



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Authorizing the City Manager to Sign a Lease Agreement with the Lodi-Woodbridge Winegrape Commission for Use of a 100' by 40' section of Katakian Park, 2735 W. Turner Road, for the Purpose of Planting a Demonstration Vineyard

**MEETING DATE:** December 5, 2001

**PREPARED BY:** Parks and Recreation Director

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**RECOMMENDED ACTION:** That the City Council adopt the attached resolution authorizing the City Manager to sign a lease agreement with the Lodi-Woodbridge Winegrape Commission for use of a 100' by 40' section of Katakian Park for the purpose of planting a demonstration vineyard.

**BACKGROUND INFORMATION:** The Lodi-Woodbridge Winegrape Commission has requested the use of a 100' by 40' section of Katakian Park to plant a demonstration vineyard as described in the attached lease agreement.

The term of the lease agreement is fifteen years with an option to renew for an additional fifteen years upon mutual agreement of both parties. The rental fee will be \$1.00 per year, payable upon execution of the agreement. All maintenance of the vineyard, including watering, will be the responsibility of the Lodi-Woodbridge Winegrape Commission. Either party may terminate the agreement upon 30 days written notice.

**FUNDING:** None.

Roger Baltz  
Parks and Recreation Director

RB:svb

cc: City Attorney

APPROVED: \_\_\_\_\_

H. Dixon Flynn -- City Manager

11/26/01

**When Recorded Return to:  
City of Lodi City Clerk  
P. O. Box 3006  
Lodi, CA 95241**

**LEASE AGREEMENT  
Portion of Katzakian Park  
015-530-56**

THIS INDENTURE, made this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by and between the CITY OF LODI, a municipal corporation (hereinafter referred to as "City" or "Lessor"), and LODI-WOODBRIDGE WINEGRAPE COMMISSION, a corporation (hereinafter referred to as "LWWC" or "Lessee") shall be as follows:

**A. RECITALS:**

WHEREAS, City is the owner of certain real property located in the County of San Joaquin, State of California known as Katzakian Park; and

WHEREAS, LWWC desires to lease a portion of Katzakian Park for the purpose of planting a demonstration vineyard; and

WHEREAS, under the laws of the State of California, including but not limited to Gov. Code §37100 et. seq., the City Council is authorized to exercise control over all real property owned by said City, including the lease of such property; and

WHEREAS, the parties believe this agreement to be in the best interest of the public, LWWC and the City; and

WHEREAS, the parties are in agreement as herein expressed;

THEREFORE, in consideration of the rents herein reserved and the covenants, agreements, conditions and terms to be performed by Lessee, City hereby leases to Lessee subject to the express agreements contained herein, that property more fully described below.

**B. TERMS AND CONDITIONS:**

**1. EXTENT OF LEASEHOLD:**

The City does hereby lease, demise and let to the Lessee and Lessee does hereby hire and take from the City that certain real property more particularly described as:

A portion of Lot 1, Bridgetowne, Unit No. 1, as shown upon map recorded in Book 33, Page 13, Book of Maps and Plats, San Joaquin County Records being the southeast portion between the public sidewalk and concrete mowstrip as shown on Exhibit A

2. TERM:

Pursuant to Gov. Code §37380(a), the term of this lease shall be for a period of fifteen (15) years from and after the date of execution of this lease with an option to renew for an additional fifteen (15) years upon mutual agreement of both parties. Upon termination of lease or abandonment of demonstration vineyard, LWWC shall remove all plants and other structures or systems from the parcel.

3. RENTS:

Rent in the amount of one dollar per year (\$1.00) for the entire term of this lease, payable in one lump sum of \$15.00, is due and payable at the execution of this agreement.

4. USE AND OCCUPANCY:

(A) The Lessee hereunder shall have the exclusive right and privilege to use the demised premises for the purposes described herein. However, City shall maintain all of the rights it currently possesses under existing public utility easements, including but not limited to, the right to enter upon the demised premises at any time for purposes of inspecting, maintaining, altering and repairing the public facilities present thereon and for the construction, inspection, maintenance or alteration of any new and additional public facilities City should desire to erect, or permit to be erected by others in the future.

This lease shall not impair, restrict or otherwise alter any right or interest held by any public utility or other entity in the public utility easement(s) existing on the demised premises.

Lessee expressly waives any and all claims for damages, including inverse condemnation, which may arise out of City's exercising its right to inspect, maintain, repair, replace, alter or increase its public facilities located upon the demised premises.

(B) Lessee shall be responsible for the maintenance, care and watering of the demonstration vineyard.

Water shall be supplied from the City's irrigation system. Lessee will be responsible for installing valves, lateral lines, irrigation heads, and controller wires to their own controller.

- (C) Signage shall be limited to vine identification nameplates and an informational sign facing the Lessee's office east of the site, subject to approval by the Community Development prior to installation.
- (D) Any fencing structure shall be subject to approval by the Parks and Recreation Director prior to installation.
- (E) Lessee shall consult with the Parks and Recreation Director for administration and day-to-day coordination.

5. CONDITION OF PREMISES:

- (A) City leases to Lessee the demised premises in "as is" condition. City informs and discloses that said premises have been used in the past for agricultural purposes, which may or may not have involved the spilling, application, spraying, or other use of pesticides, fertilizers and other chemicals upon the land. Notwithstanding the above, and to the best of City's knowledge, there are no other known concentrations of hazardous or toxic substances on the land, but makes no further representations thereto. Should Lessee, in its sole discretion and at its expense, desire to do so, it is encouraged to conduct any form of environmental assessment for the presence or absence of such substances on the premises and accepts any risk or liability associated therewith, to the extent allowed by state and federal law.
- (B) Lessee acknowledges that the remainder of the parcel not subject to this lease is planned as a public park with recreation activities likely to encourage the presence of children and waives any and all damages arising out of or related to the park or people using the same caused by the use of the park relative to the leased property.
- (C) Prior to applying any pesticides, herbicides, fertilizers, fungicides or any other chemical or mineral, Lessee shall provide City with proposed quantities, names, and times of application, together with a copy of all current Material Safety Data Sheets on each such product. The list of products to be used, the MSDS of each and the time of application may be submitted to the Parks Superintendent in writing on an annual basis beginning with the first planting. City shall notify the Lessee in writing as to its findings. City shall have the right to refuse consent for the application of any product, amount of product, or time of application if City feels, in its sole discretion, it is inconsistent with the use of the neighboring park.

6. INSURANCE AND INDEMNITY:

- (A) City's Non-liability. City shall not be liable for any loss, damage or injury of any kind to any person or property arising from any use of the demised premises, or any part thereof, or caused by any defect in any building, structure or other improvement upon or adjacent to the demised premises, or in any equipment or other facility thereon, or caused by or arising from any act or omission of Lessee or any of its agents, employees, licensees or invitees, or by or from any accident on the demised premises or any fire or other casualty thereof, or occasioned by the failure of Lessee to maintain the demised premises and all improvements thereto in a safe condition, or arising from any other cause except where caused by the negligence of City, its agents or employees.
  
- (B) Indemnification of City. Notwithstanding anything to the contrary contained in this lease, and irrespective of any insurance carried by Lessee for the benefit of City under the terms of this lease, Lessee agrees to protect, indemnify and hold the City harmless from any and all damages and liabilities at any time occasioned by or arising out of (1) any act, activity or omission of Lessee, or of anyone holding under Lessee, or (2) the occupancy or use of the demised premises or any part thereof, by or under Lessee, or (3) any state or condition of the demised premises or any part thereof.
  
- (D) Liability Insurance. Lessee shall procure and maintain at all times during the term of this lease, at its sole cost and expense, a policy or policies of commercial public liability insurance by the terms of which City, its officers, agents and employees, and Lessee are named as insured and are indemnified against liability for damage or injury to property or person, including death, of any person entering upon or using the demised premises or any improvements thereon or any part thereof or any area adjacent thereto, with a combined single limit for bodily injury and property damage in an amount of not less than ONE MILLION DOLLARS (\$1,000,000). Such public liability insurance policy or policies shall be stated to be primary and noncontributing with any insurance which may be carried by City and shall contain a provision that the City, although named as an insured shall nevertheless be entitled to recover under that policy for any loss, injury or damage to the City, its agents and employees or the property of such persons by reason of the negligence of Lessee.

- (D) Certificate of Insurance. All policies of insurance procured and maintained by Lessee hereunder shall be issued by companies having not less than Best's A Class X rating and shall be issued in the name of the City, its officers, agents, and employees, and Lessee for the mutual and joint benefit and protection of the parties. Executed copies of all insurance policies or a certificate thereof shall contain a provision that not less than thirty (30) days written notice shall be given to City prior to the cancellation, reduction of coverage, expiration or any material change in any such policy.
- (E) Failure to Provide Insurance. If Lessee fails or refuses to procure or to maintain insurance as required by this lease or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and paid for, City shall have the right at City's election, upon ten (10) days advance written notice, to procure and maintain such insurance. The premiums paid by City shall be treated as added rent due from Lessee with interest at the Bank of America prime rate, to be paid within thirty (30) days of demand. City shall give prompt notice of the payments of such premiums, stating the amounts paid and the names of the insurer or insurers. Failure to maintain adequate insurance may be deemed a material breach of this agreement.
- (F) Waiver of Subrogation. The parties hereby release each other, and their respective representatives, from any claims for damage to any person or to the premises and the improvements which may be located upon the premises and to the fixtures, personal property, tenant's improvements and alterations of tenant in or on the premises and the improvements which may be located upon the premises that are caused by or result from risks insured against under any insurance policies carried by the parties hereto and in force at the time of any such damage. Each party hereto shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy, provided obtaining such a waiver in each such policy is then available at a reasonable charge. Neither party hereto shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by this Lease.

7. TAXES:

Lessee agrees to pay and discharge at or before the maturity all taxes or assessments levied or assessed against the possessory interest created by this lease which it is legally obligated to pay, and upon any personal property put or placed by it on or in the demised premises, and all other taxes, excises, licenses, permit fees, charges or assessments upon Lessee which may be provided by law insofar as the same may be validly asserted by reason of the Lessee's occupation or use of the demised premises; provided that the Lessee shall have the right to

contest any such taxes and shall not be deemed to be in default so long as in good faith it shall contest the validity or amount of such taxes; provided further, that the Lessee shall pay any such taxes under protest, or furnish to City reasonable security, if required by the City in its sole discretion, conditional that such taxes will be paid, in the event such payment is necessary to prevent a tax sale or a forfeiture of the property or interest upon which such taxes are levied.

8. BANKRUPTCY OR REORGANIZATION:

In the event that Lessee shall file a voluntary petition in bankruptcy or that proceedings in bankruptcy shall be instituted against Lessee and Lessee is thereafter adjudged bankrupt pursuant to such proceedings, or that the court shall take such jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act, or that receiver of Lessee's assets shall be appointed, or in the event that Lessee shall execute an assignment for the benefit of its own creditors, City shall have the right to terminate this lease forthwith and in its sole discretion. Such termination shall, in such instances be deemed to occur upon the happening of any said events and from thenceforth, Lessee shall have no rights in or to the demised premises or to any of the rights herein conferred, and City shall have the right to take possession of said premises forthwith.

9. TERMINATION OF LEASE:

Lessee and City agree that either party shall have the right to terminate this lease, with or without cause, upon thirty (30) days written notice.

10. ASSIGNMENT/SUBLETTING:

This lease shall be deemed personal to the Lessee, and Lessee shall not assign nor sublease the premises without City's express written consent. Subject to the limitations on assignment and subleasing herein, each of the terms, covenants and conditions of this lease shall extend to and be binding on and inure to the benefit of not only City and Lessee, but to each of their successors and assigns. Whenever in this lease, reference is made to either City or Lessee, the reference shall be deemed to include, wherever applicable, the successors and assigns of such parties as if in every case expressed.

11. NOTICES:

All notices required to be given under this lease shall be given by first class mail to the following parties:

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|--|---|
| 1. City of Lodi<br>City Manager<br>P.O. Box 3006<br>Lodi, CA 95241 | 2. Lodi-Woodbridge Winegrape Commission<br>President<br>2545 W. Turner Road<br>Lodi, CA 95242 |
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The parties hereto shall notify the other in writing should either move its primary address.

12. RECORDATION:

This lease shall be recorded and run with the land, and shall bind and inure to the benefits of the parties' successors, heirs and assigns.

**IN WITNESS WHEREOF**, the parties hereto have set their hands the day and year first hereinabove mentioned.

**CITY OF LODI**, a California  
a municipal corporation

**LODI-WOODBRIDGE WINEGRAPE  
COMMISSION**

\_\_\_\_\_  
H. DIXON FLYNN  
City Manager

By \_\_\_\_\_

ATTEST:

Approved As To Form:

\_\_\_\_\_  
SUSAN J. BLACKSTON  
City Clerk

  
\_\_\_\_\_  
RANDALL A. HAYS  
City Attorney

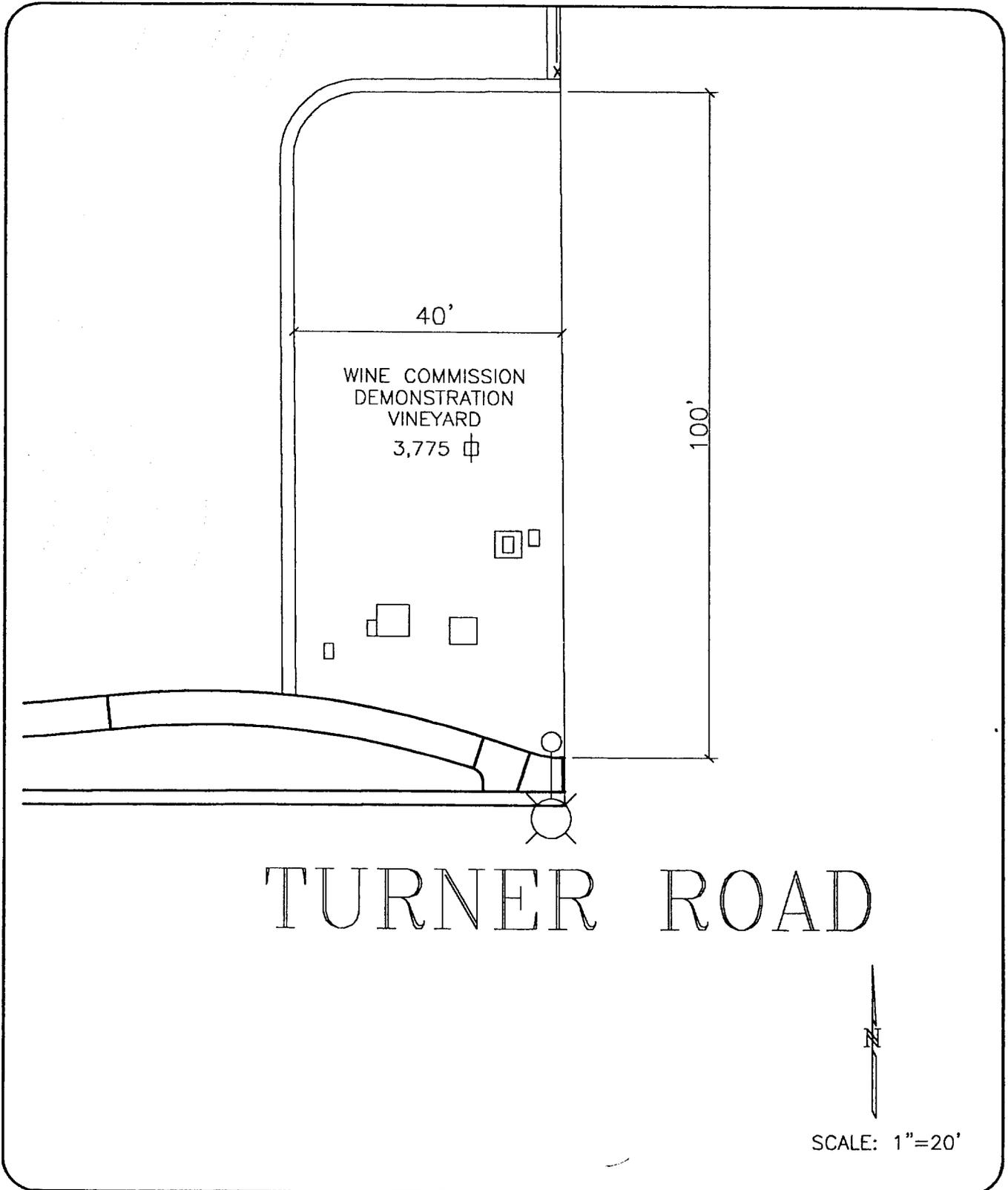


CITY OF LODI

PARKS DEPARTMENT

KATZAKIAN PARK

DEMONSTRATION VINEYARD



RESOLUTION NO. 2001-280

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE  
CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH THE  
LODI-WOODBRIDGE WINEGRAPE COMMISSION FOR USE OF A  
PORTION OF KATZAKIAN PARK FOR THE PURPOSE OF  
PLANTING A DEMONSTRATION VINEYARD

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NOW, THEREFORE, BE IT RESOLVED, that the Lodi City Council does hereby authorize the City Manager to execute a Lease Agreement with the Lodi-Woodbridge Winegrape Commission for use of a 100' by 40' section of Katzakian Park, located at 2735 W. Turner Road, for the purpose of planting a demonstration vineyard; and

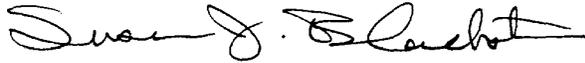
BE IT FURTHER RESOLVED, that the Lease Agreement shall be for a term of fifteen (15) years with an option to renew for an additional fifteen (15) years upon mutual agreement of both parties for the rental fee of \$1.00 per year, payable upon execution of the Agreement.

Dated: December 5, 2001

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I hereby certify that Resolution No. 2001-280 was passed and adopted by the Lodi City Council in a regular meeting held December 5, 2001 by the following vote:

- AYES: COUNCIL MEMBERS – Hitchcock, Howard, Land, Pennino  
and Mayor Nakanishi
- NOES: COUNCIL MEMBERS – None
- ABSENT: COUNCIL MEMBERS – None
- ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON  
City Clerk