



CITY OF LODI
COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Amendment No. 1 of the Professional Services Agreement with ICR Refrigeration, Inc., of Lodi, for Citywide Heating, Ventilation and Air Conditioning Maintenance Services on City Facilities (\$70,000)

MEETING DATE: November 21, 2012

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute Amendment No. 1 of the Professional Services Agreement with ICR Refrigeration, Inc., of Lodi, for Citywide heating, ventilation and air conditioning maintenance services on City facilities, in the amount of \$70,000.

BACKGROUND INFORMATION: In September 2011, Staff requested written quotes from three local heating, ventilation and air conditioning (HVAC) service companies (ICR Refrigeration, Lodi Services Heat and Cooling, and ALL Air). ICR Refrigeration was the only company to submit a quote.

On November 15, 2011, the City executed a one-year Professional Services Agreement (Agreement) with ICR Refrigeration, Inc., of Lodi, for Citywide HVAC maintenance services on City facilities. The Agreement was executed by the City Manager with a not-to-exceed cost of \$19,900 per year for on-call services. The Agreement expires on November 14, 2012.

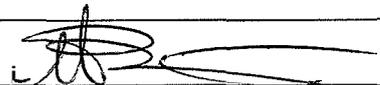
The City operates 55 HVAC systems on its facilities with a wide range of age and system complexity. Predicting HVAC maintenance and repair needs can be very difficult as the systems are aging and performance is dependent on summer and wintertime temperatures. This past year, City HVAC systems experienced an unusually high number of system failures.

As stated above, the Agreement was executed with a not-to-exceed cost of \$19,900 (below the City Manager's contract authority). The total cost spent to date is approximately \$50,000.

Amendment No. 1 extends the term of the Agreement until June 30, 2013, at which time, staff will formally bid HVAC services for Fiscal Year 2013/14, and increases the not-to-exceed cost to \$70,000. This increase will fund the costs to date and provide approximately \$20,000 to address HVAC system failures that occur through the end of the fiscal year.

Staff recommends Council adopt a resolution authorizing the City Manager to execute Amendment No. 1 of the Professional Services Agreement with ICR Refrigeration, Inc., of Lodi, for Citywide heating, ventilation and air conditioning maintenance services on City facilities.

FISCAL IMPACT: Funds are already appropriated for these services.

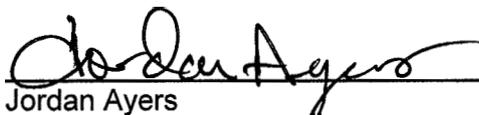
APPROVED: 
Konradt Bartlam, City Manager

Adopt Resolution Authorizing City Manager to Execute Amendment No. 1 of the Professional Services Agreement with ICR Refrigeration, Inc., of Lodi, for Citywide Heating, Ventilation and Air Conditioning Maintenance Services on City Facilities (\$70,000)

November 21, 2012

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FUNDING AVAILABLE: Funds for HVAC services will be coming from the Facilities Services Operating Account (103511).



Jordan Ayers

Deputy City Manager/Internal Services Director



for

F. Wally Sandelin
Public Works Director

Prepared by Charles E. Swimley, Jr., Deputy Public Works Director/City Engineer
FWS/CES/pmf

AMENDMENT NO. 1

ICR Refrigeration, Inc.
Professional Services Agreement

THIS AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT, is made and entered this _____ day of November, 2012, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and ICR REFRIGERATION, INC. (hereinafter "CONSULTANT").

WITNESSETH:

1. WHEREAS, CONSULTANT and CITY entered into a Professional Services Agreement (Agreement) on November 15, 2011, as set forth in Exhibit 1 (attached).
2. WHEREAS, CITY requested to amend said Agreement to extend the term to June 30, 2013, and to increase the Fee to an amount not to exceed a total of \$70,000, including the \$19,900 amount referenced in Exhibit 1; and
3. WHEREAS, CONSULTANT agrees to said amendment;

NOW, THEREFORE, the parties agree to extend the term to June 30, 2013, and to increase the Fee to an amount not to exceed a total of \$70,000, including the \$19,900 authorized in Exhibit 1. All other terms remain as set forth in the Agreement as set forth in Exhibit 1.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Amendment No. 1 on _____, 2012.

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

ICR REFRIGERATION, INC.
Hereinabove called "CONSULTANT"

KONRADT BARTLAM
City Manager

Name:
Title:

Attest:

RANDI JOHL, City Clerk

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney



AGREEMENT FOR PROFESSIONAL SERVICES

**ARTICLE 1
PARTIES AND PURPOSE**

Section 1.1 Parties

THIS AGREEMENT is entered into on November 15, 2011, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and ICR REFRIGERATION, INC, (hereinafter "CONTRACTOR").

Section 1.2 Purpose

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for Citywide HVAC Repairs (hereinafter "Project") as set forth in the Scope of Services attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

**ARTICLE 2
SCOPE OF SERVICES**

Section 2.1 Scope of Services

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

Section 2.2 Time For Commencement and Completion of Work

CONTRACTOR shall commence work pursuant to this Agreement, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY and any other agencies involved in the project shall not be

counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with reviewing agencies and make all efforts to review and return all comments.

Section 2.3 Meetings

CONTRACTOR shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Staffing

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein. CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

Section 2.5 Subcontracts

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

Section 2.6 Term

The term of this Agreement commences on *Nov. 15*, 2011 and terminates upon the completion of the Scope of Services or on *Nov. 14*, 2012, whichever occurs first.

ARTICLE 3
COMPENSATION

Section 3.1 Compensation

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference. Total compensation payable to Contractor under this Agreement shall not exceed \$19,900.00.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

Section 3.3 Costs

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

ARTICLE 4
MISCELLANEOUS PROVISIONS

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence of the City of Lodi or its officers or agents.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

Section 4.5 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services prior to final acceptance by CITY, except as expressly provided herein.

Section 4.6 Insurance Requirements for CONTRACTOR

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

Section 4.7 Successors and Assigns

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

Section 4.8 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
 221 West Pine Street
 P.O. Box 3006
 Lodi, CA 95241-1910
 Attn: John Munoz

To CONTRACTOR: ICR Refrigeration, Inc.
 1021 Black Diamond Way
 Lodi, CA 95240

Section 4.9 Cooperation of CITY

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.10 CONTRACTOR is Not an Employee of CITY

CONTRACTOR agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

Section 4.11 Termination

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning

whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

Section 4.12 Confidentiality

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by CONTRACTOR as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.19 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Section 4.20 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

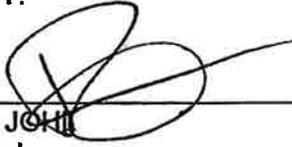
Section 4.21 Federal Transit Funding Conditions

If the box at left is checked, the Federal Transit Funding conditions attached as Exhibit D apply to this Agreement. In the event of a conflict between the terms of this Agreement or any of its other exhibits, and the Federal Transit Funding Conditions, the Federal Transit Funding Conditions will control.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:



RANDI JOKI
City Clerk

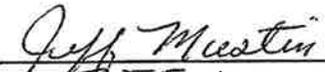


KONRADT BARTLAM, City Manager

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER, City Attorney
JANICE D. MAGDICH, Deputy City Attorney

CONTRACTOR:
ICR REFRIGERATION, INC.

By: 

By: 
Name: JEFF MUSTIN
Title: PRESIDENT

Attachments:
Exhibit A – Scope of Services
Exhibit B – Fee Proposal
Exhibit C – Insurance Requirements
Exhibit D – Federal Transit Funding Conditions (if applicable)

Doc ID:

CA:rev.09.2011

EXHIBIT A

Jobsite Locations:

Various City Facilities

Lodi, CA 95240

Attn: John Munoz, Facilities Supervisor

Scope of Work:

Provide labor and material for HVAC needs for City of Lodi Facilities as needed with cost not to exceed \$19,900.00 per year.

EXHIBIT B



MEMORANDUM, City of Lodi, Public Works Department

To: Prospective Bidder
From: Facilities Supervisor
Date: 8/3/11
Subject: Requirements to Award Successful Quote

Please fill in the blanks and include any additional costs in your quote to "obtain" these 4 items below as they will be required once the Successful Quote is awarded and before any work can begin:

Company Name: ICR co. Date: 8/4/11
 Address: 1021 BLACK DIAMOND WAY
 Contractor's License No.: 678547
 Labor Rate: \$ 95.00 HR
 Overtime Rate: \$ 142.50
 Parts and materials plus 15% % markup
 Truck charge: NONE
 Call out minimum: 2 HRS AFTER 5PM & (hours) BEFORE 8AM
 Other: _____ (be specific)

1. Insurance requirements per the attached exhibit.
2. Workers' compensation insurance coverage.
3. City of Lodi business license.
4. W-9 form per current IRS requirements.

Customer's Signature: Jeff Mustin
 Title: PRESIDENT

If you have any questions please contact me.

John Munoz
 Facilities Supervisor
 209.333.6800 ext. 2692
 209.333.6710 fax
 jmunoz@lodi.gov

JM/pjt



EXHIBIT C

Insurance Requirements for Contractor The Contractor shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Contractor and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

- | | |
|---|--|
| <p>1. <u>COMPREHENSIVE GENERAL LIABILITY</u>
\$1,000,000 Ea. Occurrence

\$1,000,000 Aggregate

\$2,000,000 Combined Single Limits</p> | <p>2. <u>COMPREHENSIVE AUTOMOBILE LIABILITY</u>
\$1,000,000 Bodily Injury - Ea. Person
\$1,000,000 Bodily Injury - Ea. Occurrence

\$1,000,000 Property Damage - Ea. Occurrence</p> |
|---|--|

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

NOTE: (1) The street address of the **CITY OF LODI** must be shown along with (a) and (b) above: 221 West Pine Street, Lodi, California, 95241-1910; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

- (a) **Additional Named Insured Endorsement**
Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional named insureds.

(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies.)
- (b) **Primary Insurance Endorsement**
Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.
- (c) **Severability of Interest Clause**
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (d) **Notice of Cancellation or Change in Coverage Endorsement**
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.

Compensation Insurance The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240. A Waiver of Subrogation against the City of Lodi is required.

NOTE: No contract agreement will be signed nor will any work begin on a project until the proper insurance certificate is received by the City.

RESOLUTION NO. 2012-181

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING AMENDMENT NO. 1 OF THE PROFESSIONAL
SERVICES AGREEMENT FOR CITYWIDE HEATING,
VENTILATION AND AIR CONDITIONING MAINTENANCE
SERVICES ON CITY FACILITIES

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WHEREAS, on November 15, 2011, the City executed a one-year Professional Services Agreement with ICR Refrigeration, Inc., of Lodi, for on-call Citywide HVAC maintenance services on City facilities with a not-to-exceed cost of \$19,900 per year; and

WHEREAS, the City operates 55 HVAC systems on its facilities, and predicting HVAC maintenance and repair needs can be very difficult as the systems are aging and performance is dependent on summer and wintertime temperatures. This past year, City HVAC systems experienced an unusually high number of system failures, and the total cost to date is approximately \$50,000; and

WHEREAS, Amendment No. 1 extends the term of the Agreement until June 30, 2013, at which time staff will formally bid HVAC services for Fiscal Year 2012/13, and increases the not-to-exceed cost to \$70,000 to fund the costs to date and provide approximately \$20,000 to address HVAC system failures that occur through the end of the fiscal year.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize Amendment No. 1 of the Professional Services Agreement with ICR Refrigeration, Inc., of Lodi, California, for Citywide heating, ventilation and air conditioning maintenance services on City facilities in the amount not to exceed \$70,000 for the period November 15, 2011 through June 30, 2013; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute the amendment.

Dated: November 21, 2012

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I hereby certify that Resolution No. 2012-181 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 21, 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