



CITY OF LODI
COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving the Appropriation of Funds for Oversight Costs Related to PCE/TCE Busy Bee Plume (\$30,000)

MEETING DATE: June 6, 2012

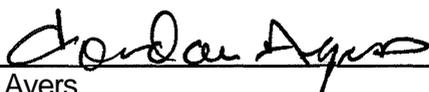
PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution approving the appropriation of funds for oversight costs related to PCE/TCE Busy Bee Plume in the amount of \$30,000.

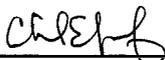
BACKGROUND INFORMATION: The City agreed to pay the State Water Resources Control Board (SWRCB) oversight costs in the Busy Bee Plume when it settled with the defendants, as shown in the attached settlement agreement. However, the SWRCB billed these costs to Busy Bee's retired counsel in error. The matter came to light when the SWRCB realized it had years of unpaid fees and acted to shut down the clean up. Per the settlement agreement and the Remedial Action Plan, any oversight costs that occurred after June 2008 are the City's responsibility. The settlement did create a source of funds to pay for the oversight, and the cleanup is reportedly near completion. The appropriation is to cover the past unpaid invoices and those we may receive for the oversight period through June 30, 2012.

FISCAL IMPACT: Failure to pay these costs will result in a shutdown of the clean up.

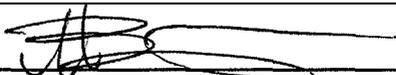
FUNDING AVAILABLE: Requested Appropriation:
Busy Bee Plume Fund (192101): \$30,000



Jordan Ayers
Deputy City Manager/Internal Services Director


for _____
F. Wally Sandelin
Public Works Director

Prepared by Rebecca Areida-Yadav, Management Analyst
FWS/RAY/pmf
Attachment

APPROVED: 

Konradt Bartlam, City Manager

Settlement Agreement and Mutual Release

A. Parties

This Settlement Agreement and Mutual Release (the "Agreement") is entered into and among the following parties:

1. The City of Lodi, California, a municipal corporation (the "City");

David Mustin; M&P Investments, a California general partnership; the Estate of Frank Paul, Deceased; and the Estate of Alvin Allmendinger, Deceased; collectively referred to as the "Busy Bee Defendants." Dana Chapman, administrator of the Estate of Frank Paul, and Janice Allmendinger as administrator of the Estate of Alvin Allmendinger join with the Busy Bee Defendants for purposes of any release by the City against their respective estates and are jointly referred to as the Busy Bee Parties; and

3. Unigard Insurance Company ("UIC") and Unigard Security Insurance Company ("USIC"); sometimes collectively referred to as "UIC & USIC."

These parties are sometimes collectively referred to herein as the "Settling Parties."

Any person or entity identified above may be referred to as a "Party."

B. Background

1. The City is the owner and operator of the municipal sanitary sewer and water supply systems within the City of Lodi.

2. M&P Investments, a California general partnership, owns certain property commonly referred to as 40 North Main Street, Lodi, California. This property as well as a certain neighboring property are alleged to have become environmentally contaminated as a result of or arising from the operations of the Busy Bee Dry Cleaners, identified at paragraphs 4 and 5, hereinafter referred to as the "Busy Bee Site."

3. David Mustin and Frank Paul were general partners in the partnership of M&P Investments, a California general partnership. UIC, as the insurer of Frank Paul, deceased, has been sued as the Estate of Frank Paul, Deceased, pursuant to the California Probate Code section 550, et seq., in that federal litigation identified at paragraph 12 of this section.

4. Alvin Allmendinger owned and operated the Busy Bee Dry Cleaners at the Busy Bee Site from 1984 through 1987. His operations at this dry cleaners are alleged to have caused environmental contamination. MSI Insurance Company, as the insurer of Alvin Allmendinger, has been sued as the Estate of Alvin Allmendinger, Deceased, pursuant to the California Probate Code section 550, et seq., in that federal litigation identified at paragraph 12 of this section.

5. Fred and Tina Roes owned and operated the Busy Bee Dry Cleaners at the Busy Bee Site from 1987 through October 1996, when the dry cleaning business was destroyed in a fire. During this period, the operations at this dry cleaners are also alleged to have given rise to environmental contamination at the site.

6. Contaminants, including PCE, have been detected in the soil and groundwater beneath and adjacent to the Busy Bee Site.

7. Breaks, cracks, and offset joints found in the City's sewer main in the alleyway that runs north to south located downstream and east of the building currently located at 110 and 112 East Elm Street, Lodi, California (the "Alley"), are alleged to have contributed to contamination at the Busy Bee Site.

8. The California Regional Water Quality Control Board (the "RWQCB") is currently the lead governmental agency responsible for the Busy Bee Site.

9. In the interests of preserving soil and groundwater quality and expediting the investigation and the remediation of the Busy Bee Site, the Busy Bee Defendants have been working with the RWQCB and have taken various measures to investigate **and** remediate the alleged contamination in the soil and groundwater at the Busy Bee Site.

10. As part of the investigation and remediation measures set forth above, the Busy Bee Defendants have caused to be issued a Draft Remedial Investigation Report and Feasibility Study Workplan prepared by E2C Remediation dated April 1, 2004, submitted to the RWQCB on April 4, 2004. This document **and** its subsequent amendments are referred to as the "Workplan."

11. As part of the investigation and remediation measures set forth above, E2C Remediation shall prepare and issue a Remedial Action Plan ("RAP") which will identify **and** describe the work necessary for clean-up of the Busy Bee Site

12. On November 2, 2000, and as later amended on May 25, 2001, August 4, 2004 and September 9, 2004, the City filed a Complaint for Damages against the Busy Bee Defendants, among others, in United States District Court for the Eastern District of California, Case No. CIV S-00-2441 FCD/JFM, alleging that the Busy Bee Defendants

were responsible in part for the contamination at the Busy Bee Site (the "Lodi Action").

13. Earlier, on February 10, 2000, the City filed a Complaint for Damages in the Superior Court of the County of San Joaquin, Case No. CV010002, seeking to enforce an administrative judgment against David Mustin and M&P Investments by requesting a permanent injunction regarding the investigation of alleged environmental contamination at the Busy Bee Site under the authority of a local ordinance known as the Comprehensive Municipal Environmental Response & Liability Ordinance or "MERLO." The Superior Court entered a default judgment against these defendants and ordered a permanent injunction. Based upon this judgment, the City later filed a lawsuit against UIC seeking to enforce the judgment in federal court, *infra*, at paragraph 20 of this section.

14. The Busy Bee Site is a listed site, as identified in California Health & Safety Code Section 25356, and is therefore subject to the procedures, standards, and other requirements of the Hazardous Substance Account Act.

15. The Busy Bee Defendants have entered into a voluntary agreement with the RWQCB regarding the investigation and remediation of the alleged environmental contamination at the Busy Bee Site.

16. The City has been identified as a potentially responsible party or PRP at the Busy Bee Site, and the City has taken steps to attempt to resolve its alleged liability for contamination at this site.

17. The City has become obligated to pay a judgment exceeding \$300,000 to UIC that was entered in state court in that action titled *City of Lodi v. Unigard Insurance Company*, Sacramento County Superior Court, Case No. 99AS01074. In an effort to

resolve the liabilities arising from this judgment as well as potential liabilities associated with other lawsuits involving UIC/USIC, the City has agreed to participate in this Agreement.

18. The City and the Busy Bee Defendants have an interest in resolving any and all disputes between them regarding their respective alleged liability for the alleged contamination at this site by agreeing to an allocation of responsibilities at the Busy Bee Site, thereby resolving the various claims that have arisen among them.

19. UIC and USIC filed suit in 1998 against the City of Lodi in federal court, now known as *Unigard Insurance Co., et al., v. City of Lodi*, U.S. District Court, E.D. Cal., Case No. S 98-1712 FCD/JFM, sometimes referred to as the "Civil Rights Action." By order of December 22, 2003, UIC & USIC have been held to have the right to obtain a permanent injunction barring the enforcement of certain provisions of Lodi Ordinances 1683 and 1684. As a successful parties, UIC & USIC have the right to seek recovery of their attorneys' fees under the authority of 42 U.S.C. § 1988.

20. In an attempt to enforce the judgment obtained against UIC's insureds, the City of Lodi filed suit in federal court seeking an injunction and other relief in an action known as *City of Lodi, California v. Unigard Insurance Company*, U.S. District Court, E.D. Cal., Case No. S 01-1718 FCD/JFM, sometimes referred to as the "11580 Action."

21. In the 11580 Action, UIC successfully defeated Lodi's motion for summary judgment. As the grounds for refusing to grant the motion were dispositive of Lodi's rights, the District Court entered judgment in UIC's favor on the complaint. In connection with the 11580 Action, UIC has the right to seek the recovery of its attorneys' fees under state law or through its counterclaim filed under the authority of 42 U.S.C. § 1983.

22. Substantial disputes have existed *among* the Settling Parties regarding their respective liabilities arising from the alleged environmental contamination at the Busy Bee Site. By and through this agreement, the Settling Parties have now resolved to settle any and all disputes among them arising from or related to the alleged environmental contamination or its causes at the Busy Bee Site, including those claims and counterclaims arising from any alleged civil rights violations.

NOW, THEREFORE, in consideration for the mutual promises set forth in this Agreement, the City, the Busy Bee Defendants, and UIC/USIC agree to resolve their differences in the manner set forth below.

C. Mutual Promises and Conditions of Settlement

1. Preconditions to Settlement of Allocation Rights

This Agreement contemplates that the Settling Parties will each take or authorize that certain steps be taken for the purpose of obtaining a release, one from the other, and as identified below:

- (a) As a result of an agreement between the RWQCB and the Busy Bee Defendants, the Busy Bee Defendants have agreed to complete the remaining site investigation for the Busy Bee Site, including pilot studies and subsequent feasibility studies (excluding the sewer line that runs in the Alley from manhole numbers K2070 to K2090 to K2091) leading to the creation and approval of a remedial action plan, or "RAP," subject to the limitations of subparagraph (c) below. The RAP shall require remediation until such time as the RWQCB issues a "no further action" letter or its

functional equivalent. As a precondition to this Agreement, the Busy Bee Defendants agree that they will be responsible for all reasonable and necessary costs and expenses relating to the preparation and RWQCB approval of the RAP, including the pilot study.

- (b) The City agrees that it will cooperate and reasonably assist with any permits (without fee), rights of way, or other municipal approvals related to the work to be performed by E2C at the Busy Bee Site.

- (c) In order to fund the work required by the RAP, the Busy Bee Defendants shall fund a "Pay for Performance" ("PPF") contract with E2C Remediation. A copy of this contract is attached as Exhibit A. While the Busy Bee Defendants will be responsible for the initial negotiation of this contract, in consideration of the mutual release that is found in this Agreement, the City will be named as a third party beneficiary to this contract. To purchase this contract, the Busy Bee Defendants shall be required to pay the PFP contract price in an amount up to the available total liability policy limits of UIC Policy no. MP 50 5494 and MSI Policy no. MP-5-223344496. The amounts required to fund this contract shall be deposited into a bank account ("Cleanup Account") for timed withdrawal by E2C pursuant to the terms of the PFP contract.

In addition to the payment(s) funding the IFP contract, the Busy Bee Defendants agree that they will pay \$100,000 into a trust account as a buffer known as the "Busy Bee Buffer." Once all available funds in the Cleanup Account and the City Buffer Account (described in Part C 1 d below) have been exhausted, the funds in the Busy Bee Buffer may be used to pay any reasonable expenses necessary to obtain a "no further

action letter” or its functional equivalent, if the PFP contract terminates without obtaining a “no further action letter” or its functional equivalent. Any residual funds in the Busy Bee Buffer will revert to the Busy Bee Defendants’ insurers if any amounts remain following the issuance of a no further action letter.

- (d) The City shall be responsible for paying any oversight fees charged by the RWQCB for the Busy Bee Site once the RAP commences, first utilizing a trust account known as the “City Buffer Account.” Any and all funds available as a result of the settlement between the City and Defendant Fred Roes shall be paid into the City Buffer Account. In addition to the settlement funds from Defendant Fred Roes, should the City settle with Brackett’s Garage, any settlement proceeds are to be deposited into the City Buffer Account. If there is a default in the performance of the PFP by E2C, the funds in the City Buffer Account shall be the first funds used for payment of any expenses above the remaining PFP contract price in the Cleanup Account for the completion of the RAP. Any funds remaining in the City Buffer Account at the time the RAP is completed shall revert to the City.
- (e) In the event the RAP is not completed and the PFP contract has been terminated, any remaining funds in the Cleanup Account shall be available for the City to use to complete the RAP.
- (f) The City’s repair of the sewer immediately downstream from the Busy Bee facility must be done in coordination with E2C’s work under the PFP contract.

2. Allocation of Responsibilities for Busy Bee Site

- (a) In consideration of UIC's waiver of its right to collect any judgment or attorneys' fees in connection with (1) that case known as *City of Lodi v Unigard Insurance Company*, Sacramento Superior Court, Case No 99AS01074, (2) the Civil Rights Action, (3) the 11580 Action, and (4) the performance of those preconditions imposed upon the Busy Bee Defendants, identified above, the City agrees that it alone will be responsible for any additional or future claims made by any other persons or entities claiming damages or injuries or asserting legal rights as a result of environmental contamination that is alleged to have taken place from the operations of the Busy Bee Dry Cleaners and that it will make no further demands on the Busy Bee Defendants. If the City defaults in its obligations and UIC elects to seek payment of those fees and costs permitted by this Agreement, the City will continue to have the same duties identified above. In connection with this promise, the City will file a Satisfaction of Judgment in San Joaquin County Superior Court, Case No. CV010002.
- (b) In consideration for the City's agreeing to accept the risk of E2C's inability to complete the RAP within the original contract price, the cost and expense of monitoring the RAP, and any other form of monetary expense or damages that may arise as a result of the releases exchanged by this Agreement, UIC & USIC will file a Satisfaction of Judgment in Sacramento Superior Court Case No. 99AS01074 within thirty (30) days after the settlement appearing in this Agreement is held to bar any rights of contribution by any third parties in a final order or judgment entered in

that action known as the Lodi Action. UIC & USIC will also waive any right to attorneys' fees arising from the appeal to the Court of Appeal for the Third Appellate District.

If the court refuses to grant the contribution bar, then this settlement will be deemed to have failed, and all Parties will be responsible to protect their respective interests as a result of this failure. This failure will allow UIC & USIC to seek recovery on its claims for attorneys' fees in *Unigard Insurance Co., et al., v. City of Lodi*, U.S. District Court, E.D. Cal., Case No. S 98-1712 FCD/JFM and *City of Lodi, California v. Unigard Insurance Company*, U.S. District Court, E.D. Cal., Case No. S 01-1718 FCD/JFM.

3. Release

- (a) In consideration of the promises exchanged above and the granting of a contribution bar as contemplated by this Agreement, the City forever releases the Busy Bee Parties and each of their respective administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, parents, subsidiaries, affiliated and related legal entities, agents, employees, servants, representatives, heirs, and associations connected with them, including without limitation their insurers, sureties, and attorneys, of and from any and all claims, demands, causes of action, obligations, liens, damages, losses, costs, and attorneys', consultants', and experts' fees and expenses of every kind and nature whatsoever, known and unknown, fixed or contingent, arising from, related to, or connected with the alleged contamination in, at, or around the Busy Bee Site and more particularly described in the United States District Court, Eastern District of California, Action No. CIV-S-00-2441 FCD/JFM, and California

Superior Court, County of San Joaquin, Action No. CV010002. The City also forever releases UIC and USIC from *any* and all claims, demands, causes of action, obligations, liens, damages, losses, costs, and attorneys', consultants', and experts' fees and expenses of every kind and nature whatsoever, known and unknown, fixed or contingent, arising from, related to, or connected with the alleged contamination in, at, or around the Busy Bee Site or that arise from those policies of insurance issued or allegedly issued to M&P Investments.

- (b) In consideration of the promises exchanged above and the granting of a contribution bar as contemplated by this Agreement, the Busy Bee Defendants forever release the City and each of its elected officials, appointed officials, managers, officers, administrators, assigns, affiliated and related legal entities, agents, employees, servants, representatives, and political associations or subdivisions, including without limitation its insurers and sureties, of and from any and all claims, demands, causes of action, obligations, liens, damages, losses, costs, and attorneys', consultants', and experts' fees and expenses of every kind and nature whatsoever, known and unknown, fixed or contingent, arising from, related to, or connected with the alleged contamination in, at, or around the Busy Bee Site and more particularly described in the United States District Court, Eastern District of California, Action No. CIV-S-00-2441 FCD/JFM, and California Superior Court, County of San Joaquin, Action No. CVO10002.
- (c) In consideration of the promises exchanged above, including but not limited to the City's agreement to accept responsibility for completion of the RAP and the risk of *any* further claims arising from or related to the

actual or alleged environmental contamination allegedly arising from the operations of the Busy Bee Dry Cleaners, and provided that a final order has been entered finding that the settlement between the Busy Bee Defendants and the City of Lodi is in good faith, UIC & USIC agree that upon the issuance of a no further action letter, or the equivalent, by the lead state agency overseeing the RAP:

- (i) UIC & USIC will forever release the City and *each* of its elected officials, appointed officials, managers, officers, administrators, assigns, affiliated and related legal entities, agents, employees, servants, representatives, and political associations or subdivisions, including without limitation its insurers and sureties, of and from any and all claims, demands, causes of action, obligations, liens, damages, losses, costs, and attorneys', consultants', and experts' fees and expenses of every kind and nature whatsoever, known and unknown, fixed or contingent, arising from, related to, or connected with the alleged contamination in, at, or around the Busy Bee Site, except that UIC/USIC shall have the right to enforce a permanent injunction as ordered in *Unigard v. City of Lodi*, U.S. District Court, ED Cal, Case No. S 98-1712 FCD/JFM. If the City violates this injunction, UIC & USIC will have *any* and all rights to seek such order, sanctions, and/or damages *as may* be appropriate.

- (ii) Until the no further action letter or its equivalent is issued, UIC & USIC and the City agree that they will jointly stipulate to a stay of the lawsuits filed in the U.S. District Court for the Eastern District of California, *Unigard v City of Lodi*, Case No. S98-1712 FCD/JFM, and *City of Lodi v. Unigard*, Case No. S 01-1718 FCD/JFM, and seek

an order confirming this stay until the contingencies to this settlement have been met.

- (iii) If the conditions to this settlement should fail, UIC & USIC shall have the right to collect its attorneys' fees, as permitted by law, in those lawsuits filed in the U.S. District Court for the Eastern District of California, *Unigard v. City of Lodi*, Case No. S 98-1712 FCD/JFM, and *City of Lodi v. Unigard*, Case No. S 01-1718 FCD/JFM.

4. Dismissal

Within 60 days after a final order granting the motion for a good faith settlement has been entered, the City and the Busy Bee Defendants shall dismiss with prejudice any and all claims, actions, administrative actions, and lawsuits (including appeals) pending in all state and federal jurisdictions as to one another including, but not limited to, tlic action pending in the United States District Court for tlie Eastern District of California, Case No. CIV S-00-2441 FCD/JFM, as well as in any administrative venues. Consistent with such dismissal, the City shall support the Busy Bee Defendants' motion for good faith settlement, seeking to bar any claims from other parties for contribution related to any alleged or actual contamination at the Busy Bee Site. In turn, the Busy Bee Defendants shall support the City's motion for good faith settlement seeking to bar any claims from other parties for contribution related to any alleged or actual contamination at the Busy Bee Site.

In the California Superior Court, County of San Joaquin, Case No. CV01 0002, tlic City agrees that it will file a satisfaction of judgment of the Busy Bee Defendants therein and a dismissal with prejudice as to any remaining defendants within 60 days after a good faith settlement order has been issued regarding the settlement between the City and the Busy Bee Defendants. UIC/USIC waives its right to collect the judgment against tlic City in the

California Superior Court, County of Sacramento, Case No. 99 AS 01074, by filing a satisfaction of judgment therein within 60 days after a good faith settlement order has been issued regarding the settlement between the City and the Busy Bee Defendants.

If a final good faith settlement order has been issued regarding the settlement between the City and the Busy Bee Defendants, then within twenty (20) days after the no further action letter or its equivalent is received by UIC/USIC, UIC/USIC will file a dismissal in the 11580 Action. The Civil Rights Action will have a judgment entered confirming the permanent injunction.

5. Scope of this Agreement

It is expressly acknowledged that Settling Parties enter into this Agreement to compromise, settle, and fully resolve any and all claims as to both liability and damages related to the environmental contamination at the Busy Bee Site, and that this Agreement settles, resolves, and releases any and all past, present, and future claims among the Settling Parties regarding the actual, alleged, or threatened environmental contamination at the Busy Bee Site. This Agreement contemplates the global termination of all litigation and past, present, and future disputes, judgments, claims, actions, administrative proceedings, and lawsuits among the City, UIC/USIC, and each of the Busy Bee Parties arising out of the alleged or threatened contamination at or around the Busy Bee Site. The terms of this Agreement are not intended to nor do they create any interest in this settlement to any third party under a third party beneficiary theory or any other theory.

This release is intended to extend to the respective heirs, employees, officers, officials, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives, and all persons, firms, associations, and/or corporations connected with them, including,

without limitation, their sureties and/or attorneys, except as otherwise provided by this Agreement.

Should Lehman Brothers or Envision Law Group, or any members thereof, sue or make a claim on any of the Busy Bee Defendants or UIC/USIC as a result of this Agreement, the Busy Bee Defendants and/or UIC/USIC will have the right to seek an adjudication of their respective rights and, if appropriate, to seek damages or other relief against Lehman Brothers or Envision Law Group or any members thereof.

6. **No Admission of Liability**

By contributing to the settlement of this claim, the Settling Defendants have not admitted and do not admit that they are liable for any damages claimed by the City and/or the other parties to any lawsuits or proceedings. The receipt of any settlement proceeds or any payments for the investigation and/or remediation at the Busy Bee Site shall not be considered an admission of liability. This settlement represents an agreement resulting from disputed issues of fact and of law. By entering into this Agreement, the Settling Parties do not admit that they, individually or jointly, have any liability or obligation for the actual or alleged environmental contamination within Lodi. None of the terms reflected herein nor any statements or communications made by the Settling Parties or their agents, attorneys, or insurers during the negotiations leading to this Agreement shall be considered admissions of liability by or on behalf of any of the Settling Parties.

7. **No Liens or Encumbrances**

Each Settling Party represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Agreement. Each Settling Party further represents and warrants that it has the sole right and

exclusive authority to execute this Agreement and to agree to the terms herein, and that it has not sold, assigned, transferred, conveyed, or otherwise disposed of any claims, demands, obligations, or causes of action referred to in this Agreement. If Lehman Brothers or Envision Law Group should claim an interest in the consideration identified in this Agreement, the City will be obligated to defend, indemnify, and hold harmless any Settling Party that is the subject of the claim or suit. In no event shall any other Settling Party be required to pay any additional amounts to settle any claims by that third party.

8. Uncertainty of Circumstances

Each party hereto acknowledges that there is a risk that, subsequent to the execution of this Agreement, it may incur, suffer, or sustain *an* injury, loss, damages, costs, attorneys' fees, expenses, or any of these, which are in some way caused by or connected with the matters released and referred to above, which are unknown and unanticipated at the time this Agreement is signed, or which are not presently capable of being ascertained, and further that there is a risk that such damages as are known may become more serious than the Settling Parties now expect or anticipate. Nevertheless, each of the Settling Parties hereto acknowledges that this Agreement has been negotiated and agreed upon in light of that realization and hereby expressly waives any rights it may have in such unsuspected claims. This release of claims is not intended to release any contractual rights that a policy holder may have against his, her, or its own insurer.

9. Waiver of Rights (Civil Code § 1542)

In entering into this settlement agreement, each Settling Party has had the benefit of legal counsel and *has* been advised of, understands, and knowingly and specifically waives its rights under California Civil Code Section 1542, which provides as follows:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE - A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which, if known by him, must have materially affected his settlement with debtor.

Each party hereto further waives all rights under any similar law in any state or territory of the United States.

10. Attorneys' Fees and Costs

Except as set forth in Section C.3(c)(i), the City and the Busy Bee Defendants acknowledge and agree that they are to bear their owns costs, expenses, expert and consultant fees, and attorneys' fees arising out of the matters set forth herein and connected to the litigation surrounding the Busy Bee Site, the negotiation, drafting, and execution of this Agreement, and all matters arising out of or connected therewith.

Except as set forth in Section C.3(c)(i), the City and UIC & USIC acknowledge and agree that they are to bear their owns costs, expenses, expert and consultant fees, and attorneys' fees arising out of the matters set forth herein and connected to the litigation surrounding the Busy Bee Site, the negotiation, drafting, and execution of this Agreement, and all matters arising out of or connected therewith.

11. Continuing Jurisdiction

Following the execution of this Agreement, the Honorable Frank C. Damrell, Jr., of the United States District Court for the Eastern District of California shall retain jurisdiction over this action for purposes of enforcement of the terms of this Agreement pursuant to California Code of Civil Procedure section 664.6 or any other similar law in any state or territory of the United States as well as the permanent injunction in *Unigard*

12. Breach of the Agreement

In the event of litigation or motion practice arising out of or relating to the performance of or the breach of this Agreement, including its interpretation, the prevailing Party or Parties shall recover their reasonable attorneys' fees and costs incurred in that litigation or motion practice.

13. Integrated Agreement

This Agreement supersedes any prior communications, agreements, and understandings regarding the matters contained herein between the signatories hereto or their representatives. Any representation, promise, or condition in connection with such matters that is not incorporated in this Agreement shall not be binding upon any of the Settling Parties.

14. Binding Effect

Subject to the conditions found in this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the Settling Parties as well as their respective officers and directors, the respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives, and all persons, firms, associations, and/or corporations connected with them, including, without limitation, their sureties and/or attorneys, except as otherwise provided by this Agreement.

15. Severability

If any provision or any part of any provision of this Agreement is for any reason held to be invalid, unenforceable, or contrary to any public policy, law, statute, and/or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

16. Benefit of Counsel/Consultants

In entering into this Agreement, each Party represents and warrants that he, she, or it is not relying on any representations, opinions, conclusions, recommendations, or opinions expressed by, provided by, or inferred from any other Party to this Agreement, any attorney for any other Party, or any other Party's experts, consultants, or agents.

Each Party represents and warrants that it has been fully advised by its attorney concerning the effect and finality of this Agreement, and that the Party understands, without reservation or doubt, the effect **and** finality of this Agreement.

Each Party further represents and warrants that it desires to forever and fully release and discharge all other Parties to this Agreement to the extent stated in this Agreement and understands that by execution of this Agreement, no further claims against any Party, arising out of the matters released, may ever be asserted by any Party hereto except as otherwise provided for in this Agreement in Section C.3(c)(i).

17. Counterparts

This Agreement may be executed in counterparts, and all so executed shall be binding upon all Parties hereto, notwithstanding that the signatures of the Parties' designated representatives do not appear on the same page.

18. Representations and Warranties

The Settling Parties make the following representations and warranties to the extent that the representation is related to its own respective knowledge, interests, or action:

- (a) Each Party warrants that, after receiving advice of counsel, he, she or it has freely agreed to enter into this Agreement;
- (b) Each Party warrants that it is fully authorized to enter into this Agreement on behalf of itself and that each Party's signatory is authorized to sign on behalf of the Party identified; and
- (c) All Parties separately warrant and represent that they have read this entire Agreement and know the contents hereof, that the terms hereof are contractual and not merely recitals, and that they have signed this Agreement of their own free will, respectively, and without duress.

19. Governing Law

This Agreement is entered into and shall be interpreted in accordance with the laws of the State of California.

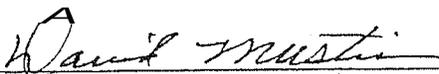
20. Warning as Required by Law

All persons signing this release must read and understand it in its entirety and truly intend to terminate, irrevocably, all their rights to further pursue or prosecute

their causes of action, demands, or claims against each of the other Settling Parties herein. In particular, please note:

- (a) The extensive description of the persons released. Some of the persons released may not be parties to the lawsuit(s), claims, actions, or judgments to be dismissed, but nevertheless release of them is required as a necessary part of the settlement evidenced by this Agreement and release.
- (b) Each of the undersigned hereby authorizes and directs the attorney of the undersigned to forthwith dismiss with prejudice any and all pending lawsuits, claims, actions, or any other type of legal proceeding as set forth herein.
- (c) No promise, inducement, or agreement not expressed herein has been made to the undersigned.

DATED:



DAVID MUSTIN, Individually and as a
General Partner of M&P INVESTMENTS

APPROVED AS TO FORM

DATED: 10/15/04

MAYALL, HURLEY, KNUTSEN, SMITH &
GREEN

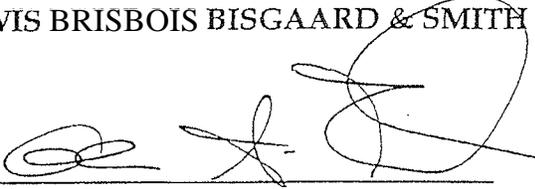
By 

JOSEPH A. SALAZAR, JR., Attorneys for M&P
INVESTMENTS and DAVID MUSTIN

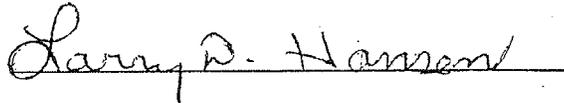
APPROVED AS TO FORM

DATED: 10/15/04

LEWIS BRISBOIS BISGAARD & SMITH
LLP

By 
GLENN A. FRIEDMAN, Attorneys for M&P
INVESTMENTS and DAVID MUSTIN

DATED: 10/15/04


LARRY D. HANSEN, MAYOR, CITY OF LODI

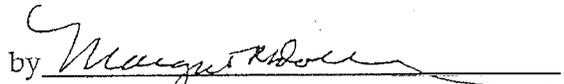
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DATED:

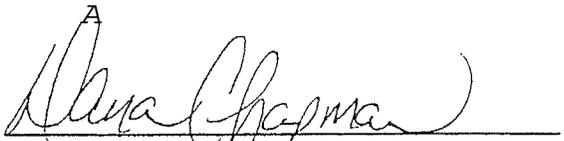

STEPHEN SCHWABAUER, ESQ., Office of the
City Attorney, CITY OF LODI

FOLGER LEVIN & KAHN, LLP

DATED: 10/15/04

by 
MARGARET DOLLBAUM, Attorneys for the
CITY OF LODI

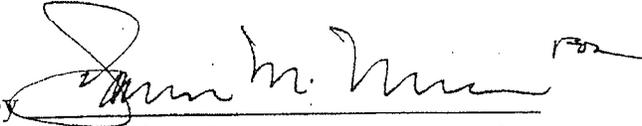
DATED: 10/18/04


DANA CHAPMAN, Administrator of the
ESTATE OF FRANK PAUL

APPROVED AS TO FORM

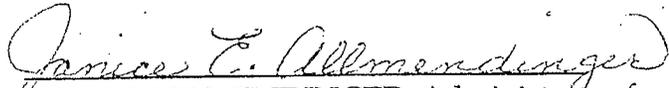
DATED: 10/15/04

BULLIVANT HOUSER BAILEY, PC

By 

M. TAYLOR FLORENCE, Attorneys for
Defendant, ESTATE OF FRANK PAUL,
Deceased

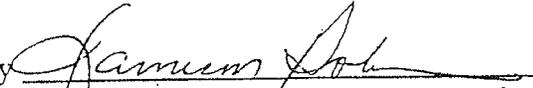
DATED: 10/21/04


JANICE ALLMENDINGER, Administrator for
the ESTATE OF ALVIN ALLMENDINGER

APPROVED AS TO FORM

DATED: 10/15/04

LAW OFFICE OF JAMES M. SOBOLEWSKI

By 
JAMES M. SOBOLEWSKI, Attorneys for
Defendant, ESTATE OF ALVIN
ALLMENDINGER, Deceased

DATED:

SCOTTKALLANDER, ASST. CORP .
SECRETARY
On Behalf of UNIGARD INSURANCE
COMPANY AND UNIGARD SECURITY
INSURANCE COMPANY

APPROVED AS TO FORM

DATED:

BULLIVANT HOUSER BAILEY, PC

By _____
M. TAYLOR FLORENCE, Attorneys for
Defendant, ESTATE OF FRANK PAUL,
Deceased

DATED:

JANICE ALLMENDINGER, Administrator for
the ESTATE OF ALVIN ALLMENDINGER

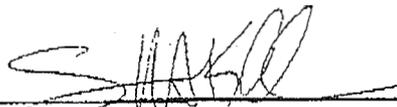
APPROVED AS TO FORM

DATED:

LAW OFFICE OF JAMES M. SOBOLEWSKI

By _____
JAMES M. SOBOLEWSKI, Attorneys for
Defendant, ESTATE OF ALVIN
ALLMENDINGER, Deceased

DATED:



SCOTT KALLANDER, ASST. CORP.
SECRETARY
On Behalf of UNIGARD INSURANCE
COMPANY AND UNIGARD SECURITY
INSURANCE COMPANY

1. AA# _____
 2. JV# _____

**CITY OF LODI
 APPROPRIATION ADJUSTMENT REQUEST**

TO. Internal Services Dept - Budget Division
 3 FROM Rebecca Areida-Yadav 5. DATE. 05/10/2012
 4 DEPARTMENT/DIVISION: Public Works

6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW

	FUND #	BUS. UNIT #	ACCOUNT #	ACCOUNT TITLE	AMOUNT
A. SOURCE OF FINANCING	192		3205	Fund Balance	\$ 30,000.00
B. USE OF FINANCING	192	192101	8099	Busy Bee Oversight	\$ 30,000.00

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

Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.

Oversight costs related to the PCE/TCE Busy Bee Plume site.

Council has authorized the appropriation adjustment, complete the following:
 Meeting Date: _____ Res No: _____ Attach copy of resolution to this form.
 Department Head Signature: Chris [Signature] for PWS

8. APPROVAL SIGNATURES

Deputy City Manager / Internal Services Manager

Submit completed form to Internal Services Manager with any required documentation
 Final approval will be provided in hard copy format

RESOLUTION NO. 2012-84

A RESOLUTION OF THE LODI CITY
COUNCIL APPROVING APPROPRIATION OF
FUNDS FOR OVERSIGHT COSTS RELATED
TO PCE/TCE BUSY BEE PLUME

WHEREAS, the City agreed to pay the State Water Resources Control Board oversight costs in the Busy Bee Plume when it settled with the defendants; however, these costs were billed by the Board to Busy Bee's retired counsel in error; and

WHEREAS, per the Settlement Agreement and Remedial Action Plan letter, oversight costs incurred after June 2008 are the City's responsibility; and

WHEREAS, the settlement did create a source of funds to pay for the oversight, and the cleanup is reportedly near completion; and

WHEREAS, the requested appropriation will cover past unpaid invoices and those we may receive for the oversight period through June 30, 2012.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the appropriation of \$30,000 from the Busy Bee Plume Fund for State Water Resources Control Board oversight costs related to the PCE/TCE Busy Bee Plume.

Dated: June 6, 2012

I hereby certify that Resolution No. 2012-84 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 6, 2012, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, Nakanishi,
and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk