA TITLE: Ordinance No. 1740 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 13 – Public Services by Adding Chapter 13.14 'Stormwater Management and Discharge Control' Relating to Stormwater"

MEETING DATE: January 7, 2004

PREPARED BY: City Clerk

RECOMMENDED ACTION: Following reading by title, it would be appropriate for the City Council to adopt the attached Ordinance No. 1740.

BACKGROUND INFORMATION: Ordinance No. 1740 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 13 – Public Services by Adding Chapter 13.14 'Stormwater Management and Discharge Control' Relating to Stormwater" was introduced at the regular City Council meeting of December 17, 2003.

Pursuant to state statute, an ordinance may be adopted five days after its introduction following reading by title.

This ordinance has been approved as to form by the City Attorney.

FUNDING: None required.

Susan J. Blackston
City Clerk

SJB/JMP

Attachment

APPROVED: _____
H. Dixon Flynn, City Manager

council/councom/Ordinance3.doc

ORDINANCE NO.1740

AN ORDINANCE OF THE CITY COUNCIL OF TH4 CITY OF LODI AMENDING LODI MUNICIPAL CODE TITLE 13 - PUBLIC SERVICES BY ADDING CHAPTER 13.14 “STORMWATER MANAGEMENT AND DISCHARGE CONTROL” RELATING TO STORMWATER

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

Section 1. Lodi Municipal Code Title 13 - Public Services is hereby amended by adding Chapter 13.14 “Stormwater Management and Discharge Control” to read as follows:

Chapter 13.14

STORMWATER MANAGEMENT AND DISCHARGE CONTROL

Article I. General Provisions

Sections:

13.14.010 Title
13.14.020 Purpose and Intent
13.14.030 Definitions
13.14.040 Conflicts with Other Laws

Article II. Discharge Restrictions

13.14.050 Discharge of Nonstormwater Prohibited
13.14.060 Exceptions to Discharge Prohibition
13.14.070 Groundwater Discharges
13.14.080 Discharge in Violation of Permit
13.14.090 Illicit Connections Prohibited
13.14.100 Concealment and Abetting
13.14.110 Acts potentially resulting in Violation of Federal Clean Water Act and Porter Cologne Act
13.14.120 Reduction of Pollutants in Stormwater
13.14.130 Containment and Notification of Spills

Article III. Service Charges and Fees

13.14.140 Storm Drain and Cooling Water Service Charges
13.14.150 Billing and Collections

Article IV. Construction Generally

13.14.160 Permit
13.14.170 Design Standards

Article V. Extensions

13.14.210 Purposes
13.14.220 Applications
13.14.230 Applicant's Obligation
13.14.240 Extension for Full Frontage Width
13.14.250 Minimum Diameter
13.14.260 Reimbursement – Oversize Mains

Article VI. Administration

13.14.310 Monitoring Facilities
13.14.320 Inspection, Sampling, Monitoring and Analysis
13.14.330 Accidental Discharge Prevention
13.14.340 Confidential Information
13.14.350 Special Agreements

Article VII. Enforcement

13.14.410 Inspection Authority
13.14.420 Enforcement Authority
13.14.430 Remedies not Exclusive
13.14.440 Compliance Timetable
13.14.450 Appeal
13.14.460 Disclaimer of Liability
13.14.470 City Authority
13.14.480 Judicial Review

Article I. General Provisions

13.14.010 Title

This chapter shall be known as the City "Stormwater Management and Discharge Control Code," and may be cited as such, and will be referred to herein as "this chapter."

13.14.020 Purpose and Intent

The purpose of this chapter is to protect and promote the health, safety and general welfare of the citizens of the City by controlling Nonstormwater Discharges to the Stormwater Conveyance System, by eliminating discharges to the Stormwater Conveyance System from spills, dumping or disposal of materials other than Stormwater, and by reducing Pollutants in urban Stormwater discharges to the maximum extent practicable. This chapter is intended to assist in the protection and enhancement of the water quality of Watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Federal Water Pollution Control Act and amendments thereto and to assure compliance with the conditions set forth by the National Pollution Discharge Elimination System (NPDES) as requirements of Stormwater discharge permits.

13.14.030 Definitions.

The following words, when used in this chapter, shall have the following meanings:

"Basin Plan" means the water quality control plan for the San Joaquin River Basin adopted by the Central Valley Regional Quality Control Board, Central Valley Region.

"Best Management Practices" means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and education practices, maintenance procedures, and other management practices to prevent or reduce to the maximum extent practicable the discharge of Pollutants directly or indirectly to waters of the United States. "Best management practices" also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw materials storage.

"City" means the City of Lodi.

"Development" means the building or placement of any structure or portion thereof. "Development" includes excavation and grading.

"Employee Training Program" means a documented Employee Training Program which may be required to be implemented by a business pursuant to a Stormwater Pollution Prevention Plan for the purpose of educating its employees on methods of reducing discharge of Pollutants to the Stormwater Conveyance System.

"Enforcement Agency" means the City of Lodi Public Works Department.

"Enforcement Official" means the Public Works Director or his or her designee or any agent of the City authorized to enforce compliance with this chapter.

"Illegal Discharge" means any discharge to the Stormwater Conveyance System that violates this chapter, or is prohibited by federal, state, or local laws, or which degrades the quality of Receiving Waters in violation of any Plan Standard.

"Illicit Connection" means any physical connection to the Stormwater conveyance system which is not authorized by the City of Lodi and the Regional Water Quality Control Board Central Valley Region.

"National pollution discharge elimination system (NPDES) permit" means a permit issued by the Regional Water Quality Control Board or the State Water Resources Control Board pursuant to Division 7, Chapter 5.5 of the California Water Code (commencing with Section 13370) to control discharges from point sources to waters of the United States.

"Noncommercial Vehicle Washing" means the washing and rinsing of passenger vehicles on private property in which no commercial enterprise is being conducted in the washing of those vehicles.

"Nonstormwater Discharge" means any discharge to the Stormwater Conveyance System that is not entirely composed of Stormwater.

"Order _____" means Regional Water Quality Control Board Order _____, which constitutes NPDES Permit No. CA_____, together with all amendments, on file in the office of the City clerk.

"Person" means any Person, firm, corporation, business entity, or public agency, whether principal, agent, employee, or otherwise.

"Plan Standard" means any or all applicable requirements of the basin plan or any other approved plan.

"Pollutant" means any contaminant which can degrade the quality of the receiving water in violation of any Plan Standard.

"Premises" means any building, lot, parcel, land or portion of land whether improved or unimproved.

"Public Works Director" means the director of the City of Lodi, Public Works Department.

"Receiving Waters" means surface bodies of water as described in Order No. 96-105, including creeks, canals, and rivers, which serve as discharge points for the Stormwater Conveyance System.

"Stormwater" means surface runoff and drainage associated with storm events which is free of Pollutants to the maximum extent practicable.

"Stormwater Conveyance System" means those artificial and natural facilities within the City of Lodi, whether publicly or privately owned, by which Stormwater may be conveyed to a Watercourse or waters of the United States, including any roads with drainage systems, streets, alleys, catch basins, pumps, natural and artificial channels, aqueducts, stream beds, gullies, curbs, gutters, ditches, sand and oil separators, open fields, parking lots, impervious surfaces used for parking, and natural and artificial channels or storm drains.

"Stormwater Pollution Prevention Plan" means a document which describes the Best Management Practices to be implemented by the owner or operator of a business or City to eliminate Nonstormwater Discharges and/or reduce to the maximum extent practicable Pollutant discharges to the Stormwater Conveyance System.

"User" means any Person that discharges, causes or permits the discharge of Stormwater into the conveyance system.

"Watercourse" means any natural stream, whether flowing continuously or not, that is fed from permanent or natural sources, and includes, without limitation rivers, creeks, canals, runs, and rivulets.

Any term(s) defined in the Federal Clean Water Act, as amended, and/or defined in the regulations for the Stormwater discharge permitting program issued by the Environmental Protection Agency, as amended, and which are not specifically defined in the above definitions of this section shall, when used in this chapter, have the same meaning as set forth in said act or regulation.

13.14.040 Conflicts with Other Laws

In the event of any conflict between this chapter and any federal or state law, regulation, order, or permit, that requirement which establishes the higher standard for public health or safety shall govern. To the extent permitted by law, nothing in this chapter shall preclude enforcement of any other applicable law, regulation, order or permit.

Article II. Discharge Restrictions

13.14.050 Discharge of Nonstormwater Prohibited

Except as provided in Section 13.14.060 of this chapter, it is unlawful for any Person to make or cause to be made any Nonstormwater Discharge. Notwithstanding

the exemptions provided this chapter, if the Regional Water Quality Control Board or the Enforcement Official determines that any otherwise exempt discharge causes or significantly contributes to violations of any Plan Standard, or conveys significant quantities of Pollutants to surface water(s) or Watercourse(s), or is a danger to public health or safety, such discharge shall be prohibited from entering the Stormwater Conveyance System.

13.14.060 Exceptions to Discharge Prohibition

Subject to the authority granted to the Regional Water Quality Control Board and the Enforcement Official in Section 13.14.420 of this chapter, the following discharges to the Stormwater Conveyance System are exempt from the prohibition set forth in Section 13.14.050 of this chapter.

A. Any discharge or connection regulated under a NPDES permit issued to the discharger and administered by the State of California pursuant to Division 7, Chapter 5.5 of the California Water Code, provided that the discharger is in compliance with all requirements of the permit and all other applicable laws and regulations;

B. Discharges from the following activities which do not cause or contribute to the violation of any Plan Standard:

1. Water line and well flushing and other discharges from potable water sources,
2. Landscape irrigation and lawn watering,
3. Rising ground waters or springs,
4. Passive foundation and footing drains,
5. Water from crawl space pumps and basement pumps,
6. Air conditioning condensate,
7. Noncommercial Vehicle Washing,
8. Natural flows from riparian habitats and wetlands,
9. Dechlorinated swimming pool discharges,
10. Flows from fire suppression activities, including fire hydrant flows and fire hydrant flow testing.
11. Waters not otherwise containing wastes as defined in California Water Code Section 13050(d) and California Health and Safety Code Section 25117.
12. Diverted stream flows.
13. Uncontaminated ground water infiltration to separate storm sewers;

C. Any discharge which the Enforcement Official, the local health officer, or the Regional Water Quality Control Board determines in writing is necessary for the protection of the public health and safety;

D. Any discharge caused by flooding or other natural disaster which could not have been reasonably foreseen or mitigated for in advance by the discharger, as determined by the Enforcement Official.

13.14.070 Groundwater Discharges

Discharges of pumped groundwater not subject to a NPDES permit may be permitted to discharge to the Stormwater Conveyance System upon written approval from the City and in compliance with conditions of approval set forth by the City.

13.14.080 Discharge in Violation of Permit

It is unlawful for any person to cause either individually or jointly any discharge to the Stormwater Conveyance System which results in or contributes to a violation of Order _____.

13.14.090 Illicit Connections Prohibited

It is unlawful and violations of this chapter for any Person to establish, use, or maintain any Illicit Connection.

13.14.100 Concealment and Abetting

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation of this chapter.

13.14.110 Acts Potentially Resulting in Violation of Federal Clean Water Act and/or Porter-Cologne Act

Any Person who violates any provision of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, may also be in violation of the Federal Clean Water Act (33 USC 1251 et seq.) and or Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.) and may be subject to the sanctions of those Acts including civil and criminal penalties.

13.14.120 Reduction of Pollutants in Stormwater

Any Person engaged in activities which may result in Pollutants entering the Stormwater Conveyance System shall, to the maximum extent practicable, undertake the measures set forth below to reduce the risk of Nonstormwater Discharge and/or Pollutant discharge.

A. Business Related Activities

1. Stormwater Pollution Prevention Plan. The Enforcement Official may require any business in the City that is engaged in activities which may result in Pollutant discharges to develop and implement a Stormwater Pollution Prevention Plan, which must include an Employee Training Program. Business activities which may require a Stormwater Pollution Prevention Plan include, but are not limited to, maintenance, storage, manufacturing, assembly, equipment operations, vehicle loading or fueling, or cleanup procedures which are carried out partially or wholly out of doors.

2. Coordination with Hazardous Materials Release Response Plans and Inventory. Any business requiring a hazardous materials release response and inventory plan under Chapter 6.95 (commencing with Section 25500) of Division 20 of the California Health and Safety Code, shall include in that plan provisions for compliance with this chapter, including the provisions prohibiting Nonstormwater Discharges and Illegal Discharges, and requiring the release of Pollutants to be reduced to the maximum extent practicable.

3. Coordination with Hazardous Waste Generator Contingency Plan and Emergency Procedures. Any business requiring a hazardous waste generator

contingency plan and emergency procedures pursuant to California Code of Regulations, Title 22, Sections 66265.51 to 66265.56, shall include in that plan provisions for compliance with this chapter, including the provisions prohibiting Nonstormwater Discharges and Illegal Discharges, and requiring the release of Pollutants to be reduced to the maximum extent practicable.

B. City

1. The Enforcement Official may develop controls as appropriate to minimize the long-term, post construction discharge of Stormwater Pollutants from new City(s) or modifications to existing City(s). Controls may include source control measures to prevent pollution of Stormwater and/or treatment controls designed to remove Pollutants from Stormwater.

2. Any Person performing construction in the City shall prevent Pollutants from entering the Stormwater Conveyance System and comply with all applicable federal, state and local laws, ordinances or regulations including but not limited to the general permit for Stormwater discharges associated with construction activity and the City grading, erosion and sediment control policies.

C. Compliance with General Permits. Each industrial discharger, discharger associated with construction activity, or other discharger subject to any general Stormwater permit issued by the United States Environmental Protection Agency, the State Water Resources Control Board, the Regional Water Quality Control Board Central Valley Region or the City of Lodi shall comply with the requirements of such permit.

D. Compliance with Best Management Practices. Every Person undertaking any activity or use of a Premises which may cause or contribute to Stormwater pollution or contamination, Illegal Discharges, or Nonstormwater Discharges shall comply with Best Management Practices guideline or pollution control requirements as may be reasonably established by the Enforcement Official.

13.14.130 Containment and Notification of Spills

Any Person owning or occupying a Premises who has knowledge of any release of Pollutants or Nonstormwater Discharge from or across those Premises which might enter the Stormwater Conveyance System, other than a release or discharge that is permitted by this chapter, shall immediately take all reasonable action to contain and abate the release of Pollutants or Nonstormwater Discharge, and shall notify the Enforcement Agency within twenty-four (24) hours of the release of Pollutants or Nonstormwater Discharge.

Article III. Service Charges and Fees

13.14.140 Storm Drain and Cooling Water Service Charges

A. The rate for disposal of storm waters, cooling water discharges or construction flush waters into the City's Stormwater Conveyance System will be established by resolution.

B. The schedule of charges for the inspection, sampling and analysis of questionable storm water flowing into the City's Stormwater Conveyance System will be those established and adopted by the City council from time to time by resolution.

C. The City shall estimate and determine the amount of storm, cooling water or construction flush waters deposited into the City's Stormwater Conveyance System unless the User of the service elects to provide, install and maintain in good working order an integrating meter satisfactory to the City for the purposes of measuring such storm, cooling water or construction flush water.

D. In determining the amount of storm, cooling water or construction flush waters deposited into the City's Stormwater Conveyance System, no charge shall be made for the storm waters or minor irrigation waters or drainage from roofs, pavements or hard-surfaced areas within the City limits. Where such drainage is metered along with construction flush water, a credit of one thousand two hundred fifty (1,250) gallons per year for each one hundred (100) square feet, as projected and measured upon a horizontal plane, or such drainage area tributary to the meter shall be allowed. Where roofs or other areas are sprinkled or flushed, such flushing or sprinkling waters shall be included in the quantities for billing purposes.

13.14.150 Billing and Collections

All billing and collections for service charges shall be per Section 13.04.030 of this code.

Article IV. Construction Generally

13.14.160 Permit

No unauthorized Person shall uncover, make any connection with or opening into, use, alter or disturb any Stormwater Conveyance System or appurtenances, thereof without first obtaining a written permit from the Public Works Director.

13.14.170 Design Standards

All construction of public Stormwater Conveyance Systems or appurtenances shall conform to the design criteria, the standard plans and specifications and the inspection and testing procedures in accordance with current City public improvement design standards.

Article V. Extensions

13.14.210 Purpose

The City council has adopted a Stormwater conveyance extension policy that is fair and equitable to all developing properties and that provides that the cost of extension shall be distributed among subsequently developing properties connecting thereto.

13.14.220 Application

Whenever a property owner requires storm drainage, an application shall be made to the Public Works Department. The Public Works Director shall determine the closest Stormwater conveyance and, if an extension is necessary, indicate the size of the main to be extended and the limits of the extension.

13.14.230 Applicant's Obligation

Whenever the Public Works Director determines that a Stormwater conveyance extension is necessary, the applicant will be required to install, at the applicant's own

expense, the Stormwater conveyance extension in accordance with the engineering plans furnished by applicant and approved by the Public Works Director. The plans shall be prepared in accordance with the City design standards.

13.14.240 Extension for Full Frontage Width

In every case where a storm drain is to be tapped to serve a parcel, the same shall be extended the full frontage of the parcel unless the Public Works Director determines that the storm drain will not need to be extended to serve any other properties.

13.14.250 Minimum Diameter

The minimum size storm drain shall have a nominal inside diameter of twelve (12) inches. Larger size mains may be required as determined by the Public Works Director in accordance with the City public improvement design standards to the City master storm drain plans.

13.14.260 Reimbursement – Oversize Mains

Whenever the City requires that a storm drain larger than eighteen (18) inches in diameter be installed in order to serve additional property or to conform to the applicable master plan, the applicant shall be reimbursed for the oversized pipe. The reimbursement shall be based on the difference in cost between the actual pipe to be installed and an eighteen-inch storm drain as applicable. The difference in cost shall be determined by the Public Works Director. The reimbursement shall be made in accordance with Chapter 16.40.

Article VI. Administration

13.14.310 Monitoring Facilities

A. The Public Works Director may require a commercial/industrial User to construct and maintain, at the User's expense, monitoring facilities which meet all government safety regulations (OSHA) to allow inspection, sampling and flow measurement of the building internal storm drainage systems and may also require sampling or metering equipment to be provided, installed, operated and maintained at the User's expense. The monitoring facility should normally be situated on the User's Premises, but the Public Works Director may, when such a location would be impractical or cause undue hardship on the User or the City, require the facility to be constructed in the public right-of-way and located so that it will not be obstructed by landscaping or parked vehicles.

B. When the monitoring facility is inside the User's fence, there shall be accommodations to allow access for the Public Works Director or designated representative, such as a gate secured with a City lock. There shall be ample room in or near such monitoring facility to allow accurate sampling and compositing of samples for analysis. The monitoring facility shall be maintained at all times in a safe and proper operating condition at the expense of the User.

C. Whether constructed on public or private property, plans and specifications shall be approved by the Public Works Director and be in accordance with all applicable City construction standards and specifications. Construction shall be

completed within sixty (60) days following written notification by the City, unless a time extension is otherwise granted by the City.

13.14.320 Inspection, Sampling, Monitoring and Analysis

The Public Works Director or designated representative may inspect the facilities of any User to ascertain whether the purpose of this chapter is being met and all requirements are being complied with. Persons or occupants of Premises where Stormwater is discharged shall allow the Public Works Director or designated representative ready access at all reasonable times to all parts of the Premises for the purposes of inspection or sampling or in performance of any of their duties. The Public Works Director or designated representative shall have the right to set up on the User's property such devices as are necessary to conduct sampling or metering operations. Where a User has security measures in force which would require proper identification and clearance before entry into their Premises, the User shall make necessary arrangements with its security guards so that upon presentation of suitable identification, the Public Works Director or designated representative will be permitted to enter without delay for the purposes of performing their specific responsibilities. The User will be charged a fee to recover the costs for inspection (investigations), sampling, monitoring and analyses performed by the City to establish billing rates and to ensure compliance with all regulations.

13.14.340 Confidential Information

A. All information and data on a User obtained from reports, questionnaires, permit application, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless (1) the User specifically requests and is able to demonstrate to the satisfaction of the Public Works Director that the release of such information would divulge information, processes or methods that would be detrimental to the User's competitive position; and (2) disclosure is not required by the California Public Records Code.

B. When requested by the Person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available to governmental agencies for use in making studies per 40 CFR 403.14; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the Person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

13.14.350 Special Agreements

Special agreements and arrangements between the City and any Persons or agencies may be established when, in the opinion of the City council, unusual or extraordinary circumstances compel special terms and conditions. However, in no case may federal standards be waived or modified.

Article VII. Enforcement

13.14.410 Inspection Authority

Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever an authorized Enforcement Official has reasonable cause to

believe that there exists in any building or upon any Premises any condition which constitutes a violation of this chapter, the Enforcement Official may enter such building or Premises at all reasonable times to inspect the same or perform any duty imposed upon the officer by this chapter. Any request for entry shall state that the property owner or occupant has the right to refuse entry and that in the event that such entry is refused, inspection may be made upon issuance of a warrant issued by a court of competent jurisdiction. In the event the owner or occupant refuses entry after such request has been made, the Enforcement Official is empowered to seek assistance from any court of competent jurisdiction in obtaining such entry. Inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to, random sampling and/or sampling in areas with evidence of Stormwater contamination, Illegal Discharge, Nonstormwater Discharge to the Stormwater Conveyance System, or similar factors.

A. Sampling Authority. During any inspection, the Enforcement Official may take samples as necessary in order to implement and enforce the provisions of this chapter. This authority may include the installation of sampling and metering devices on private property, or requiring the Person owning or occupying the Premises to supply samples.

B. Monitoring, Analysis and Reporting Authority. The Enforcement Official may require monitoring, analysis and reporting of discharges from any Premises to the Stormwater Conveyance System. Upon service of written notice by the Enforcement Official, the burden, including cost, of these activities, analyses and reports, incurred in complying with the requirement shall, to the extent permitted by law, be borne by the property owner or occupant of the facility or activity for which testing and monitoring has been requested.

13.14.420 Enforcement Authority

The Enforcement Official may exercise any enforcement powers authorized or provided in this code, including without limitation, administrative penalties pursuant to this code, as may be necessary to effectively implement and enforce this chapter.

A. Administrative Enforcement Powers. The Enforcement Official may also exercise any of the following supplemental enforcement powers as may be necessary or advisable in the Enforcement Official's judgment under the circumstances:

1. Notice of Violation (NOV). Whenever the Enforcement Official finds that any Person owning or occupying a Premises has violated or is violating this chapter or an order issued hereunder, the Enforcement Official may serve, by Personal service, or by registered or certified mail, upon said Person a written NOV. Within thirty (30) days of the receipt of this notice, or as may be prescribed in the NOV, the person so noticed shall submit to the Enforcement Official an explanation of the violation and a plan for the satisfactory correction and prevention thereof, which shall include specific required actions. Submission of this plan shall in no way relieve the Person of liabilities for violations occurring before or after receipt of the NOV.

2. Cease and Desist Orders. The Enforcement Official may require any Person owning or occupying a premises to cease and desist all activities that may cause or contribute to discharge in violation of this chapter. This order may also require such Person to: (i) comply with the applicable provisions of this chapter within a designated period of time or; (ii) take appropriate remedial or preventative action to keep the violation from recurring.

3. Notice to Clean and Abate. The Enforcement Official may require any Person owning or occupying a premises to clean up and abate any release of Pollutants on those Premises which may result in a violation of this chapter. The Enforcement Official may also order abatement of activities or practices which may reasonably be expected to result in such a violation.

4. Mitigation. The Enforcement Official shall have authority to order the mitigation of circumstances which may result in or contribute to Illegal Discharges.

5. Stormwater Pollution Prevention Plan. The Enforcement Official shall have the authority to establish elements of a Stormwater Pollution Prevention Plan, and to require any business to adopt and implement such a plan, as may be reasonable necessary to fulfill the purposes of this chapter.

6. Best Management Practices. The Enforcement Official may establish the requirements of Best Management Practices for any Premises.

7. Violations Constituting Misdemeanors. In addition to civil penalties provided for in this chapter, any violation of this chapter may be punishable as a misdemeanor as provided by Section 1.08.010 of this code.

8. Violations Deemed a Public Nuisance. In addition to the penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety or welfare and is thus deemed a nuisance. Any such nuisance may be summarily abated and/or restored by any authorized Enforcement Official. The City attorney is authorized to pursue civil action(s) pursuant to subsection B of this section to abate, enjoin, or otherwise compel the cessation of the nuisance.

9. Cost Recovery. The cost of the abatement and restoration shall be borne by the owner of the property and the cost therefore shall be invoiced to the owner of the property. If the invoice is not paid within sixty (60) days, the Enforcement Official shall have the authority to place a lien upon and against the property. If the lien is not satisfied within three months, the Enforcement Official is authorized to take all legal measures as are available to enforce the lien as a judgment, including, without limitation, enforcing the lien in an action brought for a money judgment or by delivery to the county assessor or a special assessment against the property in accordance with Government Code Section 38773.5

10. Seasonal and Recurrent Nuisance. If any violation of this chapter constitutes a seasonal and recurrent nuisance, the Enforcement Official shall so declare. Thereafter such seasonal and recurrent nuisance shall be abated every year without the necessity of any further hearing.

11. Costs of Enforcement. If the City prevails in any administrative, civil or criminal proceeding initiated under this chapter, the City shall be entitled to seek reimbursement for all costs incurred in connection with said proceeding. Such reimbursable expenses may include, but are not limited to, costs of investigation, administrative overhead, out-of-pocket expenses, costs of administrative hearings, and costs of suit. If any such costs are granted to the City, said costs shall be recoverable pursuant to subsection (A)(9) of this section.

B. Civil Actions. In addition to any other remedies provided in this chapter, any violation of this chapter may be enforced by civil action brought by the City attorney.

Monies recovered under this subsection shall be paid to the City to be used exclusively for costs associated with monitoring and establishing Stormwater discharge pollution control systems and/or implementing or enforcing the provisions of this chapter. In any such action, the City may seek, as appropriate, any or all of the following remedies:

1. A temporary and/or permanent injunction;

2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;

3. Costs incurred in removing, correcting or terminating the adverse effects resulting from the violation;

4. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life not to exceed $6,000 per day, per occurrence in which such violations occur. The City attorney, upon order of the City council, shall petition the superior court to impose, assess and recover such sums. This penalty is in addition to any penalties which may be imposed by the State Regional Water Quality Control Board and the Environmental Protection Agency. Should the damage also cause the City to be cited for a violation of State or Federal requirements, the cost of said citation will be passed onto the offending party.

C. Authority to Arrest or Issue Citations. Any authorized Enforcement Official shall have and is vested with the authority to arrest or cite and release any Person who violates any section of this chapter in the manner provided by the California Penal Code for the arrest or release on citation of misdemeanors or infractions as described by Chapters 5, 5(c) and 5(d) of Title 3, Part 2 of the California Penal Code (or as the same may hereafter be amended). Such authorized Enforcement Official may issue citations and notice to appear in the manner prescribed by Chapter 5(c) Title 3, Part 2 of the California Penal Code, including Section 853.6 (or as the same may hereafter be amended). It is the intent of the City council that the immunities prescribed in Section 836.5 of the California Penal Code be applicable to public officers or employees acting in the course and scope of employment pursuant to this chapter.

D. Emergency Orders and Abatements. The Enforcement Official may order the abatement of any discharge from any source to the Stormwater Conveyance System when, in the opinion of the Enforcement Official, the discharge causes or threatens to cause a condition which presents an imminent danger to the public health, safety, or welfare, or the environment, or a violation of a NPDES permit. In emergency situations where the property owner or other responsible party is unavailable and time constraints are such that service of a notice and order to abate cannot be effected without presenting an immediate danger to the public health, safety or welfare, or the environment or a violation of a NPDES permit, the City may perform or cause to be performed such work as shall be necessary to abate said threat or danger. The costs of any such abatement shall be borne by the owner and shall be collectable in accordance with the provisions of subsection (A)(9) of this section.

E. Contents of Notice. Any NOV, cease and desist order, or other civil notice or civil order issued by the Enforcement Official pursuant to this chapter shall include a copy of Section 13.14.450 of this chapter outlining appeal rights.

13.14.430 Remedies not Exclusive

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

13.14.440 Compliance Timetable

When the City finds that discharge of unacceptable Stormwater has been taking place, or is threatening to take place, in violation of prohibitions or limitations prescribed in this chapter, the City may require the User to submit for approval, with such modifications as it deems necessary a detailed time schedule of specific actions, which the User shall take in order to prevent or correct a violation of requirements.

13.14.450 Appeal

Any Person served with a NOV, who is subject to a cease and desist order, who is subject to an abatement order, who is required to perform monitoring, analyses, reporting and/or corrective activities by an authorized Enforcement Official, or who is otherwise grieved by the decision of the authorized Enforcement Official, may appeal the decision to the Public Works Director within ten (10) days following the effective date of the decision by filing a written appeal with the Public Works Director. Upon receipt of such request, the Public Works Director shall request a report and recommendation from the authorized Enforcement Official and shall set the matter for hearing at the earliest practical date. Due notice of the hearing shall be provided to the Person appealing the decision of the authorized Enforcement Official. At the hearing, the Public Works Director may hear additional evidence, and may reject, affirm or modify the authorized Enforcement Official's decision. The Public Works Director's decision shall be final.

13.14.460 Disclaimer of Liability

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of Pollutants into the waters of the United States. This chapter shall not create liability on the part of the City, any officer or employee thereof for any damages that result from reliance on the code or any administrative decision lawfully made thereunder.

13.14.470 City Authority

The Enforcement Official is authorized to make any decision on behalf of the City required or called for by this chapter.

13.14.480 Judicial Review

The provisions of California Code of Civil Procedure Section 1094.6 are applicable to judicial review of City decisions pursuant to this chapter.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer

or employee thereof, a mandatory duty of care 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. 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 7th day of January, 2004

_____
LARRY D. HANSEN
Mayor

Attest:

SUSAN J. BLACKSTON
City Clerk

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State of California
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1740 was introduced at a regular meeting of the City Council of the City of Lodi held December 17, 2003, and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held January 7, 2004, by the following vote:

AYES: COUNCIL MEMBERS –

NOES; COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. 1740 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON
City Clerk

Approved as to Form:

RANDALL A. HAYS
City Attorney

Comments by the City Council Members on non-agenda items