

CITY COUNCIL MEETING

March 17, 1982

RES
82-25(2) ✓
MODIFICATION OF
CITY'S DEFERRED
COMPENSATION
AGREEMENT AND PLAN

RES. NO. 82-25

Council, on motion of Councilman Pinkerton, Murphy second, adopted Resolution No. 82-25 approving modifications of the City's Deferred Compensation Agreement and Plan, whereby the City of Lodi agrees to contract for the services of Home Savings and Loan Association to perform for the City certain functions in the continuing operation of the Deferred Compensation Plan.

Follow-up
CITY COUNCIL

JAMES A. McCARTY, Mayor
ROBERT G. MURPHY, Mayor Pro Tem
RICHARD L. HUGHES
WALTER KATNICH
JAMES W. PINKERTON, Jr

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
POST OFFICE BOX 320
LODI, CALIFORNIA 95241
(209) 334-5634

HENRY A. CLAVES, Jr
City Manager

ALICE M. REINICHE
City Clerk

RONALD M. STEIN
City Attorney

March 25, 1982

Ed Jaszewski
Home Savings and Loan
1950 Arden Way
Sacramento, CA 95815

Dear Ed:

Please be advised that the Lodi City Council, in action taken at its March 17, 1982 meeting, adopted Resolution No. 82-25 approving modifications of the Deferred Compensation and Plan, whereby the City of Lodi agrees to contract for the services of Home Savings and Loan Association to perform for the City certain functions in the continuing operation of the City's Deferred Compensation Plan; and authorizing the Mayor and City Clerk to execute the subject agreement with Home Savings and Loan Association on behalf of the City.

Enclosed herewith is a certified copy of Resolution No. 82-25 and a fully executed copy of the subject agreement.

If you have any questions regarding this matter, please do not hesitate to call.

Very truly yours,



Alice M. Reimche
City Clerk

AR:dg

Enc.

RESOLUTION NO. 82-25

RESOLUTION APPROVING MODIFICATION OF THE DEFERRED COMPENSATION AGREEMENT AND PLAN, WHEREBY THE CITY OF LODI AGREES TO CONTRACT FOR THE SERVICES OF HOME SAVINGS AND LOAN ASSOCIATION TO PERFORM FOR THE CITY CERTAIN FUNCTIONS IN THE CONTINUING OPERATION OF THE DEFERRED COMPENSATION PLAN

RESOLVED that the City Council of the City of Lodi does hereby approve modifications of the City's Deferred Compensation Agreement and Plan, a copy of which agreement and plan are attached hereto, marked Exhibit "A" and thereby made a part hereof.

BE IT FURTHER RESOLVED that the City Council of the City of Lodi does hereby approve Deferred Compensation Agreement dated March 17, 1982 whereby the City of Lodi agrees to contract for the services of Home Savings and Loan Association to perform for the City certain functions in the continuing operation of the City's Deferred Compensation Plan.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Lodi does hereby authorize the Mayor and City Clerk to execute the aforementioned agreement on behalf of the City of Lodi.

Dated: March 17, 1982

I hereby certify that Resolution No. 82-25 was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 17, 1982 by the following vote:

Ayes: Councilmen - Hughes, Pinkerton, Murphy, Katnich and McCarty

Noes: Councilmen - None

Absent: Councilmen - None


ALICE M. REIMCHE
City Clerk

DEFERRED COMPENSATION AGREEMENT

THIS AGREEMENT, made and entered into this 17th day of March, 1982, by and between the City of Lodi, a political subdivision of the State of California (hereinafter called City, and Home Savings and Loan Association, a California corporation (hereinafter called "Home Savings").

RECITALS

The City Council of the City of Lodi by motion action at its regular meeting held April 6, 1977 approved the establishment of a Deferred Compensation Plan.

It is the desire of City to contract for the services of Home Savings to perform for City certain functions in the continuing operation of the Deferred Compensation Plan relating to the dissemination of information to employees and the enrollment of employees in the Plan; to aid in the collection and disbursement of monies to the appropriate funding media; and to assist City in the drafting of amendments to the Plan and attendant agreements necessary thereto so that said documents meet applicable regulatory requirements.

It is the desire of Home Savings to provide the above services subject to the terms and conditions of this agreement.

1. TERM. The respective duties and obligations of the parties hereto shall commence on the date and year first above written.

2. PERFORMANCE OF SERVICES. Notwithstanding any other provisions to the contrary, Home Savings shall have the right to designate an agent of its choice to perform such services under this agreement as may be mutually agreed to between Home Savings and such agent, with the consent of City.

3. REVIEW DEFERRED COMPENSATION PLAN. Home Savings agrees to review the approved Deferred Compensation Plan and to assist in the preparation and submission of any attendant agreements, such as joinder agreements, necessary for the implementation of the Plan or the performance of its duties under the Plan. Such agreements are to be prepared in accordance with the published rules and regulations of the Internal Revenue Service. Home Savings agrees, from time to time, to advise City of any changes in Federal or State rules and regulations that may effect the validity or feasibility of the Deferred Compensation Plan or its duties hereunder. Home Savings shall not be liable, however, for the effect of any

such changes in Federal or State rules and regulations on the Deferred Compensation Plan.

4. INVESTMENT VEHICLES.

A. Home Savings agrees to assist City concerning investment alternatives to be made available to employees participating in the Plan which may include, but not be limited to, bank accounts, fixed and variable annuities, mutual funds, life insurance, and other investments which are permissible under the provisions of the Deferred Compensation Plan.

B. Home Savings agrees that when specifically requested by City, and after City has selected the investment alternatives, to design the bid specifications and solicit investment proposals from the prospective funding agencies.

C. Home Savings agrees to review, evaluate, and analyze all responses received from the investment agencies and submit its findings to City.

D. Home Savings agrees, annually, to review, analyze, and evaluate the performance and status of the selected funding media, together with their deferred compensation products and report to City any recommendations concerning possible improvements in the investment contracts.

E. Home Savings agrees that it will review and evaluate the potential of new and relevant deferred compensation investment products and inform City, from time to time, of the feasibility of including new investment products under the Deferred Compensation Plan.

5. ENROLLMENT SERVICES. Home Savings agrees to conduct the enrollment(s) of all employees who elect to participate in the Deferred Compensation Plan. Home Savings agrees to design and prepare a comprehensive educational and merchandising program for distribution to City employees.

Home Savings agrees to conduct group presentations for City employees to explain the Deferred Compensation Program. Home Savings will insure that qualified personnel are retained on a continuing basis to provide assistance throughout the term of this agreement so that participants or potential participants receive personal counseling.

Home Savings agrees that in performing the services provided hereunder by itself or through a designee that it will conduct itself at all times with due regard to published Code, administrative rules and regulations of City and it further agrees to use its best efforts not to do or commit any act that will reasonably tend to degrade City or bring it into public contempt or ridicule, or prejudice the maintenance of the good employee-employer relationship existing between City and its employees.

6. COLLECTION AND DISBURSEMENT.

A. Home Savings is hereby authorized to engage the services of a financial institution with the approval of City which may lawfully receive, hold and disburse monies, deferred from income of employees of City, to act as Custodian Bank. The Custodian Bank will receive and hold monies from City and make disbursements upon instructions from Home Savings as set forth in this agreement. Home Savings is not liable, however, for the performance of Custodian Bank.

B. Home Savings agrees to direct the Custodian Bank to distribute such amounts to the appropriate investment media within limitations of the respective investment contracts pursuant to each employee's "investment specifications" unless otherwise designated by City, as provided for by the terms of the Deferred Compensation Plan and Participation Agreement, or modifications thereof. Nothing herein shall remove the right of City to make such distributions itself if City in its sole judgment determines to do so.

C. Home Savings agrees to provide instructions for direction of all distribution of benefits directly to City or Custodian Bank or to the investment media when required on instruction from City under the terms of the respective investment contracts in accordance with the provisions of the

Deferred Compensation Plan and within the scope of its authority hereunder. The distribution of benefits to participants shall comply with all applicable published rules and regulations of the State or Federal taxing authorities.

D. Home Savings shall direct the investment media to purchase and liquidate all insurance, annuities, securities, mutual funds, savings accounts, or other approved investments under the Deferred Compensation Plan, within the scope of its authority hereunder, on instructions from City.

7. RECORD KEEPING AND REPORTS.

A. Home Savings agrees that an individual record will be established for each participating employee and contain information including, but not limited to, Social Security number, the specific amount of the participant's contribution, the allocation of the contribution to one or more funding media, the participant's beneficiary designation, and other pertinent data necessary for the efficient administration of each participant's account.

B. Home Savings agrees to provide data required by the selected investment media to effect purchases from that investment media.

C. Home Savings agrees to provide the processing, accounting, record keeping services, and reports no less than semi-annually.

8. RESPONSIBILITIES OF CITY.

A. City agrees to provide assistance in setting up timetables for providing facilities for group meetings of employees for distributing information about the Plan.

B. City agrees to provide facilities to be used for counseling and enrollment of employees.

C. City agrees to collect all deferred amounts from participating employees' warrants and to remit said amounts as soon as possible to Home Savings and its designee or the Custodian Bank or investment media.

D. City agrees to transmit on a timely basis any relevant information requested by Home Savings relating to each participating employee upon entry into the program, and further agrees to transmit any information relating to changes in an individual participant's account.

E. City agrees to transmit on a timely basis any relevant information of a participant's withdrawal,

termination or request or distribution under the Plan including the method and timing of any distribution.

F. City agrees to provide payroll deduction procedures and facilities.

G. City agrees to provide information requested by Home Savings on a timely basis. City agrees to use its best efforts to assure the accuracy and completeness of all information provided.

9. HOME SAVINGS AS AN INVESTMENT MEDIUM. The following sets forth the manner by which Plan funds delivered to Home Savings as an investment medium will be invested.

A. Home Savings agrees to accept for investment the funds sent to Home Savings in accordance with the Plan, and to establish and maintain savings accounts in accordance with the instructions of City and the provisions of this agreement. Earnings on such accounts will be credited to such accounts in accordance with prevailing practice at Home Savings, unless otherwise instructed by City.

B. Home Savings shall establish, from time to time, savings accounts at a branch or branches of Home Savings upon instruction of City for investment of Plan funds sent to it on behalf of City. The account will be titled:

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City shall have the sole custody of all passbooks or other indices of ownership of said accounts and no investments or withdrawal of funds shall be made in such account except in accordance with the instructions of City and pursuant to this Agreement.

C. On either a biweekly, semimonthly or monthly basis, funds shall be forwarded to Home Savings to be invested pursuant to this Agreement for Participants in the Plan, together with a list indicating to which accounts these deductions should be credited. Promptly upon receipt of said funds, Home Savings shall make the appropriate credits to the applicable accounts. The legal and beneficial ownership of all such funds shall at all times be vested in City.

D. (a) The parties intend that the funds be invested in one or more 30 day fixed-rate, fixed-term savings accounts, and Home Savings guarantees to credit 8.00% interest, compounded daily (an effective annual yield of 8.45%), for eight (8) years, as currently permitted by Federal Home Loan Bank Board Regulations.

(b) Home Savings will pay the highest possible rate of interest on those fixed-rate, fixed-term

savings accounts which are subject to rate limitations. Therefore, if these rates go above 8.00% (an effective annual yield of 8.45%), Home Savings will pay the higher rate.

(c) There shall be no penalties or withdrawal charges of any kind for the withdrawal of funds, regardless of reason for the withdrawal, unless a penalty assessment is prescribed by the Federal or State government.

E. Home Savings also agrees to offer City any and all of its other savings investment instruments as may, from time to time, be determined to be in the best interests of City and to provide a higher yield on deferred compensation funds. The terms and conditions of the highest yielding other accounts of Home Savings are:

(a) T-Accounts - New Federal Home Loan Bank Board changes in the account structure indicate that there will be no compounding of interest, and the 1/4% "rate differential" cannot be applied to the Discount Rate unless that Discount Rate is less than 9%. At the present time, interest will only be paid on a monthly or quarterly basis.

(b) Non-Marketable Certificates of Deposit of a minimum of \$100,000 are subject to a rate change on a daily basis. Home Savings offers rates that are commensurate with the terms of between 30 and 360 days. These rates are

typically negotiable and are predicted on the general money supply as determined by the Controller of Home Savings and Loan.

Deposits with Home Savings are insured in accordance with regulations of the Federal Home Loan Bank.

10. COMPENSATION. Home Savings agrees that the services to be performed hereunder shall be performed without any charge to City or the participants under the Deferred Compensation Plan.

11. TERMINATION. This Agreement shall continue in force for a period of three years subject to termination upon written notice within 90 days of the date of termination or upon receipt of notice of early termination.

Home Savings agrees to transfer to City all records and documents relating to the services provided hereunder.

12. CIRCUMSTANCES EXCUSING PERFORMANCE. The execution by the parties of this Agreement is subject to force majeure and is contingent upon fires and power failures, strikes, accidents, and acts of God, weather conditions or restrictions imposed by any government or governmental agency, other delays beyond the delayed party's control or defaults by participants or employers. Failures of or defaults of participants, employers, associations or trustees shall excuse performance by Home Savings thereby prevented.

13. OWNERSHIP OF RECORDS. Home Savings agrees that all records shall be the property of City, that all computer tapes, discs and programs shall be the property of Home Savings.

14. CONFIDENTIALITY. All information supplied to, and all work processed or completed by Home Savings (including outside processing, if any) will be held to be confidential and private and will not be disclosed to anyone other than City or those persons, corporations or governmental agencies who have lawful right to such information

15. ASSIGNABILITY. No party to this agreement shall assign the same without the written consent of the other party thereto. Unless agreed to by the parties, no assignment shall relieve any party to this Agreement of any duties or liabilities hereunder.

16. FAILURE TO PERFORM. In the event of failure by Home Savings or its designee to perform the functions in the implementation and continuing operation of the Deferred Compensation Plan as set forth in the Agreement, if the failure to perform is not cured within 30 days after notice has been given by City to Home Savings and its designee, said failure shall constitute a default by Home Savings or its designee, as applicable.

Notices given under this paragraph shall specify the alleged default and the applicable Agreement provisions, and shall demand Home Savings or its designee, as appropriate, shall perform the provisions of this Agreement, within 30 days.

In the event said default is not cured within 30 days, this Agreement shall be deemed terminated at the option of City.

17. NOTICES. All notices and demands to be given under this Agreement by one party to another shall be given by certified mail addressed to the party to be notified or upon whom a demand is being made at the respective addresses set forth in this Agreement or such other place as either party shall from time to time designate in writing. The date of service of a notice or demand shall be construed in accordance with the laws of the State of California.

18. PARTIES BOUND. This Agreement and the provisions thereof shall be binding upon the respective parties and shall inure to the benefit of the same and to their successors and assigns.

19. APPLICABLE LAW. This Agreement shall be constructed in accordance with the laws of the State of California.

20. UNLAWFUL PROVISIONS. In the event any provision of this Agreement shall be held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the agreement, but the same shall be construed and enforced as if said illegality or invalid provisions had never been inserted herein or therein. Notwithstanding anything contained herein to the contrary, no party to this Agreement will be required to perform or render any services hereunder, the performance or rendition of which would be violative of any law, rules or regulations relating thereto.

21. AMENDMENTS. This Agreement may be amended in writing at any time during the term hereof by the mutual consent of the parties.

IN WITNESS WHEREOF, the within parties have hereunto
set their hands and seals the day and year first above
written.

CITY OF LODI
a municipal corporation

By *James C. Mc-Carty*
Title: *Mayor*
221 West Pine Street,
Lodi, CA 95240

ATTEST:

Walter M. Brunelle
City Clerk

HOME SAVINGS AND LOAN ASSOCIATION

By *James M. Murphy*
Title: *Vice President*
Address: 401 East Valley Boulevard
Alhambra, California 91801