

RESOLUTION NO. 99-180

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI RELATING TO VARIABLE RATE CERTIFICATES OF PARTICIPATION (ENVIRONMENTAL ABATEMENT PROGRAM), APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PROGRAM RECEIPTS SALE AND REPURCHASE AGREEMENT, A TRUST AGREEMENT, A CERTIFICATE PURCHASE CONTRACT, A PLACEMENT AGENT AGREEMENT AND A PROFESSIONAL SERVICES AGREEMENT, AND AUTHORIZING CERTAIN OTHER RELATED ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Lodi (the "City"), is a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California;

WHEREAS, there exists in the City a significant water contamination problem threatening the City's water supply and the health and safety of the City's inhabitants;

WHEREAS, in May 1997, the City executed a Comprehensive Joint Cooperative Agreement (Including Related Delegation and Settlement Agreements) with the California Department of Toxic Substances Control ("DTSC") Relating to the Investigation and Abatement of the Hazardous Substance Contamination In and Affecting the City (the "Cooperative Agreement");

WHEREAS, under the Cooperative Agreement, the City is committed to act as lead agency in initiating and prosecuting environmental enforcement actions (the "Program") to compel responsible parties to investigate and clean up all actual or potential dangers to public health and the environment arising from or related to hazardous substance contamination of portions of the City's groundwater and soil located within an area of approximately 600 acres and encompassing the City's central business area (the "Lodi Area of Contamination"), as described in the Cooperative Agreement;

WHEREAS, the Cooperative Agreement fully resolved the City's liability, if any, for contamination arising, in whole or in part, from the design, construction, operation or maintenance of the City's sewer systems;

WHEREAS, it is in the public interest and welfare of the City's inhabitants that the City find a means of financing the costs of the Program in order to fulfill the City's obligations under the Cooperative Agreement, and to enforce laws and ordinances which compel responsible parties to assume the cost and responsibility for the necessary remediation work to clean up the City's water supply and preserve and enhance the City's water system;

WHEREAS, the costs of environmental litigation under the Program may be significant;

WHEREAS, the City has determined that the most feasible means of financing Program costs is through the implementation of a certificate of participation financing, which financing will facilitate the effective and expeditious abatement of an existing or threatened Environmental Nuisance (as defined in the City's Comprehensive Municipal Environmental Response and Liability Ordinance described below) within or affecting the City;

WHEREAS, pursuant to Sections 37350 and 7158 of the California Government Code, Section 17 of the California Code of Civil Procedure, and Sections 953 and 954 of the California

Civil Code, the City may sell all or a portion of its right to receive recoveries arising from the Program;

WHEREAS, pursuant to Sections 37350 and 7158 of the California Government Code, Section 17 of the California Code of Civil Procedure, and Sections 953 and 954 of the California Civil Code, the City may purchase all or a portion of its right to receive recoveries arising from the Program;

WHEREAS, to implement this certificate of participation financing, the City proposes to irrevocably sell and convey to the Lodi Public Improvement Corporation (the "Corporation") its right to receive Program Receipts (as defined below), and simultaneously therewith the Corporation desires to sell and reconvey such Program Receipts back to the City in consideration of receipt of the Repurchase Payments, as defined in and pursuant to the Program Receipts Sale and Repurchase Agreement, dated \_\_\_\_\_, 1999 (the "Sale and Repurchase Agreement"), between the City and the Corporation;

WHEREAS, the Corporation and U.S. Bank Trust National Association, as trustee (the "Trustee"), will enter into a Trust Agreement (the "Trust Agreement") pursuant to which (i) the Corporation will assign and pledge to the Trustee its interests in and to the Repurchase Payments and (ii) the Trustee will agree to execute and deliver, from time to time, a principal amount not to exceed \$16,000,000 of certificates of participation (the "Certificates");

WHEREAS, each Certificate will evidence an undivided, proportionate interest in Repurchase Payments, consisting of a principal component and an interest component, to be made by the City, as provided in the Sale and Purchase Agreement and in the Trust Agreement;

WHEREAS, the purchase price to be paid by the Corporation for each portion of Program Receipts purchased from the City pursuant to the Sale and Repurchase Agreement will be payable solely from proceeds from the sale of the Certificates;

WHEREAS, the City's obligation to make Repurchase Payments (and certain other payments under the Sale and Repurchase Agreement) will be a special obligation of the City payable solely from Program Receipts;

WHEREAS, the City adopted Ordinance No. 1684 on November 17, 1999, effective December 17, 1999, repealing and reenacting its Comprehensive Municipal Environmental Response and Liability Ordinance, Title 8, Chapter 8.24 of the Lodi Municipal Code (the "Ordinance"), pursuant to which the City, among other things, has created in favor of Certificate holders a first lien on and interest in the Program Receipts, and the City acknowledges that such first lien is superior to all other uses of Program Receipts, except with regard to certain Permitted Deductions as provided in the Sale and Repurchase Agreement;

WHEREAS, the Program Receipts may be pledged to and deposited in the Municipal Fund (as defined in the Sale and Repurchase Agreement) created under the Ordinance as proceeds of the City's environmental abatement program;

WHEREAS, being payable solely from Program Receipts, the receipt by Certificate Holders of any amounts under the Sale and Repurchase Agreement and the Trust Agreement is unpredictable and uncertain, and accordingly there is significant risk inherent in purchasing and holding the Certificates;

WHEREAS, in view of the risks and uncertainties associated with the Certificates, the City acknowledges that the interest cost of the Certificates is significantly higher than in traditional municipal finance transactions;

WHEREAS, pursuant to Section 5900 et seq. of the Government Code the City, through the Corporation, is authorized to issue Certificates the interest component of which is subject to federal income taxation, and the City has determined that the interest component of the Repurchase Payments made under the Sale and Repurchase Agreement and represented by the Certificates will be subject to federal income taxation;

WHEREAS, pursuant to Section 5906 of the Government Code, the Certificates and the purchasers thereof will be exempt from the usury provisions of Section 1 of Article XV of the California Constitution;

WHEREAS, the City and the Corporation propose to execute and deliver a Certificate Purchase Contract (the "Certificate Purchase Contract") with Environmental Restoration Company Ltd. (the "Original Purchaser"), pursuant to which the Original Purchaser agrees to purchase, from time to time, the Certificates in an aggregate principal amount not to exceed \$16,000,000;

WHEREAS, Lehman Brothers Inc. has acted as Placement Agent for the Certificates of Participation;

WHEREAS, as a condition to execution and delivery of the Certificates, the City will obtain written confirmation from DTSC that the execution of the Sale and Repurchase Agreement, the Trust Agreement and the Certificate Purchase Contract and the execution and delivery of the Certificates do not violate or conflict with the Cooperative Agreement; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LODI, AS FOLLOWS:

Section 1. Findings. The City Council hereby specifically finds and determines that the actions authorized hereby constitute, and are with respect to, the public affairs of the City and that the statements, findings and determinations of the City set forth above and in the preambles of the documents approved herein are true and correct and that the consummation of the transactions contemplated therein shall result in significant public benefits to the City.

Section 2. Sale and Repurchase Agreement. The Sale and Repurchase Agreement, proposed to be executed and entered into by and between the City and the Corporation, in the form presented at this meeting and on file with the City Clerk of the City, is hereby approved, and the City Manager or the Finance Director are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Corporation the Sale and Repurchase Agreement in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof; provided, that the principal component of the Repurchase Payments shall not

exceed \$16,000,000 in the aggregate, the final Repurchase Payment shall be due January 1, 2029, and the Variable Rate of interest with respect to the Certificates shall not exceed 30% per annum.

Section 3. Trust Agreement. The Trust Agreement, proposed to be entered and executed by and between the Corporation and the Trustee, in the form presented at this meeting and on file with the City Clerk of the City, is hereby approved, and the Corporation is hereby requested to execute and deliver the Trust Agreement in substantially said form, with such changes therein as the designated officers of the Corporation may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. Certificate Purchase Contract. The Certificate Purchase Contract, proposed to be executed and entered by the City, the Corporation and the Original Purchaser, in the form presented at this meeting and on file with the City Clerk, is hereby approved, and the City Manager or the Finance Director are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Certificate Purchase Contract in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. Placement Agent Agreement. The Placement Agent Agreement, proposed to be executed and entered by the City and Lehman Brothers Inc., in the form presented at this meeting and on file with the City Clerk, is hereby approved, and the City Manager or the Finance Director are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Placement Agent Agreement in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. Professional Services Agreement. The Professional Services Agreement, including a Scope of Services Statement, proposed to be executed and entered by the City and Envision Law Group LLP, San Mateo, California, designating Envision Law Group LLP as the City's outside counsel in connection with the Program and setting forth the terms of such outside counsel's engagement in connection therewith, in the form presented at this meeting and on file with the City Clerk, is hereby approved, and the City Manager or the Finance Director are hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Professional Services Agreement in substantially said form, with such changes therein as such officers may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. Certificates of Participation. The City Attorney, with the approval of the Finance Director, is hereby authorized to cause Certificates to be executed and delivered to the Original Purchaser from time to time, in one or more Series having a minimum aggregate amount of \$250,000 each, to finance the costs of the Program, and to direct the expenditure of the proceeds of the Certificates in accordance with the Program Budget attached as Exhibit A to the Sale and Repurchase Agreement, as such budget may be revised from time to time with the consent of the City Council.

Section 8. Attestations. The City Clerk is hereby authorized and directed to attest the signature of the City Manager and the Finance Director as may be required or appropriate in connection with the execution and delivery of the Certificates and the documents approved by this Resolution.

Section 9. Other Actions. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents

which they may deem necessary or desirable in order to consummate the transactions authorized hereby and to consummate the sale, execution and delivery of the Certificates, from time to time in accordance with the Certificate Purchase Contract, and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Sale and Repurchase Agreement, the Trust Agreement, the Certificate Purchase Contract, the Placement Agent Agreement, and the Certificates, including but not limited to the initiation of any judicial action deemed appropriate by the City Attorney in connection with the execution and delivery of the Certificates; and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 10. City Agreement Not to Impair Rights of Certificate Holders. The City will not repeal the Ordinance or amend any provision of the Ordinance in a manner which would adversely affect the rights of the holders of the Certificates until the Certificates are fully paid and discharged and until the Purchase Commitment, as defined in the Sale and Repurchase Agreement, has terminated.

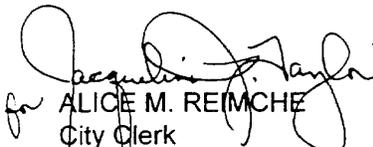
Section 11. Effective Date. This Resolution shall take effect upon the effective date of the Ordinance, unless Ordinance does not become effective by June 1, 2000, in which event this Resolution shall be of no further force and effect.

Dated: November 3, 1999

=====

I hereby certify that Resolution No. 99-180 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 3, 1999, by the following vote:

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

  
for ALICE M. REIMCHE  
City Clerk