



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Ordinance No. 1865 Entitled, "An Ordinance of the City Council of the City of Lodi Partially Rescinding and Amending Development Agreement Pertaining to the Development of 220 Acres Located on the South Side of Harney Lane Between State Highway 99 and the Union Pacific Railroad to the West (Reynolds Ranch) (Development Agreement 06-GM-01)"

**MEETING DATE:** October 17, 2012

**PREPARED BY:** City Clerk

**RECOMMENDED ACTION:** Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1865.

**BACKGROUND INFORMATION:** Ordinance No. 1865 entitled, "An Ordinance of the City Council of the City of Lodi Partially Rescinding and Amending Development Agreement Pertaining to the Development of 220 Acres Located on the South Side of Harney Lane Between State Highway 99 and the Union Pacific Railroad to the West (Reynolds Ranch) (Development Agreement 06-GM-01)," was introduced at the regular City Council meeting of October 3, 2012.

**ADOPTION:** With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. **Cal. Gov'f Code § 36934.**

Ordinances take effect 30 days after their final passage. **Cal. Gov'f Code § 36937.**  
This ordinance has been approved as to form by the City Attorney.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** None required.

  
\_\_\_\_\_  
Randi Johl  
City Clerk

RJ/jmr  
Attachment

**APPROVED:**   
\_\_\_\_\_  
Konradt Bartlam, City Manager

ORDINANCE NO. 1865

AN ORDINANCE OF THE CITY COUNCIL ~~OF~~ THE CITY OF LODI  
PARTIALLY RESCINDING AND AMENDING DEVELOPMENT AGREEMENT  
PERTAINING TO THE DEVELOPMENT OF 220 ACRES LOCATED ON THE  
SOUTH SIDE OF HARNEY LANE BETWEEN STATE HIGHWAY 99 AND THE  
UNION PACIFIC RAILROAD TO THE WEST (REYNOLDS RANCH)  
(DEVELOPMENT AGREEMENT 06-GM-01)

=====

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

SECTION 1. The Lodi City Council passed Ordinance No. 1785 approving a Development Agreement covering the following property:

**220 ACRES LOCATED ON THE SOUTH SIDE OF HARNEY LANE  
BETWEEN STATE HIGHWAY 99 AND THE UNION PACIFIC  
RAILROAD (UPRR) TO THE WEST - ASSESSORS PARCEL  
NUMBERS 058-110-04, 058-110-41, 058-130-06, 058-130-07,  
058-130-08, 058-130-09, 058-130-11, 058-130-15, 058-130-16,  
058-130-21, 058-130-22, 058-130-24, AND 058-130-04.**

SECTION 2. San Joaquin Valley Land Company LLC. ("SJVLC"), the sole party to the above referenced Development Agreement, requested that the agreement be partially rescinded and amending by letter of September 24, 2012, a copy of which is attached hereto and incorporated by reference. However, SJVLC, Citizens for Open Government and the City entered into a settlement agreement dated August 26, 2006 ("Settlement Agreement"), the obligations of which were incorporated into the Development Agreement and into the California Environmental Quality Act (CEQA) approvals set forth in Resolution 2006-162. This ordinance shall not terminate any of the obligations set forth in the Settlement Agreement. Moreover, CEQA Resolution 2006-162 shall continue in full force and obligate Frontiers to comply with all of the obligations set forth in the Settlement Agreement.

SECTION 3. The City Council hereby finds that partial termination of the Development Agreement and amendment as set forth in the attached Mutual Agreement to Terminate Development Agreement is in the best interest of the City to ensure that any construction is subject to the new impact mitigation fee program, and to eliminate conditions in the Development Agreement that could present barriers to housing construction in the current economy.

SECTION 4. The City Council hereby finds that the partial termination of the Development Agreement and amendment as set forth in the attached Mutual Agreement to Terminate Development Agreement is consistent with the General Plan land use designation and the zoning for the proposed Development.

SECTION 5. The City Council hereby adopts Ordinance No. 1865 partially rescinding and amending the Development Agreement by and between the City of Lodi and SJVLC as set forth in the attached Mutual Agreement to Terminate Development Agreement. However, the Settlement Agreement and CEQA Resolution 2006-162 shall continue in full force and obligate SJVLC to comply with all of the obligations set forth in the Settlement Agreement.

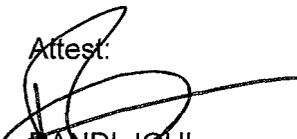
SECTION 6. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer for employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 7. 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 8. 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 30 days from and after its passage and approval.

Approved this 17<sup>th</sup> of October, 2012

  
\_\_\_\_\_  
JOANNE MOUNCE  
Mayor

Attest:  
  
RANDI JOHL  
City Clerk

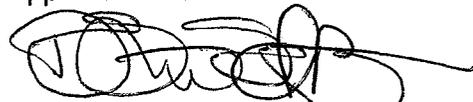
=====  
State of California  
County of San Joaquin, ss.

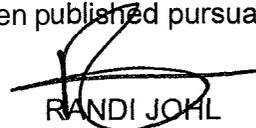
I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1865 was introduced at a regular meeting of the City Council of the City of Lodi held October 3, 2012, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held October 17, 2012, 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

I further certify that Ordinance No. 1865 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

Approved as to Form:

  
D. STEPHEN SCHWABAUER  
City Attorney

  
\_\_\_\_\_  
RANDI JOHL  
City Clerk

**san joaquin  
valley land  
company llc**

August 13, 2012

Mr. Rad Bartlam, C i Manager  
City of Lodi  
221 W. Pine Street  
Lodi, CA 95240

**RE. Request to Terminate Reynolds Ranch Development Agreement**

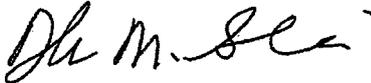
Dear Rad:

This letter concerns the Development Agreement, ("DA"), for the Reynolds Ranch project approved on August 30, 2006 by the Lodi City Council.

On behalf of SJVLC, I am requesting that the DA be terminated. The project is not sustainable financially with the DA in effect due to the combination of the cost of the obligations and the much lower land values since the DA and the project were originally approved in 2006. We understand that we will lose any benefits contained in the DA upon termination.

Please contact me at your earliest convenience so that we may discuss the steps necessary by us and the City to place this item on a City Council meeting agenda as soon as possible.

Sincerely,



Dale N. Gillespie, Managing Member  
San Joaquin Valley Land Company, LLC

cc: SJVLC members

## MUTUAL AGREEMENT TO TERMINATE DEVELOPMENT AGREEMENT

This **Mtial** Agreement to Terminate Development Agreement (Agreement) is made this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the City of **Lodi**, a California general law city (**Lodi**) and San Joaquin Valley Land Company LLC (Landowner or Developer) and terminates that certain Development Agreement entered into by the parties on September 6, 2006 (Development Agreement) regarding the Reynolds Ranch Project (the "Project").

### 1. RECITALS.

A Landowner owns or controls certain real property generally **known as** the Reynolds Ranch Project and more specifically described in Exhibit A which is attached hereto and incorporated herein by this reference.

B. In 2005 Blue Shield of California, ("BSC"), which at the time employed over 600 employees in 3 separately leased **Lodi** facilities, and constituted one of Lodi's largest private employers, desired to consolidate their **operations** into a single owned location and thereafter expand their employment to **1100** employees. Despite **best** efforts by the City of **Lodi**, BSC was unable to find a suitable location within the then current Lodi municipal boundary and subsequently BSC decided to locate its new facility **in** Stockton.

C. The City of Lodi was discouraging residential development applications during this period of time, **as** it anticipated updating Lodi's General Plan, a process which **had** not yet **begun**.

D. During this same time, Landowner proposed developing a **mixed** use project adjacent to Highway 99 and **South** of Harney Lane that would be designed to accommodate Blue Shield's **needs** in the proposed Project. The Project **as** conceived and designed included approximately **1,100** residential **units** of various types, **office** uses, and **an** anchored retail shopping center.

E. Negotiations between BSC and Landowner resulted in an enforceable agreement **in** favor of BSC purchasing a **20.5** acre campus **within** the Project site contingent **upon** Lodi and San **Joaquin** County LAFCo approving the annexation of the Project site to **Lodi** and **Lodi** granting related land use entitlements **within** a **certain time frame**. BSC leveraged the fact that they had already secured the Stockton site due to BSC's **inability** to earlier locate a suitable site in Lodi to negotiate a substantial land price **concession** and a cap on its contribution to **infrastructure** **far** below **BSC's** **fair** share contribution.

F. Under **State** law and local ordinance development agreements between **Lodi** and land owners are optional. Lodi and Landowner entered into the Development Agreement, ("DA"), for purposes **of, on** Developers part: securing vested development **rights**; and **on** City's part: **securing** community benefits and applying conditions of approval ~~that~~ were functionally equivalent to the **conditions** of approval ~~that~~ were anticipated to be imposed by the yet to be adopted **General Plan update**.

G. **On** September 6, 2006 Lodi and Landowner entered into the Development Agreement, effective **on** October 6, 2006.

H. Lodi and LAFCo approved the annexation and related entitlements in August, 2006 and January, 2007 respectively. Landowner funded and constructed substantial dedicated public **infrastructure** for Phase 1 of the Project in order for BSC to construct and occupy the facility within BSC's identified time constraints. The public **infrastructure**, including the re-alignment, dedication of land for rights of way totaling almost 12 acres, and construction of the Hwy 99 frontage road, (now called Reynolds Ranch Parkway), to accommodate **future** reconstruction of the Hwy 99/Harney Lane interchange, in addition to a sewer line oversized to accommodate future development East of Hwy 99, was not **reimbursed** by the City of Lodi.

I Landowner completed Phase 1 of Reynolds Ranch and BSC completed their 160,000 square foot facility and moved in November of 2008, adding 500 new jobs to the 600 **hundred** jobs saved for a total of 1,100 jobs.

J. Economic conditions deteriorated rapidly **beginning** in 2007 before any residential development plans could be filed for and processed.

K. Landowner continued to attempt to develop other portions of the Project in spite of highly negative economic conditions without success, except for the **Phase 2** retail shopping center. Both Costco and Home Depot became interested in the **regional** draw of Reynolds Ranch to a population center of over 190,000 people due to its **proximity** and **access** to Highway 99 and nearby roads ~~that~~ **access** the many foothill communities and **north** Stockton. However, though the letters of intent were signed for these two retailers in 2007, both postponed their development and construction plans with Costco **starting in** October 2010 and Home Depot **starting** in August 2011, which resulted **in greatly** reduced land sales prices and lower reimbursements of their offsite obligations otherwise owed to Landowner. In addition, significant **unreimbursed** holding **costs** were incurred **between** 2007 and 2010.

L. **Phase 2** of Reynolds Ranch is currently being completed and Costco and Home Depot have opened. Many of the improvements in **this** phase have far-reaching **regional** benefits. The Phase 2 public improvements have also not been reimbursed to developer including two new signals **on** Reynolds Ranch Parkway, Developer's \$1.4 million **cost** for the Hwy 99/Harney Lane interim interchange improvements, and the engineering and related **soft costs** for the **Hwy 99/Harney Lane** interim interchange improvements.

**M.** The Costco store generates significant **sales tax** revenue for Lodi. It also employs at least **180** employees, 20 in management positions. Approximately two-thirds of Costco's sales **are** to non-Lodi residents, creating additional sales opportunities for local merchants.

**N.** Home Depot opened its first LEED-certified 135,000 square foot store, which is one of the only "new-market" stores it opened in 2012. **This** store draws national attention **as** the only Home Depot store outfitted **with** state of the **art** energy management systems **as** part of a **U.S.** Department of Energy grant. The Lodi store is the test site for these systems **on** an on-going basis. The Home Depot employs approximately **150** employees, **most** full time. It is projected to create **significant sales tax** revenue to the City. Like Costco, approximately two-thirds of the projected sales volume is expected to be derived from non-Lodi residents.

**O.** Subsequent to the entry of the Development Agreement, the City adopted its anticipated General Plan but that General Plan did not contain **many** of the conditions anticipated in the Development Agreement.

**P.** Government Code Section **65868** authorizes the parties to terminate the Development Agreement upon mutual consent and providing the public notice required by Government Code Section **65867**.

**Q.** Therefore, the City finds the public interest **has** been served by locating the Blue Shield, Home Depot, Costco and other retail users at Reynolds Ranch. Further, the City finds the exactions imposed by the Development Agreement represent significant obstacles to the development of the residential **aspect** of the approved mixed use plan and the City will not enjoy the additional benefits flowing from **full build out** of **this** approved **mixed** use Project. Further, the City finds ~~that~~ the exactions **imposed** by the Development Agreement place the residential aspect of the mixed use plan at a fatal economic disadvantage in relationship to **other** pending or future residential projects in Lodi which do not **carry** the weight of the Development Agreement's conditions. The City further **finds** that conditions and terms imposed by the recently enacted General Plan **Update** are appropriate to the residential **aspects** of the Reynolds Ranch Project, fulfill the public interest and **are** the functional equivalent to the ad hoc conditions imposed by the Development Agreement.

## **2. TERMINATION OF DEVELOPMENT AGREEMENT.**

Subject to the terms and conditions contained herein, the parties **terminate** the Development Agreement **as** of **this** Agreement's effective date. Thereafter the parties **shall** have **no** rights or duties to one another (except **as** set forth herein) or any **third** party from any and all **rights** or obligations arising from the Development Agreement, whether or not such rights or **obligations** have been fully or partially enjoyed and/or **performed** or if the enjoyment of the right or performance of the obligation **has** not yet happened. It is the intention of the parties that **upon** the effective date of this Agreement the parties **shall**

**no** longer have any **rights** or obligations between themselves under the Development Agreement except **as** set forth herein.

A. Obligations **Arising** from Existing Benefits: The obligations set forth below, which were triggered under the Development Agreement prior to **this** Termination Agreement but have not yet **been** satisfied by the Developer shall continue in **full** force and effect. In the event Developer **has** failed to meet any of the obligations **set** forth below at the time Developer applies for any development entitlements within the **Project**, City **will** be entitled to refuse to process the application **until** the below listed obligations **are** fully satisfied.

- i) Electric Utility Impact Fees. Developer **shall** pay **an** amount to be billed by the City not to exceed **\$291,336.28** in electric **utility** Line Extension Costs called for in paragraph **6.4.10** of the Development Agreement by January **1,2013**.
- ii) Developer and Citizens for Open Government and the City entered into a settlement agreement dated August **24, 2006** (“Settlement Agreement”), the obligations of which were incorporated into the Development Agreement and into the CEQA approvals set forth **in** Resolution **2006-162**. **This** agreement shall not terminate any of the obligations set forth in the Settlement Agreement. Moreover, CEQA Resolution **2006-162** **shall** continue in **full** force and obligate Developer to comply with **all** of the obligations set forth in the Settlement Agreement.
- iii) Agricultural Mitigation. Developer **shall** satisfy the Agricultural **Mitigation** Requirements set forth in Paragraph **6.1.2** and **6.4.11** of the Development Agreement **at** the times **required** by those sections. **This obligation, among others, is also included in the Settlement Agreement referenced in section 2.A.ii above.**
- iv) Maintenance of Public Improvements. Developer **shall** comply **with** the requirements of Paragraph **6.4.5** of the Development Agreement.
- v) Dedication of Fire **Station** Property. Developer **shall** comply with the requirement of Paragraph **6.4.6** of the Development Agreement to dedicate property for a Fire **Station**. The remainder of the requirements of paragraph **6.4.6** **shall** be **terminated**.
- vi) Public Art. Developer **shall** comply **with** the requirement to Install public **Art** set forth in the Project set forth in Paragraph **6.4.8** of the Development Agreement. The **\$60,000** amount **shall** be reduced by the ratio **that** the acres of Project land developed **as** of the date

of this Agreement bears to the **total** acreage of the Project (52.7 acres/220 acres which equals \$14,373.00).

3. SUBSEQUENT DEVELOPMENT AND CONSTRUCTION SHALL BE SUBJECT TO CURRENT ORDINANCES, STANDARDS AND POLICIES.

A. Portions of the Project Already Constructed.

Those portions of the Project already constructed shall be regarded as vested from any changes in the ordinances, standards and policies in effect at the time the Development Agreement was effective and shall not be subject to any new ordinances, standards or policies enacted subsequently.

B. Portions of the Project not Yet Constructed.

Those portions of the Project that have not yet obtained a building permit from the City of Lodi shall be subject to the ordinances, standards and policies in effect at the time the building permit application is submitted unless Landowner first obtains a vested right affecting the applicability of such ordinances, standards and policies through a vesting tentative map, a development agreement or some other form of right.

4. MISCELLANEOUS PROVISIONS.

A. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid, and shall be enforced to the fullest extent permitted by law.

B. Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

C. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

D. Professional Fees. If either party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses and court costs and other costs of action incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment. For the purpose of this Agreement, the

terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred. The term "attorney" shall have the same meaning as the term "counsel."

E. Entire Agreement. This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented, superseded, canceled or terminated, nor may any obligations hereunder be waived, except by Written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto and lawful assignees.

F. Time of Essence. City of Lodi and Landowner hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

G. Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.

H. Governing Law. The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

I. Days of Week. If any date for performance herein falls on a Saturday, Sunday or holiday, as defined in Section 6700 of the California Government Code, the time for such performance shall be extended to 5:00 p.m. on the next business day.

J. No Construction Against Drafting Party. The parties agree that this Agreement was jointly negotiated and jointly drafted and that it shall not be interpreted or construed in favor of or against any party on the ground that the party or the parties' attorney drafted this Agreement,

IN WITNESS THEREOF this MUTUAL, AGREEMENT TO TERMINATE DEVELOPMENT AGREEMENT is effective this \_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF LODI, a municipal corporation

ATTEST:

\_\_\_\_\_  
RANDI JOHL  
City Clerk

\_\_\_\_\_  
KONRADT BARTLAM  
City Manager

APPROVED AS TO FORM:

SAN JOAQUIN VALLEY LAND COMPANY, LLC

By: \_\_\_\_\_  
D. STEPHEN SCHWABAUER,  
City Attorney

By: \_\_\_\_\_  
Name:  
Title: