

RESOLUTION NO. 2006-142

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT TO FARMERS & MERCHANTS BANK OF CENTRAL CALIFORNIA AND THE BORROWING OF FUNDS THEREUNDER

WHEREAS, Farmers & Merchants Bank of Central California (the "Bank") has offered to provide a revolving line of credit to the City of Lodi (the "City") in the amount of three million dollars (\$3,000,000) to be available through June 30, 2007, pursuant to a loan agreement between the City and the Bank (the "Loan Agreement") which is attached hereto and incorporated herein by reference; and

WHEREAS, Government Code Sections 53850 et seq. authorize the City to borrow money by the issuance of temporary notes under the Loan Agreement; and

WHEREAS, in order to make best use of the credit facility provided by the Bank, it is desirable to delegate to the Deputy City Manager the authority to make borrowings under the line of credit.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi as follows:

1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

2. Approval of Loan Agreement. The proposed form of the Loan Agreement between the Bank and the City, including the form of promissory notes to be delivered by the City thereunder, as presented to this meeting, is hereby approved in substantially final form. The City Manager of the City is hereby authorized, for and on behalf of the City Council, to execute and deliver to the Bank the Loan Agreement in substantially said form, with such changes therein as such officer, with the advice of the City Attorney, may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

3. Delegation of Authority to Make Borrowings Under Loan Agreement. The City Council hereby authorizes the Deputy City Manager of the City, for and on behalf of the City Council, to execute and deliver to the Bank promissory notes representing borrowings under the Loan Agreement; provided that such additional borrowings are made in conformance with the terms, conditions, and limitations of the Loan Agreement and the temporary borrowing provisions of Government Code Sections 53850 et seq., all as determined by the Deputy City Manager. Such promissory notes shall be issued in substantially the form attached to the Loan Agreement as Exhibit B, with interest thereon, determined in accordance with the provisions of the Loan Agreement, with such changes therein as such officer, with the advice of the City Attorney, may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

4. Authorization to Execute Documents. City officials and staff are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents that they may deem necessary or advisable in order to proceed with the borrowings authorized hereby and otherwise carry out, give effect to, and comply with the terms and intent of this Resolution. Such actions already taken by such officials and staff are hereby ratified, confirmed, and approved.

Dated: July 19, 2006

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I hereby certify that Resolution No. 2006-142 was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 19, 2006, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Johnson,
and Mayor Hitchcock

NOES: COUNCIL MEMBERS – Mounce

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


JENNIFER M. PERRIN
Interim City Clerk

LOAN AGREEMENT

This Agreement dated as of July 1, 2006, is between Farmers and Merchants Bank (the "Bank") and the City of Lodi, California (the "Borrower").

1. LINE OF CREDIT AMOUNT AND TERMS

1.1 Line of Credit Amount.

(a) During the availability period described below, the Bank will provide a line of credit to the Borrower. The amount of the line of credit (the "Commitment") is Three Million Dollars (\$3,000,000).

(b) This is a revolving line of credit. During the availability period, the Borrower may repay principal amounts and reborrow them.

1.2 Availability Period. The line of credit is available between the date of this Agreement and June 30, 2007 (the "Expiration Date") unless the Borrower is in default.

1.3 Interest Rate.

(a) The interest rate amount and calculation is described in Exhibit A attached hereto and incorporated herein by reference.

1.4 Repayment Terms.

(a) The Borrower will pay interest on the first day of each month until payment in full of any principal outstanding under this line of credit.

(b) Each advance made under this line of credit will be repaid in full on the last day of the fiscal year of the Borrower during which the advance is made.

(c) There shall be no prepayment penalty.

1.5 Maximum Interest Rate. In the event that the interest rate which would be applicable to any advance under any of the terms of this Agreement would exceed any maximum interest rate imposed by law, then the interest rate applicable to such advance shall be reduced to such maximum interest rate; provided, however, that upon demand by the Bank, the Borrower shall repay to the Bank all advances to which a reduction in interest rate under this paragraph applies.

1.6 Pledge of Funds. To secure the payment of the obligations of the Borrower under this Agreement, the Borrower hereby pledges, and grants to the Bank a lien and charge against, a certificate of deposit ("CD Deposit") placed with the Bank in the amount of \$3,000,000 and all

unrestricted revenues of the Borrower, including, but not limited to, any revenue received from the State of California or the Federal government, or instrumentality of the foregoing, with respect to projects financed by an advance under this line of credit. The lien shall have first priority with respect to the CD Deposit, and the Borrower shall not create, permit or suffer to exist any other security interest or lien against the CD Fund. The term "unrestricted revenues" shall include, but not be limited to, all taxes, income, revenue, cash receipts, and other monies of the Borrower which are generally available for the payment of current expenses and other obligations of the Borrower. The obligations of the Borrower under this Agreement are payable from all taxes, income, revenue, cash receipts and monies of the Borrower which are lawfully available for such payments ("Available Funds"), whether or not such funds are pledged to the Bank under this paragraph.

1.7 Mandatory Prepayment. The Borrower shall, on demand by the Bank, immediately prepay all amounts outstanding under this Agreement, and no further advances shall be available under this Agreement, upon the occurrence of any of the following:

(a) Any judgments or arbitration awards are entered against the Borrower (except for judgments or arbitration awards which have been stayed pending appeal), or the Borrower enters into any settlement agreements with respect to any litigation or arbitration, in an aggregate amount of One Million Dollars (\$1,000,000) or more in excess of any insurance coverage. The Borrower will not be obligated to prepay the credit if, before the expiration of thirty (30) days after the entry of the judgment or arbitration award, the Borrower makes arrangements for the payment of the judgment or arbitration award which are satisfactory to the Bank in its discretion; provided, however, that the Bank will not be obligated to extend any additional credit to the Borrower during the thirty (30) day period.

(b) Any government authority takes action that the Bank believes materially adversely affects the Borrower's financial condition or ability to repay.

(c) A material adverse change occurs in the Borrower's financial condition, properties or prospects, or ability to repay the loan.

2. FEES AND EXPENSES

2.1 Expenses. The Borrower agrees to reimburse the Bank for any expenses it incurs in the preparation of this Agreement and any agreement or instrument required by this Agreement. Expenses include, but are not limited to, reasonable attorneys' fees, including any allocated costs of the Bank's in-house counsel; provided that such attorneys' fees shall not exceed Two Thousand Five Hundred Dollars (\$2,500).

3. DISBURSEMENTS, PAYMENTS AND COSTS

3.1 Requests for Credit. Each request **for** an extension of credit will be made in writing in a manner acceptable to the Bank, or by another means acceptable to the Bank.

3.2 Disbursements and Payments. Each disbursement by the Bank and each payment

by the Borrower will be:

- (a) made at the Bank's branch (or other location) selected by the Bank from time to time;
- (b) made in immediately available funds, or such other type of funds selected by the Bank;
- (c) evidenced by records kept by the Bank. In addition, the Bank may, at its discretion, require the Borrower to sign one or more promissory notes.

3.3 Telephone and Telefax Authorization.

(a) The Bank may honor telephone or telefax instructions for repayments or for the designation of fixed interest rates given by any one of the individuals authorized to sign loan agreements on behalf of the Borrower, or any other individual designated by any one of such authorized signers. In addition, the Bank may make advances to the Borrower on the basis of telefaxed copies of the duly executed documents required by paragraph 4.3 below; the Borrower shall promptly deliver to the Bank the executed originals of such documents.

(b) Advances will be deposited in and repayments will be withdrawn from the Borrower's account number _____, or such other of the Borrower's accounts with the Bank as designated in writing by the Borrower.

(c) The Borrower will provide written confirmation to the Bank of any telephone or telefax instructions within 5 days. If there is a discrepancy and the Bank has already acted on the instructions, the telephone or telefax instructions will prevail over the written confirmation.

(d) The Borrower indemnifies and excuses the Bank (including its officers, employees, and agents) from all liability, loss, and costs in connection with any act resulting from telephone or telefax instructions it reasonably believes are made by any individual authorized by the Borrower to give such instructions. This indemnity and excuse will survive this Agreement's termination.

3.4 Direct Debit.

(a) The Borrower agrees that interest and principal payments and any fees will be deducted automatically on the due date from the Borrower's account number _____, or such other of the Borrower's accounts with the Bank as designated in writing by the Borrower.

(b) The Bank will debit the account on the dates the payments become due. If a due date does not fall on a banking day, the Bank will debit the account on the first banking day following the due date.

(c) The Borrower will maintain sufficient funds in the account on the dates

the Bank enters debits authorized by this Agreement. If there are insufficient funds in the account on the date the Bank enters any debit authorized by this Agreement, the debit will be reversed.

3.5 Banking Days. Unless otherwise provided in this Agreement, a banking day is a day other than a Saturday or a Sunday on which the Bank is open for business in California. All payments and disbursements which would be due on a day which is not a banking day will be due on the next banking day. All payments received on a day which is not a banking day will be applied to the credit on the next banking day.

3.6 Additional Costs. The Borrower will pay the Bank for the Bank's costs or losses arising from any statute or regulation, or any request or requirement of a regulatory agency which is applicable to all national banks or a class of all national banks. The costs and losses will be allocated to the loan in a manner determined by the Bank, using any reasonable method. The costs will be paid by the Borrower within 10 days after the last day of each quarter in arrears. The Bank shall provide to the Borrower at least 30 days' written notice of its demand for compensation under this paragraph, and shall describe in reasonable detail the basis for the demand and the method used to calculate the amount demanded. The costs include the following:

- (a) any reserve or deposit requirements; and
- (b) any capital requirements relating to the Bank's assets and commitments for credit.

3.7 Interest Calculation. Except as otherwise stated in this Agreement, all interest and fees, if any, will be computed on the basis of a 360-day year and the actual number of days elapsed. This results in more interest or a higher fee than if a 365-day year is used.

3.8 Interest on Late Payments. At the Bank's sole option in each instance, any amount not paid when due under this Agreement (including interest) shall bear interest from the due date at the Bank's Base Rate (adjusted, as applicable, as provided in paragraph 1.6 above). This may result in compounding of interest.

3.9 Default Rate. Upon the occurrence and during the continuation of any default under this Agreement, advances under this Agreement will at the option of the Bank bear interest at a rate per annum which is 2.0 percentage points higher than the rate of interest otherwise provided under this Agreement. This will not constitute a waiver of any default.

4. CONDITIONS

The Bank must receive the following items, in form and content acceptable to the Bank, before it is required to extend any credit to the Borrower under this Agreement:

4.1 Authorizations. A Resolution of the City Council of the Borrower authorizing the execution of this Agreement.

4.2 Legal Opinion. A written opinion from the Borrower's legal counsel, covering the authorization of the Borrower to enter into this Agreement and to pledge the assets as required by paragraph 1.6 above, and that the Agreement and such pledge are legal, binding and enforceable against the Borrower, and such other matters as the Bank may reasonably require. The legal counsel and the terms of the opinion must be acceptable to the Bank.

4.3 Conditions to Each Advance. At least one business day before each extension of credit, including the first:

(a) A promissory note evidencing the advance, executed by the Borrower, substantially in the form attached as Exhibit B;

(b) A copy of the resolution of the City Council authorizing the advance, if not previously provided to the Bank;

(c) An opinion from the Borrower's counsel stating that the advance has been duly authorized and is in compliance with all applicable legal requirements, and such other matters as the Bank may reasonably require. The legal counsel and the terms of the opinion must be acceptable to the Bank.

4.4 Other Items. Any other items that the Bank reasonably requires.

5. REPRESENTATIONS AND WARRANTIES

When the Borrower signs this Agreement, and until the Bank is repaid in **full**, the Borrower makes the following representations and warranties. Each request for an extension of credit constitutes a renewed representation:

5.1 Authorization. This Agreement, and any instrument or agreement required hereunder, are within the Borrower's powers and have been duly authorized.

5.2 Enforceable Agreement. This Agreement is a legal, valid and binding agreement of the Borrower, enforceable against the Borrower in accordance with its terms, and any instrument or agreement required hereunder, when executed and delivered, will be similarly legal, valid, binding and enforceable, subject, in each case, to bankruptcy, insolvency, and other laws that affect creditors' rights generally;

5.3 No Conflicts. This Agreement does not breach any agreement by which the Borrower is bound, except for agreements which do not involve payments by the Borrower in excess of \$100,000 in any one year, and this Agreement does not violate any law or regulation.

5.4 Financial Information. All financial and other information that has been or will be supplied to the Bank, including the Borrower's financial statement dated as of June 30, 2006, IS:

(a) sufficiently complete to give the Bank accurate knowledge of the

Borrower's financial condition.

- (b) in compliance with all government regulations that apply.

Since the date of the financial statement specified above, there has been no material adverse change in the assets or the financial condition of the Borrower.

5.5 Lawsuits. There is no lawsuit, tax claim or other dispute pending or threatened against the Borrower which, if lost, would impair the Borrower's financial condition or ability to repay the loan, except as have been disclosed in writing to the Bank.

5.6 Other Obligations. The Borrower is not in default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation; except for agreements which do not involve payments by the Borrower in excess of \$100,000 in any one year.

5.7 No Event of Default. There is no event which is, or with notice or lapse of time or both would be, a default under this Agreement.

5.8. Bank-Qualified Loans. If the advance will be Bank-Qualified, Borrower represents that:

- (a) Borrower has no reasonable anticipation of incurring more than \$10,000,000 in tax-exempt obligations, other than obligations described in Internal Revenue Code Section 265 (b)(3)(c)(ii), in the calendar year in which the advance is made; and

- (b) Borrower will not designate more than \$10,000,000 of obligations as Bank-Qualified during the calendar year in which the advance is made.

6. COVENANTS

The Borrower agrees, so long as credit is available under this Agreement and until the Bank is repaid in full:

6.1 Use of Proceeds. To use the proceeds of the credit only for purposes authorized by the Lodi City Council.

6.2 Financial Information. To provide the following financial information and statements and such additional information as requested by the Bank from time to time:

- (a) Within 30 days of the date when completed, copies of the Borrower's annual financial statements, certified and dated by an authorized financial officer of the Borrower. These financial statements must be audited (with an unqualified opinion) by a Certified Public Accountant ("CPA") acceptable to the Bank.

- (b) Within 30 days of adoption by the Borrower, a copy of the Borrower's

budget, which shall be a balanced budget.

(c) Within 30 days after each quarter end, a report of the Borrower's Available Funds in the (to be determined) Fund. This report shall include a summary of how the funds are invested.

6.3 Reserved.

6.4 Limitation on indebtedness. Not to have outstanding or incur indebtedness in excess of any applicable statutory maximum. In particular, the amount borrowed by the Borrower in any fiscal year pursuant to Government Code section 53850 et. seq. shall not exceed 85% of the estimated amount of the then uncollected Available Funds of the Borrower which will be available for the payment of such indebtedness, as required by Government Code section 53858.

6.5 Other Liens. Not to create, assume, or allow any security interest or lien (including judicial liens) on the Borrower's CD Deposit, except the security interest in favor of the Bank.

6.6 Notices to Bank. To promptly notify the Bank in writing of

(a) any lawsuit against the Borrower in an amount of One Million Dollars (\$1,000,000) or more.

(b) any failure to comply with this Agreement

(c) any material adverse change in the Borrower's financial condition or operations.

(d) any additional indebtedness or liens incurred by the Borrower after the date of this Agreement.

(e) any change in the Borrower's investment policy.

(9) any actual contingent liabilities of the Borrower and any such information or representations.

6.7 Books and Records. To maintain adequate books and records.

6.8 Audits. To allow the Bank and its agents to examine, audit and make copies of books and records at any reasonable time for any reasonable purpose related to this Agreement. If any of the Borrower's books or records are in the possession of a third party, the Borrower authorizes that third party to permit the Bank or its agents to have access to perform audits and to respond to the Bank's requests for information concerning such books and records.

6.9 Compliance with Laws. To comply with the laws, regulations, and orders of any

government body with authority over the Borrower.

6.10 Perfection of Liens. To help the Bank perfect and protect its security interests and liens, and reimburse it for related costs it incurs to protect its security interests and liens.

6.11 Cooperation. To take any action requested by the Bank to carry out the intent of this Agreement.

6.12 Insurance. To maintain insurance as is usual for the Borrower.

7. DEFAULT

If any of the following events occur, the Bank may do one or more of the following: declare the Borrower in default, stop making any additional credit available to the Borrower, and require the Borrower to repay its entire debt immediately and without prior notice. If an event of default occurs under the paragraph entitled "Bankruptcy," below, with respect to the Borrower, then the entire debt outstanding under this Agreement will automatically **be** due immediately.

7.1 Failure to Pay. The Borrower fails to make a payment under this Agreement within 7 days after the date when due.

7.2 Lien Priority. The Bank fails to have an enforceable lien on or security interest in any property given as security for this loan, with the priority required by this Agreement.

7.3 False Information. The Borrower has given the Bank false or misleading information or representation.

7.4 Bankruptcy. The Borrower files a bankruptcy petition, a bankruptcy petition is filed against the Borrower, or the Borrower makes a general assignment for the benefit of creditors.

7.5 Receivers. A receiver or similar official is appointed for the Borrower.

7.6 Cross-default. Any default occurs under any agreement in connection with any credit the Borrower has obtained from anyone else or which the Borrower has guaranteed in the amount of One Million Dollars (\$1,000,000) or more in the aggregate.

7.7 Other Bank Agreements. The Borrower fails to meet the conditions of, or fails to perform any obligation under any other agreement the Borrower has with the Bank **or** any affiliate of the Bank. If, in the Bank's opinion, the breach is capable of being remedied, the breach will not be considered an event of default under this Agreement for a period of thirty (30) days after the date on which the Bank gives written notice of the breach to the Borrower, provided, however, that the Bank will not be obligated to extend any additional credit to the Borrower during that period.

7.8 Other Breach Under Agreement. The Borrower fails to meet the conditions of, or fails to perform any obligation under, any term of this Agreement not specifically referred to in this Article. **If**, in the Bank's opinion, the breach is capable of being remedied, the breach will not be considered an event of default under this Agreement for a period of thirty (30) days after the date on which the Bank gives written notice of the breach to the Borrower; provided, however, that the Bank will not be obligated to extend any additional credit to the Borrower during that period.

8. ENFORCING THIS AGREEMENT; MISCELLANEOUS

8.1 GAAP. Except as otherwise stated in this Agreement, all financial information provided to the Bank and all financial covenants will be made under generally accepted accounting principles, consistently applied.

8.2 California Law. This Agreement is governed by California law.

8.3 Successors and Assigns. This Agreement is binding on the Borrower's and the Bank's successors and assignees. The Borrower agrees that it may not assign this Agreement without the Bank's prior consent. The Bank may sell participations in or assign this loan, and may exchange financial information about the Borrower with actual or potential participants or assignees. If a participation is sold or the loan is assigned, the purchaser will have the right of set-off against the Borrower.

8.4 Reserved.

8.5 Severability; Waivers. If any part of this Agreement is not enforceable, the rest of the Agreement may be enforced. The Bank retains all rights, even if it makes a loan after default. If the Bank waives a default, it may enforce a later default. Any consent or waiver under this Agreement must be in writing.

8.6 Attorneys' Fees. The Borrower shall reimburse the Bank for any reasonable costs **and attorneys' fees incurred by the Bank in connection with the enforcement or preservation of any rights or remedies under this Agreement and any other documents executed in connection with this Agreement**, and including any amendment, waiver, "workout" or restructuring under this Agreement. In the event of a lawsuit or arbitration proceeding, the prevailing party is entitled to recover costs and reasonable attorneys' fees incurred in connection with the lawsuit or arbitration proceeding, as determined by the court or arbitrator. In the event that any case is commenced by or against the Borrower under the Bankruptcy Code (Title 11, United States Code) or any similar or successor statute, the Bank is entitled to recover costs and reasonable attorneys' fees incurred by the Bank related to the preservation, protection, or enforcement of any rights of the Bank in such a case. As used in this paragraph, "attorneys' fees" includes the allocated costs of the Bank's in-house counsel.

8.7 One Agreement. This Agreement and any related security or other agreements required by this Agreement, collectively:

(a) represent the sum of the understandings and agreements between the Bank and the Borrower concerning this credit;

(b) replace any prior oral or written agreements between the Bank and the Borrower concerning this credit; and

(c) are intended by the Bank and the Borrower as the final, complete and exclusive statement of the terms agreed to by them.

In the event of any conflict between this Agreement and any other agreements required by this Agreement, this Agreement will prevail.

8.8 Notices. All notices required under this Agreement shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses on the signature page of this Agreement, or sent by facsimile to the fax numbers listed on the signature page, or to such other addresses as the Bank and the Borrower may specify from time to time in writing. Notices sent by first class mail shall be deemed delivered on the earlier of actual receipt or on the fourth business day after deposit in the U.S. mail.

8.9 Headings. Article and paragraph headings are for reference only and shall not affect the interpretation or meaning of any provisions of this Agreement.

8.10 Counterparts. This Agreement may be executed in as many counterparts as necessary or convenient, and by the different parties on separate counterparts each of which, when so executed, shall be deemed an original but all such counterparts shall constitute but one and the same agreement.

This Agreement is executed as of the date stated at the top of the first page.

Credit Commitment

Borrower: City of Lodi – Electric Department.

Amount: \$3,000,000.

Type: Unsecured (Option 1)/Secured (Option 2), Revolving Line of Credit

Purpose: The Electric Department’s short term operating capital needs.

Maturity: June 30,2007.

Interest Rate: Option 1 - Unsecured: The interest rate will be set at the time of each advance & be equal to the 30-day London Interbank Offer Rate (LIBOR) plus 1.50%. If that rate were set today, it would be 6.88% based on the current 30-day LIBOR rate of 5.38% **plus** 1.50%. The rate for each advance will be reset every 30 days based on the then 30-day LIBOR rate plus 1.50%. Advances will be limited to amounts of \$500,000 or greater. Interest will be calculated on the basis of an actual/360-day year. (Any tax advantaged cost that can be obtained by the Bank related to this credit commitment will be passed on to the Borrower in the form of a reduced interest rate.)

Option 2 – Secured: The interest rate will be set at the time of each advance & be equal to 1.35% over the F&M rate paid for cash collateral as defined below (“Collateral”). Interest will be calculated on the basis of an actual/360-day year. (Any tax advantaged cost that can be obtained by the Bank related to this credit commitment will be passed on to the Borrower in the form of a reduced interest rate.)

Pre-Payment

Penalty: There will be no pre-payment penalty.

Fees: None. All outside legal cost to be paid by Borrower. (See condition #7 below.)

Collateral: Option 1 - Unsecured. Option 2 - Secured: City of Lodi cash deposits in an F&M Bank, segregated & bank controlled account equal to or greater than the amount drawn under the line of credit.

Guarantors: None.

Other

Conditions: (1) This credit commitment is subject to the City Council approval of a resolution authorizing the borrowing, repayment & terms of the credit

commitment as well as authorizing either one of the following to make draw requests under the line of credit; the City Manager or the Deputy City Manager.

- (2) This credit commitment is subject to the City of Lodi providing an opinion letter from the City's outside attorney stating the City has the authority to borrow & repay the credit, and has properly authorized all the terms & repayment of the credit. The outside attorney is also to review all the loan documentation & provide an opinion that the documents are binding & legally enforceable under the laws of the state of California.
- (3) The City of Lodi agrees to provide the 2006 Comprehensive Annual Financial Report, including the CPA audited financial statements, within 180 days of FYE.
- (4) Within 30 days of each quarter end, the City of Lodi agrees to provide to the Bank the quarterly bond rating agencies reports submitted to the Fitch, and Standard & Poor's rating agencies.
- (5) Draw requests under the line of credit will be signed by either one of the following; the City Manager or the Deputy City Manager, and are to be accompanied by a statement of the use of funds, and the total of Cash & Marketable Securities held by the Electric Department after the draw request.
- (6) The City of Lodi will maintain all rating agency, bond ratings of a BBB- or above. Any bond rating of lower than a BBB- will be considered a default of the line of credit, the Bank will have the right to terminate all advances under the line of credit, and demand the outstanding balance of the line of credit be paid immediately.
- (7) The City of Lodi agrees to pay the cost of any outside legal council used by the Bank to review or prepare loan documentation.

You will be required to execute documentation that is in a form and in substance satisfactory to the Bank, otherwise this credit commitment will expire on August 30, 2006. Subsequent documentation may include terms and conditions that are different from or in addition to those that are stated in this letter. For example, these terms may include various warranties, representations and covenants regarding financial conditions. Any pre-closing conditions (including but not limited to condition #1 & #2 above) stated in the loan documents would have to be met prior to funding.

Exhibit B -Form of Promissory Note

\$ _____ Lodi, California

1. For Value Received, the City of Lodi, California ("Borrower") promises to pay to the order of Farmers and Merchants Bank ("Bank") at its office in Lodi, California, the principal amount of _____ Dollars (\$_____) at the times and in the amounts specified in the Loan Agreement referred to below. Borrower promises to pay interest on such unpaid principal amount at the times and at the rates specified in the Loan Agreement

2. This Note is issued under the Loan Agreement between Borrower and Bank dated July 1, 2006 (the "Loan Agreement"), and is subject, among other things, to acceleration as provided therein. Capitalized terms defined in the Loan Agreement shall have the same meaning in this Note.

3. The undersigned officers of the Borrower certify as follows:

(a) The undersigned have authority to execute this Note under Resolution No. _____ adopted by the Lodi City Council on _____. Such Resolution is still in force and has not been modified or amended, except for any amendments which have been provided to, and are acceptable to, the Bank.

(b) There has been no event of default under the Loan Agreement.

(c) The proceeds of this Note shall be used only for expenditures approved by the Lodi City Council.

(d) The amount borrowed under this Note, together with all other amounts previously borrowed by the Borrower during this fiscal year pursuant to Government Code section 53850 et. seq., does not exceed 85% of the estimated amount of uncollected Available Funds of the Borrower which will be available for the payment of such indebtedness, as required by Government Code section 53858.

4. To secure the payment of the obligations of the Borrower under this Note, the Borrower hereby pledges, and grants to the Bank a lien and charge against, the Borrower's CD Deposit (**need more information**), and all unrestricted revenues of the Borrower, including, but not limited to, any revenue received from the State of California or the Federal, government, or instrumentality of the foregoing, with respect to projects financed by an advance under under the Agreement. The lien shall have first priority with respect to the CD Deposit, and the Borrower shall not create, permit or suffer to exist any other security interest or lien against the CD Deposit. The term "unrestricted revenues" shall include, but not be limited to, all taxes, income, revenue, cash receipts, and other money of the Borrower which are generally available for the payment of current expenses and other obligations of the Borrower. The obligations of the Borrower under this Note are payable from all taxes, income, revenue, cash receipts and moneys of the Borrower which are lawfully available for such payments, whether or not such funds are pledged to the Bank under this paragraph.

5. This Note shall be governed by and construed under the laws of the State of California

In Witness Whereof, the undersigned has caused this Note to be executed **by** its officers thereunto duly authorized.

CITY OF LODI, CALIFORNIA

By: _____

Title: _____

By: _____

Title: _____