

CITY OF LOMA LINDA  
CITY COUNCIL AGENDA

REGULAR MEETING OF NOVEMBER 24, 2015

A regular meeting of the City Council of the City of Loma Linda is scheduled to be held Tuesday, November 24, 2015 in the City Council Chamber, 25541 Barton Road, Loma Linda, California. *Pursuant to Municipal Code Section 2.08.010, study session or closed session items may begin at 5:30 p.m. or as soon thereafter as possible. The public meeting begins at 7:00 p.m.*

Reports and Documents relating to each agenda item are on file in the Office of the City Clerk and are available for public inspection during normal business hours. The Loma Linda Branch Library is also provided an agenda packet for your convenience. The agenda and reports are also located on the City's Website at [www.lomalinda-ca.gov](http://www.lomalinda-ca.gov).

*Materials related to an item on this Agenda submitted to the City Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, 25541 Barton Road, Loma Linda, CA during normal business hours. Such documents are also available on the City's website at [www.lomalinda-ca.gov](http://www.lomalinda-ca.gov) subject to staff's ability to post the documents before the meeting.*

Persons wishing to speak on an agenda item, including any closed session items, are asked to complete an information card and present it to the City Clerk prior to consideration of the item. When the item is to be considered, please step forward to the podium, the Chair will recognize you and you may offer your comments. The City Council meeting is recorded to assist in the preparation of the Minutes, and you are therefore asked to give your name and address prior to offering testimony.

The Oral Reports/Public Participation portion of the agenda pertains to items NOT on the agenda and is limited to 30 minutes; 3 minutes allotted for each speaker. Pursuant to the Brown Act, no action may be taken by the City Council at this time; however, the City Council may refer your comments/concerns to staff or request that the item be placed on a future agenda.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (909) 799-2819. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. Later requests will be accommodated to the extent feasible.

A recess may be called at the discretion of the City Council.

**Agenda item requests for the DECEMBER 8, 2015 meeting must be submitted in writing to the City Clerk no later than NOON, MONDAY, NOVEMBER 23, 2015**

**A. Call To Order**

**B. Roll Call**

**C. Invocation and Pledge of Allegiance** – Councilman Dailey (In keeping with long-standing traditions of legislative invocations, this City Council meeting may include a brief, non-sectarian invocation. Such invocations are not intended to proselytize or advance any one, or to disparage any other, faith or belief. Neither the City nor the City Council endorses any particular religious belief or form of invocation.)

**D. Items To Be Added Or Deleted**

**E. Oral Reports/Public Participation - Non-Agenda Items (Limited to 30 minutes; 3 minutes allotted for each speaker)**

**F.** **Conflict of Interest** Disclosure - Note agenda item that may require member abstentions due to possible conflicts of interest

**G.** **Scheduled And Related Items**

1. **Public Hearing** – Council Bill #O-2015- 03 - (First Reading/Set Second Reading for December 8, 2015) Establishing Wastewater Collection Rates and repealing Ordinance No. 716 [**Public Works**]
3. **Public Hearing** – Council Bill #R-2015-39 – Approving the Economic Incentive Agreement between the City and Spreen Mazda, Inc. [**Assistant City Manager**]

**H.** **Consent Calendar**

3. Demands Register
4. Minutes of November 10, 2015
5. Acceptance of Offer of Right-of-Way Dedication at Northeast Corner of Barton Road and Campus Street [**Public Works**]
6. Appropriate funds and award contracts [**Public Works**]
  - a. \$37,045 and Award Contract for Community Room Flooring (CIP 15-836)
  - b. \$46,200 and Award Contract for Repainting Fire Station 251 Mansard Roof (CIP 15-837)
  - c. \$40,150 and Award Contract for Repainting Civic Center Lobby (CIP 15-838)
7. Award contract for tree removal [**Public Works**]
8. Addendum to the Agreement for Professional Services with Lilburn Corporation to expand the scope of services of the Supplemental Environmental Impact Report (due to proposed changes in design) for Precise Plan of Design No. 13-018-- Integrated Campus Master Plan and, the use of funds deposited as Pass-Through-Fees paid for by the Applicant to cover the cost of the expanded scope of services. [**Community Development**]
9. Increase CDBG Revenue for Fiscal Year 2015-16 by \$13,600 and appropriate those funds to the Expenditure Accounts for the City Project and Inland Temporary Homes Public Service Activity Program

**I.** **Old Business**

**J.** **New Business**

**K.** **Reports of Councilmen** (This portion of the agenda provides City Council Members an opportunity to provide information relating to other boards/commissions/committees to which City Council Members have been appointed).

**L.** **Reports Of Officers** (This portion of the agenda provides Staff the opportunity to provide informational items that are of general interest as well as information that has been requested by the City Council).

**M.** **Adjournment**



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Phillip Dupper, Mayor pro tempore  
Ronald Dailey, Councilman  
Ovidiu Popescu, Councilman  
John Lenart, Councilman

COUNCIL AGENDA: November 24, 2015  
TO: City Council  
FROM: T. Jarb Thaipejr, City Manager/Public Works Director *T.J.T.*  
SUBJECT: Council Bill #O-2015-03 – Establishing Maximum Sewer Treatment Rates Effective January 1, 2016

Approved/Continued/Denied By City Council Date _____
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## **RECOMMENDATION**

It is recommended that the City Council repeal Ordinance No. 716 and introduce Council Bill #0-2015-03 on first reading establishing maximum wastewater (sewer) utility service rates and charges and set the second reading for December 8, 2015.

## **BACKGROUND**

The wastewater rate has two (2) components, City of Loma Linda portion for collection and City of San Bernardino portion for treatment. The proposed rate increase affects the City of San Bernardino portion only. The City of Loma Linda portion is not being changed at this time and Loma Linda will not receive any revenue from this action.

This proposed rate increase is based on the rate study prepared by the City of San Bernardino. Pursuant to Section 6 of the California Constitution, Article XIIIID (Prop. 218) a Notice of Public Hearing regarding this matter was sent to the record property owners and residents on October 7, 2015. The notice was sent at least 45 days prior to the public hearing. The notice included instructions on how to protest the proposed increase.

## **ANALYSIS:**

4900 notices were sent to residents and owners with 32 returned as undeliverable. We have received written protests representing nineteen (19) properties. The proposed increases are to cover the costs projected for the next two years. The City of San Bernardino rate portion has not changed in the last 2 years.

## **FINANCIAL:**

Rate increase to cover City cost.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOMA LINDA,  
CALIFORNIA, ESTABLISHING WASTEWATER COLLECTION RATES  
EFFECTIVE JANUARY 1, 2016, AND REPEALING ORDINANCE NO. 716

WHEREAS, pursuant to Article XIII B of the California Constitution, it is the intent of the City Council to require the ascertainment and recovery of costs reasonably borne from fees and charges levied therefor in providing the regulation, products or services hereinafter enumerated in this resolution; and

WHEREAS, there exists between the City of San Bernardino and the City of Loma Linda a Joint Powers Agreement pertaining to wastewater collection and treatment; and

WHEREAS, a study was conducted by the City of Loma Linda to determine the costs to provide wastewater collection, permitting, and inspection services; and

WHEREAS, a study was conducted by the City of San Bernardino to determine the costs to provide wastewater treatment services to the City of Loma Linda. The rate component for the treatment of wastewater from the City of Loma Linda to the treatment plant is independent of the City of Loma Linda approved components; and

WHEREAS, Article XIII D, Section 6(a) of the State Constitution (Proposition 218), passed by the voters of California on November 5, 1996, requires municipalities to give written notice to the owners of parcels upon which proposed water-, refuse- and/or sewer-related fees or charges are to be applied; and

WHEREAS, Proposition 218 requires that a public hearing shall be conducted not less than 45 days after the mailing of a notice of a public hearing on property-related fee adjustments to the record owners of each identified parcel upon which the fee is proposed for imposition; and

WHEREAS, Proposition 218 provides that, if written protests against proposed property-related fees are presented by a majority of the property owners of record upon which the proposed fees would be imposed, the fee adjustment shall not be implemented; and

WHEREAS, the City has considered all comments and correspondence, and the findings and conclusions made by the City pursuant to this Ordinance are based upon all of the oral and written evidence presented to it and taken as a whole.

NOW, THEREFORE, the City Council of the City of Loma Linda does ordain as follows:

SECTION 1. FINDINGS.

The City Council finds:

a. Notice of the proposed amended wastewater collection rates and of the public hearing thereon was given pursuant to Proposition 218 to record owners of all affected parcels on October 7, 2015. 4900 notices were sent to residents and owners with 32 returned as undeliverable.

b. The public hearing required by Proposition 218 was duly held by the City Council, pursuant to notice, on November 24, 2015.

- c. Protests representing nineteen (19) properties were received in opposition to the proposed amended wastewater collection rates, constituting less than a majority of the affected property owners.
- d. Revenues derived shall not exceed the funds required to provide the property-related service.
- e. Revenues derived shall not be used for any purpose other than that for which the fee is imposed.
- f. The fee imposed shall not exceed the proportional cost of the service.
- g. No fee may be imposed unless the service is actually used by, or immediately available to, the owner of the property.
- h. No fee may be imposed for general governmental services such as police, fire, ambulance, or library services where the service is available to the public at large in substantially the same manner as it is to property owners.
- i. This ordinance provides for the immediate preservation of the public peace, health or safety in that the adjustment of wastewater collection rates to include City of San Bernardino pass-through charges so that the rates charged to City customers fully support the cost of providing necessary services and facilities to treat wastewater. If rates are not so adjusted, the budgeted maintenance of City facilities and construction of additional facilities would be disrupted by the transfer of funds intended for those purposes to cover pass-through charges. Other necessary services would be curtailed by a lack of funds.

SECTION 2. Pursuant to the Joint Powers Agreement and Resolutions 517 and 2004-124 of the City of San Bernardino, industrial waste discharge permits, monitoring fees and non-domestic waste inspection fees, domestic liquid waste disposal permits, analysis fees, and non-compliance re-sampling fees shall pertain to the following:

- Domestic Liquid Waste
- Industrial Waste Discharge Permit Fee
- Industrial Waste Discharge Monitoring Fee
- Non-Domestic Waste Inspection Fee
- Domestic Liquid Waste Disposal Permit Fee
- Domestic Liquid Waste Analysis Fee
- Domestic Liquid Waste Non-Compliance Fee

The City of San Bernardino Sewer Treatment Charge (pass through) is established pursuant to Exhibit "B" attached hereto and made a part hereof. Said pass through charge shall be added to all Loma Linda water/sewer/trash bills.

SECTION 3. Pursuant to the provisions of Section 13.12.020 of the Loma Linda Municipal Code, any premises which are served by a connection to the system of sewage and waste water treatment of the City shall be charged and the owner thereof shall pay a sewer service charge based on the monthly charges established pursuant to Exhibit "A" attached hereto and made a part hereof, excluding City of San Bernardino charges for treatment, which are on Exhibit "B" attached hereto and made a part hereof.

SECTION 4. All other dischargers who are also served by metered water service will pay a monthly flat charge of two dollars (\$2.00) per account in addition to the charge based on the number of cubic feet of water used and a rate which is based on the strength of the wastewater. All connections will be divided into six (6) Classifications. The connections within each Class will have similar discharge characteristics and will be charged the same rate.

SECTION 5. Commercial uses in the following Commercial Class groups shall be charged the rates indicated for each 100 cubic feet of water usage, but not less than the monthly charge for a single-family residence.

- a. Commercial Class I shall consist of the following:

Mobile Home Parks  
Multi-Family (4-units or more)

- b. Commercial Class IIa shall consist of the following:

Auto Dealers	Non-Office
Bakeries	Public Transportation
Barber & Beauty Shops	Service Clubs
Department & Retail Stores	Storage Facilities
Dry Cleaners	

Commercial Class IIb shall consist of the following:

Bars Without Dining Facilities	Miscellaneous Offices
Hotels/Motels Without Dining Facilities	Offices

- c. Commercial Class III shall consist of the following:

Auto Repair	Auto Steam Clean
Car Wash	Truck Repair
Service Stations	

- d. Commercial Class IV shall consist of the following:

Industrial/Commercial Laundries	Mortuaries
Laundromats	

- e. Commercial Class V shall consist of the following:

Restaurants	Hotels/Motels With Dining Facilities
Fast Food Establishments	

- f. Class VI (Institutional) shall consist of the following:

Civic Center	VA Hospital
Loma Linda Community Hospital	Schools

Loma Linda University Medical Center  
Convalescent Homes

Churches  
Pre-School and Day Care

SECTION 6. If any discharger can establish to the satisfaction of the Public Works Director that a substantial volume of water usage does not enter the sewer system, the Public Works Director shall determine a volume of water usage which he determines to be equitable. The Public Works Director may require installation of separate meters or sub-meters on any such system at no cost to the City.

SECTION 7. If any discharger can establish to the satisfaction of the Public Works Director that the amount and nature of the pollutants in its discharge vary significantly from others in its classification, the Public Works Director shall determine the suitable Class. Dischargers which cannot be classified into one of the existing classifications will be charged at the rates for Class III customers.

SECTION 8. Any questions as to the proper Class of a discharger will be determined by the Public Works Director.

SECTION 9. No discharger shall discharge wastewater with an electrical conductivity exceeding 1,000 microhms per centimeter for any day, and the discharger's daily average during any month shall not exceed 750 microhms per centimeter. Dischargers exceeding these values may be subject to payment of fines or surcharges on their monthly sewer bills.

SECTION 10. If a discharger is not connected to the City water system, the Public Works Director shall determine the volume of water to be used in determining the monthly charge. The Public Works Director may require that an approved metering device be installed to measure the volume of water discharged to the sewer system. The metering installation will be at no cost to the City.

SECTION 11. The Public Works Director may require the installation of a flow meter and/or sampling device to monitor the discharge of any facility discharging into the City sanitary sewer system whenever he determines that metering and sampling are necessary to determine the proper charges. Classes II, III and IV users may be required to install flow meters and monitoring equipment as specified by the Public Works Director.

SECTION 12. When the monthly service charge is determined by flow measurement and/or sampling and testing for strength and/or type of pollutants, these services will be performed by a facility and/or persons approved by the Public Works Director.

SECTION 13. All expenses incurred by the City for flow measurement, sampling and laboratory testing shall be in addition to the monthly service charge, except for customers who have approved flow measuring equipment with automatic samplers.

SECTION 14. All metering and sampling devices and facilities shall be approved by the Public Works Director.

SECTION 15. All metering and sampling devices and facilities shall be maintained in a manner acceptable to the Public Works Director.

SECTION 16. No facility or person may make a connection to, or discharge into the City sanitary sewer system without the prior approval of the Public Works Director.

SECTION 17. All dwellings, apartment houses and places of commercial and industrial business in which wastewater is generated within the City shall be required to use the collection and treatment service of the City and to pay the charges set forth by the Department of Public Works.

SECTION 18. The City Manager, Finance Director and Public Works Director are hereby directed to update annually the projections of costs, capital needs, reserves and revenues for the City wastewater utility, which projections initially were provided by the model upon which the rates set herein are based.

A. Annual Progress Report: Such update shall be prepared as a part of the City Annual Budget and shall be presented to the City Council in the form of a Progress Report on the accomplishment of scheduled capital improvement projects, fixed asset replacement projects, estimates of the adequacy of operational expenses and reserves, and revenue and rate, with a certification by the three above-listed City officials that those rates are adequate to maintain the physical integrity, the maintenance of all required health standards, adequate levels of maintenance and expansion, and adequate quality of facilities for the collection system.

B. Unanticipated and Emergency Needs: The Annual Progress Report shall also recommend rate changes for which rates have already been set by the City Council, if such changes are determined to be necessary. Such rate changes shall be recommended if, in the judgment and written report of the three aforementioned City officials, unanticipated costs or revenues, and emergency needs of the Sewer Utility are such that either rate reductions or rate increases are appropriate and warranted.

SECTION 19. Billing and collection charges for sewer service shall be included on the regular City utility bill to customers who have City water service. When the sewer customer does not have City water service, a separate bill for sewer service shall be mailed in accordance with standard billing procedures to the person who owns or controls the premises serviced.

SECTION 20. Delinquent Sewer Service. Once a sewer service bill has been declared delinquent in accordance with the provisions of these rules and regulations, it shall be the responsibility of the owner of the property, or the consumer requesting reconnection, to pay the delinquent bill and disconnection/reconnection charges, if any.

A consumer's sewer service may be discontinued by the Public Works Director for the non-payment of a bill for sewer service at a previous location, provided said bill has not been paid within thirty (30) days after presentation at the new location.

SECTION 21. Ordinance No. 716 is hereby repealed.

SECTION 22. These rules and regulations shall be in full force and effect from and after the 1st day of January 2016.

SECTION 23. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 24. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted three (3) prominent places in the City of Loma Linda and to cause publication once

Ordinance No.

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in The Sun, the official newspaper of the City of Loma Linda, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on November 24, 2015, and adopted as an ordinance of the City of Loma Linda at a regular meeting of the City Council held on \_\_\_\_\_ by the following vote:

Ayes:

Noes:

Abstain:

Absent:

\_\_\_\_\_  
Rhodes Rigsby, Mayor

ATTEST:

\_\_\_\_\_  
Pamela Byrnes-O'Camb, City Clerk

**Exhibit A**

City of Loma Linda

Wastewater Utility

**Schedule of Proposed Wastewater Service Charges and Rates**

Classification	Existing	Proposed Monthly Charge				
	Charges <sup>[1]</sup>	4/1/14	1/1/15	1/1/16	1/1/17	1/1/18
	\$/month	\$/month	\$/month	\$/month	\$/month	\$/month
Residential	\$8.67	\$9.75	\$10.97	\$12.34	\$13.88	\$15.62
Multi-Units (1-3 units)	8.67	9.75	10.97	12.34	13.88	15.62
Commercial	\$2.43	\$2.73	\$3.07	\$3.45	\$3.88	\$4.37

**Commercial Use Monthly Volume Rates**

Classification	Existing	Proposed Rate <sup>[2]</sup>				
	Rates <sup>[1]</sup>	4/1/14	1/1/15	1/1/16	1/1/17	1/1/18
	\$/Ccf	\$/Ccf	\$/Ccf	\$/Ccf	\$/Ccf	\$/Ccf
Class I: MHP (>=4 units)	\$0.69	\$0.78	\$0.88	\$0.99	\$1.11	\$1.25
Class II: Category a	0.76	0.86	0.97	1.09	1.23	1.38
Class II: Category b	0.73	0.82	0.92	1.04	1.17	1.32
Class III: Auto Service	1.10	1.24	1.40	1.58	1.78	2.00
Class IV: Laundry, Mortuary	1.21	1.36	1.53	1.72	1.94	2.18
Class V: Restaurant	1.21	1.36	1.53	1.72	1.94	2.18
Class VI: Institutional	\$0.80	\$0.90	\$1.01	\$1.14	\$1.28	\$1.44

Existing rates and charges became effective February 1, 2011.

Rate charged on water consumed through the meter.

**EXHIBIT "B"**

**City of San Bernardino Pass Through Loma Linda  
Schedule of Proposed Wastewater Treatment Charges and Rates**

Classification	Existing Charges	Proposed Monthly Charge		
		1/1/16	7/1/16	7/1/17
	\$/month	\$/month	\$/month	\$/month
Residential (Single Family)	\$18.50	\$19.18	\$20.85	\$21.55
Multi-Family (2 units)	\$37.00	\$38.37	\$41.72	\$43.10
Multi-Family (3units)	\$55.50	\$57.55	\$62.58	\$64.64
Multi-Family (4 units or more); Mobil Home Park	\$2.40	\$1.17	\$1.90	\$1.97
Non-Residential	\$2.40	\$3.18	\$3.42	\$3.52
Industrial	\$1.00	\$0.20	\$0.26	\$0.28

**Commercial Use Monthly Volume Rates**

Classification	Existing Rates	Proposed Rate		
		1/1/16	7/1/16	7/1/17
	\$/HCF	\$/HCF	\$/HCF	\$/HCF
Multi-Family (4 units or more); Mobil Home Park	\$1.25	\$1.36	\$1.48	\$1.53
Retail, Commercial, Light Industrial	\$2.10	\$2.28	\$2.47	\$2.55
Auto Repair, Car Wash	\$1.30	\$1.41	\$1.53	\$1.58
Offices, Motels (without Restaurant)	\$1.50	\$1.63	\$1.77	\$1.83
Restaurant, Hotels	\$2.70	\$2.93	\$3.18	\$3.28
Laundromat	\$1.50	\$1.63	\$1.77	\$1.83
Hospital, Convalescent Home	\$1.35	\$1.46	\$1.58	\$1.63
School, Church, Nursery School	\$1.10	\$1.19	\$1.29	\$1.33

Rate charged on water consumed through the meter.

**Commercial Use Monthly Volume Rates**

Classification	Existing Rates	Proposed Rate		
		1/1/16	7/1/16	7/1/17
Domestic Liquid Waste (\$/Gallon)	\$0.040	\$0.043	\$0.047	\$0.049

**Industrial Wastewater Charges**

Discharge Flow (\$/MG)	\$900.00	\$977.00	\$1,060.00	\$1,094.00
Biochemical Oxygen Demand Charge (\$/1000 Lbs.)	\$360.00	\$391.00	\$424.00	\$438.00
Suspended Solids Charge (\$/1000 Lbs.)	\$640.00	\$694.00	\$753.00	\$778.00

Rate charged on water consumed through the meter.



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Phillip Dupper, Mayor pro tempore  
Ronald Dailey, Councilman  
John Lenart, Councilman  
Ovidiu Popescu, Councilman

COUNCIL AGENDA: November 24, 2015

TO: City Council

FROM: Konrad Bolowich, Assistant City Manager

SUBJECT: Economic Incentive Agreement between the CITY OF LOMA LINDA, JTS MOTORCARS, INC., a California corporation and SPREEN INVESTMENT COMPANY II, a California general partnership

Approved/Continued/Denied  
By City Council  
Date \_\_\_\_\_

## RECOMMENDATION

It is recommended that the City Council enter into the Economic Incentive Agreement between JTS Motorcars inc, Spreen investment Company II, and the City of Loma Linda in the form submitted herewith.

## BACKGROUND

Spreen Mazda, Inc., together with Spreen Investment Company, a California partnership has proposed to the City an Economic Incentive Agreement, in the form submitted herewith (the "Agreement"). Under the Economic Incentive Agreement, the City would be obligated to make certain payments to Spreen Mazda based upon a percentage (40%) of net sales taxes received by the City from operations undertaken by Spreen Mazda. Spreen Mazda is to be established and thereafter maintained as a business operating at a site within the corporate limits of the City.

Prior to consideration of this item, a notice of public hearing was published concerning the proposed Agreement; that notice alludes to Government Code Section 53083, as more fully described below. A copy of the Agreement and this staff report have been on display as public records with the City Clerk.

## ANALYSIS

Spreen Mazda is not relocating a facility owned by Spreen Mazda or SIC or their respective principals. By retaining Spreen Mazda within the City, the City will continue to be the beneficiary of substantial sales tax revenues over a significant period of time, all as more particularly set forth in the Economic Incentive Agreement. The sales included under this agreement, expressly exclude sales and use taxes generated from service, parts sales, used car sales or leases and the sale of new motor vehicles that are not new Mazda motor vehicles.

The maximum amount of the reimbursement shall be limited to Seven Hundred Thousand Dollars (\$700,000.00). No interest or inflators apply to the Maximum Amount. The Agreement shall remain in place for a two hundred forty (240) month period commencing with the Date of Agreement, or until \$700,000.00 has been reimbursed.

All actions required by all applicable law with respect to the proposed Economic Incentive Agreement have been taken in an appropriate and timely manner; and Staff and recommends that the Economic Incentive Agreement is important to make available to the City for the benefit of its inhabitants and an additional source of sales tax revenues and is in the best interests of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

CC AGENDA ITEM 2

Spreen Mazda will operate as a conforming business activity on an ongoing basis on a site in the City of Loma Linda as their sole location within California, and treat the site as the sole point of sale for all taxable sales of new Mazda automobiles in the Inland Empire. It is estimated that operations in the City will create between ten and fifteen full-time jobs in the community. No part-time or temporary positions are anticipated.

The City will be obligated to make certain payments to Spreen Mazda based upon a percentage (40%) of sales taxes received by the City from operations undertaken by Spreen Mazda. The City will retain a percentage (60%) of sales taxes received by the City from operations undertaken by Spreen Mazda in the Inland Empire. Should other types of transactions become ineligible for allocation, these would then similarly fall outside the allocation formula.

Under this agreement, it is estimated that Spreen Mazda would be entitled to annual economic incentives in the amount of \$28,000.00, and that the City will retain \$42,000.00 as new sales tax revenue to the City; such figures for annual sales and regarding sales taxes are only estimates: the actual figures will be a function of such sales activity as is actually consummated by Spreen Mazda from time to time.

Approval of this resolution will authorize the City Manager to execute the Agreement (including without limitation all attachments thereto) on behalf of the City. The City Manager is also authorized, on behalf of the City, to make revisions to the Agreement which do not increase any amounts to be paid by the City or materially or substantially increase the City's obligations thereunder, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the Agreement and to administer the City's obligations, responsibilities and duties to be performed under the Agreement and related documents.

Government Code Section 53083 is a codification of Assembly Bill 562 from 2013, which became effective as of January 1, 2014. Section 53083 provides, in pertinent part, as follows:  
53083.

(a) On and after January 1, 2014, each local agency shall, before approving any economic development subsidy within its jurisdiction, provide all of the following information in written form available to the public, and through its Internet Web site, if applicable:

- (1) The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable.
- (2) The start and end dates and schedule, if applicable, for the economic development subsidy.
- (3) A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.
- (4) A statement of the public purposes for the economic development subsidy.
- (5) Projected tax revenue to the local agency as a result of the economic development subsidy.
- (6) Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

(b) Before granting an economic development subsidy, each local agency shall provide public notice and a hearing regarding the economic development subsidy. A public hearing and notice under this subdivision is not required if a hearing and notice regarding the economic development subsidy is otherwise required by law.

The elements enumerated within Section 53083 as set forth above are included within this staff report, particularly under the heading "ANALYSIS."

This report will remain posted on the City Internet Web site with a link leading to it under the economic development page.

## **ENVIRONMENTAL**

This agreement is not considered a project per section 15378(b)(4) of the California Environmental Quality Act in that the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

## **FINANCIAL IMPACT**

The Agreement will make available to the City an additional source of sales tax revenues and is in the best interests of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

It is estimated that there will be between ten and fifteen full time positions created in the City with the resultant economic stimulus. There will also be a direct impact of an additional \$420,000.00 from the sales tax revenue brought to and retained by the City over the life of the agreement. There is also the potential that the portion of County Pool tax revenue may be increased by an unknown amount.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOMA LINDA APPROVING AN ECONOMIC INCENTIVE AGREEMENT BY AND AMONG THE CITY OF LOMA LINDA, SPREEN MAZDA, INC. AND SPREEN INVESTMENT COMPANY**

**WHEREAS**, the City of Loma Linda (“City”) is a chartered city organized and operating under its city charter (the “Charter”) and the laws of the State of California; and

**WHEREAS**, Spreen Mazda, Inc., a California corporation (“Spreen Mazda”) together with Spreen Investment Company II, a California partnership (“SIC”) has proposed to the City an agreement substantially in the form submitted herewith (the “Economic Incentive Agreement”); and

**WHEREAS**, a copy of the Economic Incentive Agreement, together with a report describing the proposed transaction, has been on file with the City Clerk as a public record; and

**WHEREAS**, notice of a public hearing to consider the Economic Incentive Agreement, and which specifically referenced Government Code Section 53083, was published in a newspaper of general circulation serving the City and its inhabitants; and

**WHEREAS**, under the Economic Incentive Agreement, the City would be obligated to make certain payments to Spreen Mazda based upon a percentage (40%) of net sales taxes received by the City from operations undertaken by Spreen Mazda; and

**WHEREAS**, Spreen Mazda is proposed to be established and thereafter maintained as a business operating at a situs within the corporate limits of the City, is unwilling to maintain its operations within the City but for the approval of the Economic Incentive Agreement; and

**WHEREAS**, Spreen Mazda is not relocating a facility owned by Spreen Mazda or SIC or their respective principals; and

**WHEREAS**, by retaining Spreen Mazda within the City, the City will continue to be the beneficiary of substantial sales tax revenues over a significant period of time, all as more particularly set forth in the Economic Incentive Agreement; and

**WHEREAS**, particularly in light of the elimination of redevelopment agencies as effected by enactments of the California Legislature in 2011 and 2012, including the former Loma Linda Redevelopment Agency, the generation of tax revenues available to the City is important in preserving the ability of the City to provide an acceptable level of core municipal services to its inhabitants; and

**WHEREAS**, the financial participation by the City under the Economic Incentive Agreement is in consideration of the activities that will be undertaken by Spreen Mazda under the Economic Incentive Agreement; and

**WHEREAS**, a public meeting of the City Council on the proposed Economic Incentive Agreement was duly noticed; and

**WHEREAS**, the proposed Economic Incentive Agreement, and a staff report have been available for public inspection prior to the public meeting; and

**WHEREAS**, all actions required by all applicable law with respect to the proposed Economic Incentive Agreement have been taken in an appropriate and timely manner; and

**WHEREAS**, the City Council has duly considered all of the terms and conditions of the proposed Economic Incentive Agreement and believes that the Economic Incentive Agreement is important to make available to the City for the benefit of its inhabitants an additional source of sales tax revenues and is in the best interests of the City and the health, safety, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMA LINDA DOES RESOLVE AS FOLLOWS:**

**Section 1.** The City Council hereby finds and determines that, by generating additional revenues to the City, the Economic Incentive Agreement will benefit the City and its inhabitants.

**Section 2.** The City Council hereby approves the Economic Incentive Agreement in substantially the form presented to the City Council, subject to such revisions as may be made by the City Manager or his designee. The City Manager is hereby authorized to execute the Economic Incentive Agreement (including without limitation all attachments thereto) on behalf of the City. A copy of the Economic Incentive Agreement when executed by the City shall be placed on file in the office of the City Clerk.

**Section 3.** The City Manager is hereby authorized, on behalf of the City, to make revisions to the Economic Incentive Agreement which do not increase any amounts to be paid by the City or materially or substantially increase the City's obligations thereunder, to sign all documents, to make all approvals and take all actions necessary or appropriate to carry out and implement the Economic Incentive Agreement and to administer the City's obligations, responsibilities and duties to be performed under the Economic Incentive Agreement and related documents.

Resolution No.  
Page 3

**PASSED and ADOPTED** this 24th day of November 2015 by the following vote:

Ayes:  
Noes:  
Absent:  
Abstain:

By: \_\_\_\_\_  
Rhodes Rigsby, Mayor

ATTEST:

\_\_\_\_\_  
Pamela Byrnes-O'Camb, City Clerk

**ECONOMIC INCENTIVE AGREEMENT**

**BY AND AMONG**

**CITY OF LOMA LINDA**

**AND**

**JTS MOTORCARS, INC.**

**AND**

**SPREEN INVESTMENT COMPANY II**

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## ATTACHMENTS

Attachment No. 1	Participant Certificate
Attachment No. 2	Promissory Note
Attachment No. 3	Owner Deed of Trust

## **ECONOMIC INCENTIVE AGREEMENT**

This ECONOMIC INCENTIVE AGREEMENT ("Agreement") is entered into as of November 24, 2015 by and among the CITY OF LOMA LINDA, a chartered municipal corporation ("City"), JTS MOTORCARS, INC., a California corporation ("Participant") and SPREEN INVESTMENT COMPANY II, a California general partnership ("Owner"). City, Participant and Owner hereby agree as follows:

### **1.00 SUBJECT OF AGREEMENT**

#### **1.01 Purpose of Agreement**

1.01.1. The purpose of this Agreement is to promote the economic welfare of the City and enhance the wherewithal of City to provide municipal services and to provide jobs within the corporate limits of the City. The foregoing will be accomplished by the addition and retention of Participant to establish and maintain its business within the City and to conduct from Participant's location in the City sales of "New Mazda Motor Vehicles" (as defined in Section 1.03 below). This Agreement is in the vital and best interest of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

In order to induce Participant to establish and operate on the Site a New Mazda Dealership (as those capitalized terms are defined below) and generate sales tax income to City, Owner and Participant desire to enter into this Agreement in order to provide for City to purchase an operating covenant and other covenants from Participant, and to obligate Participant to operate a New Mazda Dealership on the Site.

#### **1.02 The Site**

The "Site" is that certain property commonly known as 25140 Redlands Boulevard, Loma Linda, California 92354. The Site may be changed to another site within the City at any time and as often as required by Participant, in its sole discretion; Participant shall promptly notify City as to any change of situs. The reference to Site shall include any such other situs within the City where Participant operates its business.

#### **1.03 Definitions**

The capitalized terms and words used in this Agreement shall have the following meanings:

"*Additional Information*" is defined in Section 2.01.1.

"*BOE*" means the State of California Board of Equalization.

"*Business License Condition*" means the payment in full of all Business License Taxes which are payable under the Business License Tax Ordinance in connection with operations by Participant within the corporate limits of the City (the "Business License Condition").

"*Business License Tax Ordinance*" means Title 5 of the City Code.

“*Business License Taxes*” means those amounts which City determines to be payable from time to time in connection with the operation of a business, including a New Mazda Dealership, under the Business License Tax Ordinance.

“*Certificate Condition*” means the obligation of Participant to execute and deliver to City for each Measuring Period a Certificate substantially in the form of Attachment No. 1, with such Certificate to be executed and delivered to City within thirty (30) days after the corresponding Measuring Period.

“*Change in Law Conditions*” has the meaning set forth therefor in Section 5.02.

“*City*” means the City of Loma Linda, a chartered municipal corporation.

“*City Code*” means the Loma Linda Municipal Code as in effect as of the Date of Agreement and as such Municipal Code may be amended from time to time.

“*City Manager*” means the City Manager of the City or his designee.

“*City Sales Tax Revenues*” means a proportionate share of: (i) those taxes paid in connection with the conduct by Participant of Conforming Business Activities on the Site (and expressly excluding sales and use taxes generated from service, parts sales, used car sales or leases and the sale of new motor vehicles that are not new Mazda motor vehicles) which are allocated to and received by City for its use based upon and limited to one percent (1%) of sales price pursuant to the Bradley Burns Uniform Sales Tax Law, California Revenue and Taxation Code Section 7200 *et seq.*, including all amendments and successor statutes thereto, and (ii) revenues received by City pursuant to Section 97.68 of the Revenue and Taxation Code (as enacted by Chapter 162, Statutes of 2003) from the Sales and Use Tax Compensation Fund, as therein defined, in connection with the conduct by Participant of Conforming Business Activities on the Site.

“*City Subsidy*” means those moneys which become payable by City to Participant as Measuring Period Payment Amount(s) under the terms and conditions of Section 2.02 of this Agreement up to the Maximum Amount (as all such payments are aggregated).

“*Conditions Precedent*” is defined in Section 2.03 of this Agreement.

“*Conforming Business Activities*” means the sale of by Participant of New Mazda Motor Vehicles.

“*Date of Agreement*” means November 24, 2015.

“*Default*” is defined in Section 6.01 of this Agreement.

“*Excluded Items*” means products, if any, as to which provisions of law attribute sales tax on a basis other than point of sale or as to which provisions of law prohibit the payment of any subsidy, rebate or other remuneration based upon generation of sales or use taxes.

“*Existing Honda Dealership*” means the dealership that has been operated at the Site by Spreen Honda, Inc., a California corporation, for a period of several years prior to the Date of Agreement.

*"Fee Condition"* means the payment in full of all Public Entity Fees payable in respect to the Participant Improvements, if any.

*"Indemnification Condition"* means the provision of defense, indemnification, assumption of responsibility for as required pursuant to Section 3.02 of this Agreement.

*"Maximum Amount"* means Seven Hundred Thousand Dollars (\$700,000.00). No interest or inflators apply to the Maximum Amount.

*"Measuring Period"* means a calendar year.

*"Measuring Period Payment Amount"* means, as to a Measuring Period, an amount equal to forty percent (40%) of the Net City Sales Tax Revenues received by City during such Measuring Period in connection with the operation of Conforming Business Activities on the Site.

*"Net City Sales Tax Revenues"* means City Sales Tax Revenues less those City Sales Tax Revenues that are attributable to Excluded Items.

*"New Mazda Dealership"* means a full service new car Mazda car and truck dealership on the Site engaged in selling of new Mazda automobiles and trucks operated substantially in the manner Spreen Honda has operated during the five (5) years preceding this Agreement (but regarding new Mazda products as a factory authorized dealer of New Mazda Motor Vehicles).

*"New Mazda Motor Vehicles"* means communications equipment and supplies, including assembly and repairs of such equipment and supplies, as well as similar products and related services.

*"Operating Covenant Period"* means a two hundred forty (240) month period commencing with the Date of Agreement.

*"Operation Condition"* means the operation of Conforming Business Activities on the Site in conformity with all applicable laws on a continuous basis (subject to Section 2.01.2(a)) throughout the Operating Covenant Period and with no assignment by Participant contrary to Section 1.04.3 of this Agreement as Participant's sole sales office location within Southern California with respect to Conforming Business Activities.

*"Owner Deed of Trust"* means a deed of trust in the form of Attachment 3 hereto.

*"Ownership Condition"* means ownership by Participant (as of the Date of Agreement and as of each Participant Certificate) of (i) a fee simple interest in the Site, or (ii) a lease of the Site for a term of not less than ten (10) years with an option or options by Participant to extend for the remainder of the Operating Covenant Period.

*"Participant"* is defined in the introductory paragraph of this Agreement; however, at Participant's election and upon advance written notice to City, other entities sharing common control with Participant shall be included as a Participant in this Agreement, subject to all of the terms and conditions herein and provided that any payments made at a particular time under this Agreement by City shall be made payable to one entity.

*"Participant Certificate"* means Attachment No. 1 to this Agreement.

“*Participant Improvements*” means such improvements, if any, which Participant elects to construct or cause to be constructed within the corporate limits of City.

“*Performance Conditions*” means the Certificate Condition, the Indemnification Condition, the Operation Condition, the Ownership Condition, the Sales Tax Condition, and the Sales Tax Reporting Condition.

“*Promissory Note*” means a promissory note by Participant and Owner in the form of Attachment No. 2 to this Agreement.

“*Public Entity Fees*” means all fees (but not taxes) payable to City and any other governmental agency having regulatory authority in connection with Participant Improvements should any such improvements be undertaken at the Site at the election of Participant or Owner.

“*Sales Tax Condition*” means maintaining the Site as point of sale for all taxable sales of New Mazda Motor Vehicles made by Participant within Southern California.

“*Sales Tax Reporting Condition*” is defined in Section 2.01.2(a) of this Agreement.

“*Sales Tax Reports*” is defined in Section 2.01.2(a)(ii) of this Agreement.

“*Sales Tax Revenues*” means tax revenues attributable to up to one percent (1%) of sales price pursuant to the Bradley Burns Uniform Sales Tax Law, California Revenue and Taxation Code Section 7200 *et seq.*, including all amendments and successor statutes thereto.

“*Site*” is defined in Sections 1.02 of this Agreement.

“*Southern California*” means San Bernardino County, Riverside County, and all other counties in California that are south of the most southerly point of Kern County.

“*Title Company*” means Ticor Title Insurance or another mutually acceptable title insurance company.

#### 1.04 Parties to this Agreement

##### 1.04.1. City

City is a chartered municipal corporation, exercising governmental functions and powers of a charter city under the Constitution of the State of California and the Loma Linda City Charter. The principal office of City is located at 25541 Barton Road, Loma Linda, California 92354. Whenever a reference is made to City, the City Manager of City is authorized to act on behalf of City unless otherwise specifically provided or the context should otherwise require. City shall advise Participant in writing if there is any change pertaining to any matters set forth or referenced in the foregoing portion of this Section 1.04.1.

##### 1.04.2. Participant

Participant means JTS Motorcars, Inc., a California corporation. The principal office of Participant for the purposes of this Agreement is the Site. Participant shall advise City in writing

if there is any change pertaining to any matters set forth or referenced in the foregoing portion of this Section 1.04.2.

1.04.3. Owner

Owner means Spreen Investment Company II, a California general partnership. The principal office of Owner for the purposes of this Agreement is the Site. Owner shall advise City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing portion of this Section 1.04.3.

1.04.4. Assignment by Participant or Owner

Neither Owner nor Participant may undertake any of the following without the consent of City, and no such action shall limit or otherwise affect any of the rights or benefits of Participant (or the duties and obligations of City) hereunder: (i) a material issue or transfer of stock or other voting or ownership interests in Participant or Owner (and/or assign this Agreement in connection with any such issuance or transfer) that would require a filing with the Securities and Exchange Commission, (ii) merge or consolidate with any other entity, and/or sell or transfer all or substantially all of the assets of Participant or Owner (and/or assign this Agreement in connection with any such merger, consolidation or sale), (iii) sell or transfer all or substantially all of the New Mazda Motor Vehicles business conducted by Participant or Owner in Southern California, (iv) assign its interest in this agreement, wholly or in part, to any entity that controls, is controlled by or is under common control with Participant or Owner, or (v) move, sell, or transfer all or substantially all of the Existing Honda Dealership during the Operating Covenant Period. This Agreement contemplates, and the parties agree, that at some point in time Participant may have another entity, which either controls, is controlled by, or is under common control with Participant and/or Owner, and which entity sells New Mazda Motor Vehicles. Provided that such entity operates its business in City and agrees to be bound to City as Participant under this Agreement, then such entity shall be entitled to participate in this Agreement in such manner as Participant. The word "control", for purposes of the foregoing, means the power, directly or indirectly, by voting rights, contract or otherwise, to direct or cause the direction of the management or policies of a person or entity.

While this Agreement shall not be construed to limit the ability of Participant or Owner to transfer or dispose of its business activities, or any portion thereof, in the event Participant or Owner undertakes any of the assignment or transfer provisions set forth above in this Section 1.04.4, each of Owner and Participant, as transferor, and the transferee shall execute an acknowledgement under which the transferee agrees to perform as Participant (or, as applicable, Owner) under this Agreement and, provided the original Participant has no accrued liabilities to City under the terms of this Agreement, the original Participant shall thereafter be released from further obligations under this Agreement.

Each of Owner and Participant shall promptly notify City in writing referencing this Section 1.04.4 of any and all changes referenced in this Section 1.04.4. All transferees shall be bound by this Section 1.04.4 as well as the other provisions of this Agreement.

All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of Participant and Owner and the permitted successors and assigns of Participant and shall further inure to the benefit of City.

## 2.00 CONSIDERATION FOR AGREEMENT; MEASURING PERIOD PAYMENTS

2.01 Participant Consideration. Participant has agreed to operate the Site with Conforming Business Activities and to satisfy the Performance Conditions throughout the Operating Covenant Period. Participant assumes all responsibility for all costs to provide Participant Improvements, if any.

2.01.1. Within thirty (30) days after the completion of each Measuring Period, Participant shall execute and deliver to City a Participant Certificate together with information regarding sales and sales taxes sufficiently detailed that City staff is able to confirm that the data submitted pertains solely to Conforming Business Activities and not such other transactions as used car sales; such information as described in this sentence (apart from the Participant Certificate) constitutes the "Additional Information." Participant shall be responsible to submit Additional Information that is reasonably satisfactory to City, and to supplement such information as may be requested by City in City's reasonable discretion. City shall thereafter review the Participant Certificate and may undertake such further review and inquiry concerning satisfaction of the Performance Conditions as it shall deem appropriate regarding the performance by Participant. Participant shall cooperate with such review. Following the completion of such review, within forty-five (45) days after receipt of the corresponding Certificate, City shall either pay to Participant the Measuring Period Amount for the corresponding period (as addressed in the Certificate), as more fully described in Section 2.02 hereof, or shall inform Participant in writing as to the reasons the Measuring Period Amount is not being paid. Participant may ask for reconsideration by City, such as in the event of circumstances described in Section 2.01.2(a) of this Agreement, and may submit additional evidence in connection therewith. City shall endeavor to conduct any further review within a forty-five (45) day period after it receives such additional information, following which City shall inform Participant of the outcome.

The foregoing process shall be repeated for each Measuring Period during the Operating Covenant Period; provided that in no event shall amounts disbursed by City to Participant under this Agreement for any Measuring Period exceed the Measuring Period Amount.

2.01.2. The performance by Participant shall include satisfaction of each of the Performance Conditions for each measuring Period which occurs during the Operating Covenant Period.

Concerning the Operation of Conforming Business Activities on the Site on an ongoing basis throughout the Operating Covenant Period, in the event the physical facilities at the Site are damaged to the extent that it is not feasible for Participant to operate, Participant shall recommence operations as soon Participant determines it is practical to do so.

Upon satisfaction of the foregoing Conditions, Participant shall, as set forth in Section 2.03, provide its certification in connection with the satisfaction of the foregoing Conditions in the form of the Participant Certificate. The Participant Certificate shall be updated, signed and submitted prior to each Measuring Period Payment request.

(a) (i) Participant shall provide City with information concerning the amount of Sales Tax Revenues generated by Participant within City which are payable to the State of California and which are reported to the BOE, including a separate delineation as to Sales Tax Revenues arising from Excluded Items. Participant shall prepare and furnish to City quarterly

statements showing the amount of Sales Tax Revenues collected and paid during each quarter by Participant in connection with Conforming Business Activities at the Site (including a delineation of those Sales Tax Revenues arising from Excluded Items). Participant shall include in such reports to City the amounts of Business License Taxes, if any, paid by Participant to City during the corresponding Measuring Period.

(ii) Participant shall maintain and have available and cause to be maintained and available for inspection by City or its designees, copies of any and all Sales Tax Reports, defined below, submitted by Participant to the BOE. "Sales Tax Reports" shall mean the statements and quarterly reports (Form BOE-401-A), including a separate delineation regarding Sales Tax Revenues attributable to Excluded Items, and any other or supplemental reports, statements or submissions, actually filed or required to be filed by Participant with the BOE relating to or in connection with the collection, remittance and/or calculation of Sales Tax Revenues from the Property. The Sales Tax Reports shall be delivered by Participant to City on a quarterly basis as an attachment to the Participant Certificate, unless the timing of filing such report is amended by the BOE, in which case the date of submitting the Sales Tax Reports shall be amended accordingly.

(iii) if applicable, any and all amendments to said Sales Tax Reports shall be delivered to City simultaneously with Participant filing said amendments with the BOE.

This subsection (d) shall be referred to as the "Sales Tax Reporting Condition".

## 2.02 Measuring Period Payments

As set forth in Section 2.01.1, in consideration of the undertakings of Participant pursuant to this Agreement, City shall, within forty-five (45) days after all Conditions Precedent have been satisfied for the corresponding Measuring Period, disburse to Participant the applicable Measuring Period Payment Amount. The Participant Certificates shall be submitted to City to the attention of the City Manager at the address set forth in Section 1.04.1.

City shall not make any payments or otherwise provide any assistance pursuant to this Agreement other than those payments provided for in this Section 2.02.

The obligation of City to make payments pursuant to this Agreement does not constitute a pledge of any City revenues; the obligation of City to make payments pursuant to this Agreement is an unsecured obligation of City. In addition, the obligation of City to make payments is subject to City making annual appropriations for the fiscal year which includes the Measuring Period in each case which appropriations include the amounts which would be payable hereunder. City agrees to annually consider in good faith as part of its normal and customary budgetary processes inclusion of payments under this Agreement for the corresponding annual period for which such budget is adopted.

### 2.02.1 Time for Payments

All Subsidy Payments to be made within forty-five (45) days after satisfaction of the Conditions Precedent as to the corresponding Measuring Period.

#### 2.02.2. Discrepancies Regarding Measuring Period Payments

If a discrepancy arises regarding the determination of the Economic Incentive Payment, then a representative from City and Participant shall promptly meet to resolve such discrepancy. If such discrepancy cannot be resolved within fifteen (15) business days after the first meeting to resolve such discrepancy, then the Parties shall refer such dispute to an independent, outside accountant (with each Party selecting an accountant and then those two accountants shall select a separate accountant) for review and resolution within forty-five (45) days following the expiration of the first fifteen (15) business day period.

#### 2.03 Conditions Precedent

City shall not be obligated to make the initial disbursement of any Measuring Period Payment or any subsequent disbursement thereof unless all of the Performance Conditions have been satisfied for the applicable Measuring Period and:

(i) Participant delivers to the City Manager or his designee a certificate substantially in the form of the Participant Certificate, duly executed, which affirms Participant's compliance with and satisfaction of each of the Performance Conditions and the Additional Information in form and substance reasonably satisfactory to City;

(ii) City receives the Sales Tax Revenues from the BOE. However, notwithstanding the foregoing language or any other language in this Agreement to the contrary, in the event that the BOE withholds Sales Tax Revenues from City as a result of any separate obligations that the BOE deems are owed by City to the State of California or the BOE, then City shall still be obligated to Participant for a sum equal to the Economic Incentive that otherwise would have been payable to Participant absent such withholding and such payment shall be made with ninety (90) days after it would have been due if the BOE had not withheld payment;

(iii) City's having the legal right under state law to retain and control the disposition of all or substantially all of its portion of the Sales Tax Revenues; and

(iv) Participant shall have executed and delivered to City the Promissory Note and shall have executed, caused to be recorded among the official land records of the County Recorder of the County of San Bernardino the Owner Deed of Trust together with a lender's policy of the title insurance conforming to Section 2.04 hereof.

Subsections (i)-(iv) above shall collectively constitute the "Conditions Precedent."

#### 2.04 Owner Deed of Trust

The Promissory Note shall be secured by the Owner Deed of Trust, which shall be not lower than a second lien on the Site and which shall have a loan to value ratio of not greater than ninety percent (90%), inclusive of the Owner Deed of Trust and any encumbrances senior to the Owner Deed of Trust, and with the condition of title otherwise reasonably acceptable to City. Owner is a related party to Participant and Owner will benefit by this Agreement. Owner and Participant shall cooperate with the Title Company in connection with the provision of a lender's policy of title insurance for the Owner Deed of Trust based upon the principal amount of the Promissory Note. The premium for such title insurance policy shall be borne by Participant.

### **3.00 REQUIREMENTS APPLICABLE TO ANY IMPROVEMENTS**

#### **3.01 Development of Improvements by Participant**

Participant, which established facilities and has been operating within City prior to the Date of Agreement, is not required by this Agreement to make any improvements to property. If Participant elects to make improvements within the corporate limits of City, then costs for planning, designing, and constructing such improvements shall be borne exclusively by Participant and Participant shall construct or cause to be constructed such improvements in compliance with all the zoning, planning and design-review requirements of City, including without limitation the City Code, and all nondiscrimination, labor standard, and wage rate requirements to the extent such labor and wage requirements are applicable. Participant shall also bear all costs related to discharging the duties of Participant set forth in this Agreement.

#### **3.02 Indemnification**

Participant agrees to and shall defend, indemnify, release, assume all responsibility for, and hold City, its officers, employees and agents, harmless from, all claims or suits relating to the subject matter of this Agreement or the implementation hereof including, without limitation, claims for relocation assistance or benefits as may be asserted by any current or former occupant of any portion of the Site pursuant to the California Uniform Relocation Law) Government Code Section 7260 *et seq.*, the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. Section 4601 *et seq.*) or any other federal, state or local enactments providing for relocation assistance or benefits in connection with the development of the Site or this Agreement; and for, and damages to, property and injuries to persons, including accidental death (including attorneys' fees and costs), or interruption to or damage to a business or goodwill, which may be caused by any of Participant's activities under this Agreement, whether such activities or performance thereof be by Participant or anyone directly or indirectly employed or contracted with by Participant and whether such damage shall accrue or be discovered before or after termination of this Agreement. Participant shall not be liable for property damage or bodily injury occasioned by the sole active negligence of the Agency or its designated agents, or employees.

### **4.00 USE OF THE SITE**

#### **4.01 Uses**

Participant is an experienced operator of a business consisting of the sale of motor vehicles including new motor vehicles as authorized by Honda Motor Company; pursuant to this Agreement, Participant will add the sale of New Mazda Motor Vehicles. Participant shall operate on the Site Conforming Business Activities and the operation of a Mazda dealership and a Honda dealership, all of which shall conform in all respects to all applicable regulations of federal, state and local agencies regulating the establishment or operations of such facilities.

Participant shall carry out all of its undertakings pursuant to this Agreement in conformity with, all applicable laws. This Agreement shall be subject to all applicable laws. Participant does hereby and shall indemnify and hold City harmless from and against any and all claims, demands, causes of action, obligations, damages, liabilities, costs and expenses, including reasonable attorneys' fees, that may be asserted against or incurred by City with respect to or in any way arising from Participant's compliance with or failure to comply with applicable laws, including all applicable

federal and state labor standards including without limitation the requirements of Labor Code Section 1720.

Participant agrees that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site.

Participant shall refrain from restricting the rental, sale or lease of the property on the basis of race, color, creed, religion, sex, marital status, handicap, national origin or ancestry of any person.

#### 4.02 Use and Operating Covenants

Continuously throughout the Operating Covenant Period, Participant hereby covenants and agrees to and shall use the Site, and to operate thereon or cause to be operated thereon on a continuous basis a New Mazda Dealership; provided that the operation of a Honda motor vehicle dealership on the Site by Owner or Spreen Honda in addition to the New Mazda Dealership is allowable hereunder. Assuring the ongoing operation of the existing dealership with the sale of new Honda motor vehicles is a material inducement for City to enter into this Agreement without which City would not have entered into this Agreement. Participant is not precluded from continuing the sale of Honda motor vehicles or adding additional product lines of new motor vehicles but, in no event shall Participant discontinue the sale of New Mazda Motor Vehicles or cease to operate the New Mazda Dealership at any time during the Operating Covenant Term.

Participant shall maintain the Site and all improvements thereon, including all landscaping and lighting, in clean fully operational condition and in compliance with all applicable provisions of the City Code, such that the appearance of the Site shall reflect the first class, first quality vehicles to be displayed, offered for sale or lease, and sold or leased at the Site.

### 5.00 **DEFAULTS AND REMEDIES**

#### 5.01 Default

The following shall constitute a "Default" under this Agreement:

##### 5.01.1. Default by Participant

(a) Participant discontinues its operations at the Site within the corporate limits of City or relocates its business to another jurisdiction in California, except in connection with the sale of its business;

(b) Participant's failure to provide City with the Participant Certificates, within sixty (60) days written notice from City; or

(c) Excepting in connection with damage to physical facilities, Participant fails to operate Conforming Business Activities on the Site for a period or periods totaling forty-five (45) days in any calendar year, as aggregated (but excluding for such purpose Saturdays, Sundays and legal holidays) during the Operating Covenant Period and, in the event damage to physical facilities occurs to the extent it is not feasible for the Participant to operate and Participant has notified the City Manager in writing within thirty (30) days of the onset of the occurrence of such condition, Participant fails to operate Conforming Business Activities on the Site or at another situs

within the corporate limits of City for a period or periods totaling one hundred twenty (120) days in any calendar year, as aggregated (but excluding for such purposes Saturdays, Sundays and legal holidays).

5.01.2. Representations and Warranties: Other Obligations

The breach of any of Participant's representations or warranties in this Agreement, unless such breach is cured within a reasonable period of not to exceed sixty (60) days after notice by City; or

5.01.3. Default by City

The failure by City to make payment of one or more Measuring Period Payment Amounts, if any, as it becomes obligated to make under this Agreement.

5.02 Remedies and Termination

In the event that Participant is in Default of this Agreement as specified in Section 5.01, City may suspend payment of amounts otherwise payable pursuant to Section 2.02 of this Agreement until such default has been cured; provided that City shall further be entitled to terminate this Agreement without making payment of amounts otherwise payable pursuant to Section 2.02 in the event such default has not been cured by the time required pursuant to this Agreement for the cure of such default (and, if no time is specified, within sixty (60) days from the date notice of default is given by City). If Participant defaults in accordance with Section 5.01.1(a), then in addition to terminating the Agreement, City shall be entitled to recover damages according to proof. City may take any legal or equitable action to enforce this Agreement, including without limitation, the Promissory Note.

Notwithstanding anything to the contrary in this Agreement, no party may terminate this Agreement without prior written notice to the other party specifically (i) stating the nature of the default and giving the other party a reasonable time of not to exceed sixty (60) days to cure said default or (ii) stating that an adjudication of a court of competent jurisdiction has occurred in California or a law has been enacted which precludes the making of payments by City as contemplated by this Agreement. If such events occur (as referenced in items (i) or (ii) of this paragraph), a non-defaulting party may terminate this Agreement upon providing written notice of such event a reasonable time prior to termination. Alternatively, a non-defaulting party shall have the right to seek specific performance

This Agreement shall also be subject to termination at the prior written mutual agreement of the parties hereto.

5.03 Legal Actions

5.03.1. Institution of Legal Actions

In addition to any other rights or remedies available to the parties, either party may institute legal action to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Bernardino, State of California or in the United States District Court in the Central District of California.

If an action is brought which seeks to invalidate this Agreement, to modify this Agreement or to alter payments which would be made hereunder, neither party shall be responsible to defend against any such claims.

5.03.2. Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

5.03.3. Acceptance of Service of Process

In the event that any legal action is commenced by Participant against City, service of process on City shall be made by personal service upon the City Manager or in such other manner as may be provided by law.

In the event that any legal action is commenced by City against Participant, service of process on Participant shall be made by personal service on Participant or any of its officers, or in such other manner as may be provided by law. Service shall be valid whether made within or without the State of California.

5.04 Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

5.05 Inaction Not a Waiver of Default

Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**6.00 GENERAL PROVISIONS**

6.01 Notices, Demands and Communications Between the Parties

Written notices, demands and communications between City and Participant shall be sufficiently given if delivered by hand or dispatched by registered or certified mail, postage prepaid, return receipt requested, or by generally recognized overnight courier service, to the principal offices of City and Participant at the addresses specified in Sections 1.04.1 and 1.04.2, respectively. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 5.01.

Any written notice, demand or communication shall be deemed received immediately if delivered by hand or via overnight courier and shall be deemed received on the tenth (10<sup>th</sup>) day from the date it is postmarked if delivered by registered or certified mail.

#### 6.02 Conflicts of Interest

No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

#### 6.03 Enforced Delay; Extension of Times of Performance

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; acts or omissions of the other party. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Participant.

#### 6.04 City Manager to Act for City

Whenever this Agreement provides for an action to be taken by City, then, except to the extent that provisions of applicable law or the context may otherwise require, such action may be taken by the City Manager on behalf of City.

#### 6.05 Non-liability of Officials and Employees of City

No member, official or employee of City shall be personally liable to Participant, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due to Participant or its successors, or on any obligations under the terms of this Agreement.

#### 6.06 No Third Party Beneficiaries

There shall be no third party beneficiaries of this Agreement.

#### 6.07 Provision of Information; Inspection of Books and Records; Limitations Upon Voluntary Release of Certain Information

City shall have the right at all reasonable times during the Operating Covenant Period to inspect the books and records of Participant pertaining to the collection and payment of Sales Tax Revenues as reasonably necessary to determine compliance with this Agreement; Participant agrees to make such records available to City as deemed necessary by City, at least annually and additional upon request therefor by City, to verify compliance with the terms of this Agreement.

#### 6.08 Confidentiality

The parties acknowledge that the information contained in any tax return is confidential, proprietary to Participant, and agree that, to the fullest extent permitted by law, no documents, including tax returns, or other information provided by Participant to City, its agents and representatives pursuant to or with regard to the provisions of this Agreement, shall be released to or

otherwise made available to any third person, corporation, organization or association unless disclosure is permitted pursuant to a written order of a court of competent jurisdiction or the prior written consent of Participant. City shall offer Participant the opportunity to defend any claim made by any third party against City for release of such confidential documents or information. In the event that a nonparty to this Agreement seeks disclosure of any information concerning the terms of this Agreement from City, City shall promptly, but in any event, no later than seven (7) business days after City receives such request, notify Participant in writing of such request, identifying the party making the request and the information sought by such party. In the event that Participant contests such disclosure request, Participant shall pay and hold City harmless from all costs and expenses including reasonable attorneys' fees of City, the parties hereto may incur in contesting such disclosure request. All tax returns, documents and other information provided to City by Participant shall be returned to Participant immediately upon termination of this Agreement. Notwithstanding the foregoing portion of this Section 6.08, and as limitation thereon, Participant acknowledges and agrees that City may be required to disclose certain information in connection with requirements of California Government Code Section 53083 and such other and additional statutes and regulations as may be or may become applicable thereto.

#### **6.09 Advice of Counsel**

The parties, and each of them, acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing, and the parties executed this Agreement after review by such independent counsel, or, if they were not so represented, then said non-representation is and was the voluntary, intelligent and informed decision and election of the party not so represented, and prior to executing this Agreement, each party has had an adequate opportunity to conduct an independent investigation of all of the facts and circumstances with respect to the matters which are the subject of this Agreement.

#### **7.00 ENTIRE AGREEMENT; WAIVERS; AMENDMENTS**

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original. This Agreement includes pages 1 through 15, plus a signature page, and Attachments No. 1, No. 2 and No. 3 which are attached hereto and incorporated herein by reference, which constitute the entire understanding and agreement of the parties.

Time is of the essence as to each and every provision of this Agreement.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes any and all negotiations, understandings, discussions, memoranda, writings or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter of this Agreement. All waivers or modifications of the provisions of this Agreement or of any project document or Attachment hereto must be in writing by the appropriate authorities of City and Participant, and all amendments hereto must be in writing by the appropriate authorities of City and Participant.

#### **8.00 TIME FOR ACCEPTANCE OF AGREEMENT BY CITY**

This Agreement, when executed by each of Owner and Participant and delivered to City, must be authorized, executed and delivered by City on or before thirty (30) days after signing and delivery of this Agreement by Participant or this Agreement shall be void, except to the extent that

Participant shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement. The date of this Agreement shall be the date when it shall have been signed by City.

IN WITNESS WHEREOF, City, Participant and Owner have signed this Agreement as set forth below.

[SIGNATURES ON FOLLOWING PAGE]

**CITY**

**CITY OF LOMA LINDA,  
a chartered municipal corporation**

By: \_\_\_\_\_  
T. Jarb Thaipejr  
Its: City Manager

**PARTICIPANT**

**JTS MOTORCARS, INC. a California corporation  
dba Spreen Mazda**

By: Jeffrey T. Spreen  
Its: President

**OWNER**

**SPREEN INVESTMENT COMPANY II,  
a California general partnership**

By: \_\_\_\_\_  
Its: General Partner

**ATTACHMENT NO. 1**  
**PARTICIPANT CERTIFICATE**

(Participant Letterhead)  
City of Loma Linda  
25541 Barton Road  
Loma Linda, California 92354

Attn: City Manager

With respect to that certain Economic Incentive Agreement, dated as of November 24, 2015 (the "EIA") by and between JTS Motorcars, Inc., a California corporation (the "Participant") and City of Loma Linda ("City"), Participant hereby certifies to City that, for the period commencing as of \_\_\_\_\_ and ending as of \_\_\_\_\_, Participant has satisfied each of the Performance Conditions (with all capitalized terms not defined herein having the respective meanings established therefor in the EIA).

JTS MOTORCARS, INC., a California corporation

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name:

Its:

## ATTACHMENT NO. 2

### PROMISSORY NOTE

[SECURED BY DEED OF TRUST]

\$700,000.00

Loma Linda, California

FOR VALUE RECEIVED, each of JTS Motorcars, Inc., a California corporation ("Spreen Mazda") and Spreen Investment Company II, a California general partnership ("Spreen Investment" and collectively with Spreen Mazda, the "Maker") promises under this Promissory Note (the "Note") to pay to the City of Loma Linda ("Holder") at City Hall, 25541 Barton Road, Loma Linda, California, 92354, or at such other address as Holder may direct from time to time in writing, [MAXIMUM AMOUNT] (\$ \_\_\_\_\_) (the "Note Amount") together with interest thereon at the rate set forth herein. Notwithstanding the Maximum Amount, the amount owed to City under this Note shall be an amount equal to (i) the lesser of the amounts disbursed to the Maker by City (as described in Section 201.1 of the Agreement) or Seven Hundred Thousand Dollars (\$700,000.00) and (ii) any interest payable under the terms of this Note. All sums hereunder shall be payable in lawful money of the United States of America and all sums shall be credited first to interest then due and the balance to principal. This Note shall be a joint and several obligation of each of Spreen Mazda and Spreen Investment.

This Note is delivered pursuant to an Economic Incentive Agreement by and among Spreen Mazda, Spreen Investment and the City dated as of November 24, 2015 (the "Agreement"); a copy of the Agreement is on file with the City as a public record and is deemed incorporated herein by reference. All capitalized terms not defined herein shall have the meaning established therefor by the Agreement.

1. Interest Rate. Interest shall accrue on the Note Amount at a rate of zero percent (0%) per annum based on a 360 day year during such time as the Maker operates the New Mazda Dealership on the Site in conformity with the Agreement, and five percent (5%) per annum compounded annually (or, if lower, the highest legally allowable, non-usurious interest rate), based on a 360 day year for any time the Maker fails to operate the New Mazda Dealership on the Site in conformity with the Agreement.

2. Payment. The whole of the Note Amount plus accrued interest and all other payments due hereunder shall become due and be immediately payable to the Holder by the Maker (payment shall be accelerated) and Maker shall make payment of such amounts, and any amounts otherwise payable pursuant to the Agreement, concurrent with the first to occur of one or more of the following (each an "Acceleration Event"): (i) a sale or transfer (or attempt to sell or transfer) of the New Mazda Dealership without prior written City approval or otherwise contrary to the Agreement; (ii) a sale or transfer of the Site without prior written City approval or otherwise contrary to the Agreement; (iii) the cessation or interruption of sales or servicing operations for the New Mazda Dealership at the Site for a period of ten (10) days or more (provided that a cessation or interruption of sales or servicing operations for the New Mazda Dealership resulting from a casualty or remodeling shall not be an Acceleration Event so long as, in the event of a casualty, Maker is diligent seeking to cause restoration of the premises with the intent to commence operations and such cessation or interruption does not last longer than ninety (90) days [or, with City's approval at its discretion, a longer period of time] or in the case of a remodeling, Maker is diligently prosecuting

such remodeling with the intent to recommence operations and such cessation or interruption does not last longer than ninety (90) days [or, with City's approval at its discretion, a longer period of time]; (iv) the appointment of a receiver or trustee over all or a substantial portion of Maker's, or either Spreen Mazda's or Spreen Investment's assets; (v) Maker, or Spreen Mazda or Spreen Investment, is adjudicated insolvent or becomes unable to pay debts as they mature, or makes a general assignment for the benefit of creditors or voluntarily files a petition in bankruptcy or any similar law; (vi) an involuntary petition in bankruptcy is filed against Maker, or Spreen Mazda or Spreen Investment, and is not dismissed within sixty (60) days; (vii) or any levy of attachment, execution, tax assessment or similar process is issued against any security for this Note and shall not be released within twenty (20) days thereof; (viii) the closure or transfer of Spreen Honda; or (ix) violation by one or more of the provisions of this Note or the Agreement (other than the items set forth in [i], [ii], [iii], [iv], [v], [vi], [vii] or [viii] herein) which violation is not cured within thirty (30) days after Holder gives Maker (or either Spreen Mazda or Spreen Investment) notice of default. The amount payable pursuant to this Section 2 shall be subject to credits, if any, to the extent applicable pursuant to Section 3 of this Note.

Unless sooner satisfied, payment under Section 2 shall be due on \_\_\_\_\_ [insert date which is sixty (60) days following the twentieth (20th) anniversary of the Date of Agreement] (the "Maturity Date").

3. Periodic Credits. For each calendar year or portion thereof in which this Note is in effect, the Maker shall receive a credit against the Note Amount in an amount equal to Forty Percent (40%) of the City Sales Tax Revenue received by City from the operation of the New Mazda Dealership on the Site in conformity with the Agreement for the preceding Measuring Period, which amount shall constitute a "Credit Amount." No credit shall be available as to any portion of a Measuring Period during which portion Spreen Mazda or Spreen Investment is in default of this Note or the Agreement.

4. Security for Note. This Promissory Note is secured by a deed of trust of even date herewith (the "Owner Deed of Trust"), executed by Spreen Investment, granting Holder a security interest in all of the property described therein (the "Site").

5. Notice of Sale, Transfer or Refinancing. Maker, and each of Spreen Mazda and Spreen Investment, agrees to notify the Holder in writing not less than thirty (30) days prior to the sale or transfer of the New Mazda Dealership or Maker's, or Spreen Mazda's or Spreen Investment's, interest in the Site.

6. Holder May Assign. Holder may, at its option, assign its right to receive payment under this Promissory Note without necessity of obtaining the consent of the Maker; or Spreen Mazda or Spreen Investment.

7. Maker Assignment Prohibited. Borrower, or Spreen Mazda or Spreen Investment, may not assign this Note or assign or delegate any of its rights or obligations, without the prior written consent of Holder in each instance, which consent shall be at the sole discretion of Holder. As a condition to any request by Maker to assign or delegate any of its rights or obligations under this Note, and in consideration of Holder's review thereof, Maker shall pay to Holder any and all costs incurred by Holder in processing Maker's request, including without limitation legal fees.

8. Attorneys' Fees and Costs. In the event that any action is instituted to enforce payment under this Promissory Note, the Maker promises to pay such sums as a court may fix for court costs and reasonable attorneys' fees.

9. Non-Waiver. Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment.

10. Successors Bound. This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

11. Severability. The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

"MAKER"

JTS MOTORCARS, INC., a California corporation,

By: \_\_\_\_\_  
Its: President

By: \_\_\_\_\_  
Its: Secretary

SPREEN INVESTMENT COMPANY II, a California  
general partnership,

By: \_\_\_\_\_  
Its: General Partner

**ATTACHMENT NO. 3**  
**OWNER DEED OF TRUST**

**WHEN RECORDED MAIL  
TO:**

City of Loma Linda  
25541 Barton Road  
Loma Linda, California 92354  
Attention: Pamela Byrnes-  
O'Camb, City Clerk

APN: 028-138-110

SPACE ABOVE THIS LINE FOR RECORDER'S USE  
(This document is exempt from the payment of a recording fee pursuant to  
Government Code Section 27383.)

**DEED OF TRUST WITH ASSIGNMENT OF RENTS  
(SHORT FORM)**

This **DEED OF TRUST** is made as of \_\_\_\_\_, 201\_ between **SPREEN INVESTMENT COMPANY II**, a California general partnership, herein called **TRUSTOR**, whose address is 25140 Redlands Boulevard, Loma Linda, California 92354, **TICOR TITLE COMPANY OF CALIFORNIA**, herein called **TRUSTEE**, and the **CITY OF LOMA LINDA**, a chartered municipal corporation, herein called **BENEFICIARY** or **AUTHORITY**.

**WITNESSETH:** That Trustor grants to Trustee in trust, with power of sale, that property (the "Property") in the City of Loma Linda, County of San Bernardino, State of California, described as:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.**

together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits for the purpose of securing (1) that certain Promissory Note more particularly described below, executed and delivered pursuant to an unrecorded Economic Incentive Agreement between Trustor and Beneficiary dated as of November 24, 2015 (the "Agreement"; a copy of the Agreement is on

file with the Beneficiary as a public record). All capitalized terms not defined herein shall have the meanings established therefore under the Agreement unless the context requires otherwise. This Deed of Trust secures payment under that certain promissory note dated as of \_\_\_\_\_, 201\_, made by Trustor in favor of Beneficiary (the "Promissory Note"), and extensions or renewals thereof, in the principal sum of Seven Hundred Thousand Dollars (\$700,000.00), with the balance of the indebtedness, due and payable on occurrence of an event of acceleration as defined in the Promissory Note, (2) the performance under the Agreement (including without limitation the attachments thereto) and under each agreement of Trustor incorporated by reference or contained herein, and (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his/her successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in San Bernardino County on August 18, 1964, at Book 6213, Page 768, shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivisions A and B, (identical in all counties, and printed on pages 3 and 4 hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him/her at his/her address hereinbefore set forth.

**TRUSTOR**

**SPREEN INVESTMENT COMPANY II,**  
a California general partnership

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT "A" TO DEED OF TRUST**

**LEGAL DESCRIPTION**

Real property in the City of Loma Linda, County of San Bernardino, State of California, described as follows:

**PARCEL 1:**

PARCEL 1 OF PARCEL MAP 12167, IN THE CITY OF LOMA LINDA, COUNTY OF SAN BERNARDINO, AS PER PLAT RECORDED IN BOOK 150, PAGES 44 AND 45 OF PARCEL MAPS, RECORDS OF SAID COUNTY:

RESERVING THEREFROM AN EASEMENT FOR INGRESS AND EGRESS ACROSS THOSE PORTIONS OF SAID PARCEL 1 OF PARCEL MAP 12167 LYING WITHIN THAT CERTAIN STRIP OF LAND AS DESCRIBED IN THE DEED TO THE CITY OF LOMA LINDA RECORDED MARCH 18, 1987, AS INSTRUMENT NO. 87-088425, OFFICIAL RECORDS, AS SAME IS DELINEATED ON PARCEL MAP 12167.

**PARCEL 2:**

AN EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THOSE PORTIONS OF PARCELS 2, 3 AND 4 OF PARCEL MAP 12167 AS PER PLAT RECORDED IN BOOK 150 OF PARCEL MAPS, PAGES 44 AND 45, LYING WITHIN THAT CERTAIN STRIP OF LAND AS DESCRIBED IN ITS DEED TO THE CITY OF LOMA LINDA, RECORDED MARCH 18, 1987, AS INSTRUMENT NO. 87-088425, OFFICIAL RECORDS, AS SAME IS DELINEATED ON PARCEL MAP 12167.

APN: 028-138-110

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the fee interest in real property conveyed under the foregoing Deed of Trust by Spreen Investment Company II, a California general partnership, to the City of Loma Linda (the "City") as to the following property: The land referred to herein is situated in the State of California, County of San Bernardino, described as follows:

Real property in the City of Loma Linda, County of San Bernardino, State of California, described as follows:

PARCEL 1:

PARCEL 1 OF PARCEL MAP 12167, IN THE CITY OF LOMA LINDA, COUNTY OF SAN BERNARDINO, AS PER PLAT RECORDED IN BOOK 150, PAGES 44 AND 45 OF PARCEL MAPS, RECORDS OF SAID COUNTY.

RESERVING THEREFROM AN EASEMENT FOR INGRESS AND EGRESS ACROSS THOSE PORTIONS OF SAID PARCEL 1 OF PARCEL MAP 12167 LYING WITHIN THAT CERTAIN STRIP OF LAND AS DESCRIBED IN THE DEED TO THE CITY OF LOMA LINDA RECORDED MARCH 18, 1987, AS INSTRUMENT NO. 87-088425, OFFICIAL RECORDS, AS SAME IS DELINEATED ON PARCEL MAP 12167.

PARCEL 2:

AN EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THOSE PORTIONS OF PARCELS 2, 3 AND 4 OF PARCEL MAP 12167 AS PER PLAT RECORDED IN BOOK 150 OF PARCEL MAPS, PAGES 44 AND 45, LYING WITHIN THAT CERTAIN STRIP OF LAND AS DESCRIBED IN ITS DEED TO THE CITY OF LOMA LINDA, RECORDED MARCH 18, 1987, AS INSTRUMENT NO. 87-088425, OFFICIAL RECORDS, AS SAME IS DELINEATED ON PARCEL MAP 12167.

APN: 028-138-110

is hereby accepted by the City Manager on behalf of the City pursuant to authority conferred by action of the City Council by Resolution No. \_\_\_\_\_ of the City, and the Grantee consents to recordation thereof by its duly authorized officer.

**CITY OF LOMA LINDA**

Dated: \_\_\_\_\_, 201\_

By: \_\_\_\_\_

T. Jarb Thaipejr  
Its: City Manager

**ATTEST:**

\_\_\_\_\_  
Pamela Byrnes-O'Camb, City Clerk

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

- Individual  
 Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)     Limited     General  
 Attorney-In-Fact  
 Trustee(s)  
 Guardian/Conservator  
 Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above



# City of Loma Linda Official Report

---

Rhodes Rigsby, Mayor  
Phillip Dupper, Mayor pro tempore  
Ovidiu Popescu, Councilman  
Ronald Dailey, Councilman  
John Lenart, Councilman

COUNCIL AGENDA: November 24, 2015

TO: City Council

VIA: T. Jarb Thaipejr, City Manager

FROM: Pamela Byrnes-O'Camb, City Clerk

SUBJECT: Minutes of November 10, 2015

Approved/Continued/Denied By City Council Date _____
--

## **RECOMMENDATION**

It is recommended that the City Council approve the minutes of November 10, 2015.

City of Loma Linda

City Council Minutes

Regular Meeting of November 10, 2015

A regular meeting of the City Council was called to order by Mayor Rigsby at 7:02 p.m., Tuesday, November 13, 2015, in the Council Chamber, 25541 Barton Road, Loma Linda, California.

Councilmen Present: Mayor Rhodes Rigsby  
Mayor pro tempore Phill Dupper  
Ovidiu Popescu  
Ron Dailey  
John Lenart

Councilmen Absent: None

Others Present: City Manager T. Jarb Thaipejr  
City Attorney Richard Holdaway

Councilman Popescu led the invocation and Pledge of Allegiance. No items were added or deleted and no conflicts of interest were noted.

The City Council recessed to consider the Successor Agency Agenda and reconvened at 7:25 p.m. with all members present.

**Oral Reports/Public Comments**

Kurt Swigart, 26253 Cresthaven Court, voiced concern over the recent residential burglaries and damage to several community mailboxes in the City, and asked about joining the Citizen on Patrol Program. He also expressed a need for additional deputies. Capt. Dorsey of the Sheriff's Department responded.

Ileene Christianson-Torres, 26241 Cottage Street, stated that she won the Los Angeles/Pasadena/San Bernardino Miss Pre-Teen Beauty Contest, and would be representing Loma Linda in the national finals in Orlando, Florida. She then asked that donations to help defray expenses be sent to 29797 Redlands Boulevard, Loma Linda.

**CC-2015-082 - Consent Calendar**

**Motion by Popescu, seconded by Lenart and unanimously carried to approve the following items:**

The Demands Register dated October 27, 2015 with commercial demands totaling \$1,233,649.49 and payroll demands totaling \$237,874.84

The Demands Register dated October 31, 2015 with commercial demands totaling \$163,003.42.

The Demands Register dated November 10, 2015 with commercial demands totaling \$497,736.68 and payroll demands totaling \$268,472.63.

The Minutes of October 13, 2015

September and October 2015 Treasurer's Reports for filing.

Addendum to the Administrative Services Agreement between the City of Loma Linda Plan #301449 and ICMA Retirement Corporation to make available to participants in the Plan the VantageBroker self-directed brokerage account option through ICMA-RC's relationship with TD Ameritrade and authorize City Manager to sign

Appropriation of \$44,000 from Traffic Mitigation fund balance, and award contract for engineering services for re-alignment of the Redlands Boulevard/California Street Intersection

Appropriation of \$13,400 from General Fund Balance to Facility Maintenance Fund to comply with AQMD Executive Order VR-301 and VB-401-B and award contract to implement the work

Agreement for Professional Services between the City and Lilburn Corporation for contract planning services, preparation of an environmental analysis, and associated technical studies, for the construction of a 3-Story, 94 room, extended stay hotel, which includes a variance request for a freestanding, freeway gateway sign and a master sign program for vacant property located at 10340 Richardson Street

**New Business**

**CC-2015-083 - El Nino storm presentation**

City Manager Thaipejr presented the report, showing various points that could pose problems and suggested resolutions of the various issues:

- 1) Van Leuven Street at Orange Grove as well as near Loma Linda Academy. He met with representatives of Loma Linda Academy regarding on-campus issues and possible modifications were suggested to reduce or eliminate flooding/damage. The City will assist in diverting the water from the area of Anderson Street and Academy Way. In addition, Loma Linda University will construct a berm along Orange Grove to prevent water from flowing over Orange Grove. A catch basin will be installed at the parking lot of the park so if the County Flood Control Channel at the lowest point at Van Leuven Street and Orange Grove gets blocked, the overflow will be directed to the catch basin. County Flood Control has been asked to clean the channel.
- 2) Storm Drain at Benton. The area is within the railroad right-of-way and needs to be cleaned; the ultimate goal is to extend the storm drain by tunneling under the railroad tracks to tie the storm drain into the existing storm drain at San Timoteo Creek. Trees will be removed/trimmed near the Drayson Center to assist in reducing the amount of debris entering the drainage system.
- 3) University Mobile Park and Oakwood. Install K-Rail across Oakwood so along with sand bags, dirt from the south will be prevented from flowing onto the street and intersection of Barton/Oakwood/University; thus, the water will be allowed to flow to the catch basin and be directed through the mobile home park and empty into the Gage Canal Channel. Should the intersection flood, it will be closed.
- 4) Mountain View Plaza. Install barricades and sandbags to divert water. The block wall was removed and rod iron fencing installed so water can flow to the catch basin.
- 5) Mountain View Basin. An expert witness and engineer in litigation involving So-Cal Storage was utilized, who recommended installing debris nets and rock (gabion wall) at various points in the canyon to prevent debris from flowing downhill, but which would allow water to flow to the storm drains and reduce water flow energy.
- 6) Cypress Street, Almond Court, Pecan Way and Welebir Street. Install sandbags and erosion control on the street to prevent water from entering and to reduce water flow energy. If need, the streets can be closed.
- 7) Hummingbird and Amherst. Channel has been cleaned. Stage K-rail to re-direct water.

He then reviewed that the detention basins, storm drains, and catch basins were in the process of being cleaned; tree trimming and removal will be contracted to avert falling limbs/trees; K-rails, barricades, and erosion control installed; a detour plan will be prepared in the event of road closures; equipment will be purchased and/or reserved per a list of potential stand-by contractors; sand bags will be prepared and available at the City Yard, both Fire Stations and possibly other locations; a hand-held radio system will be activated and utilized.

No action required.

**CC-2015-084 - Appropriate \$282,000 for**

- a. \$75,000 to repair traffic signals
- b. \$90,000 to install mitigation measures for projected El Nino storm events
- c. \$67,000 for repairs and maintenance of City Facilities
- d. \$50,000 for removing trees in the city

City Manager Thaipejr stated that based upon the previous item, the appropriations would allow for preparation for the El Nino Event.

**Motion by Popescu, seconded by Dupper and unanimously carried to approve the above-listed appropriations.**

**CC-2015-085 - Council Bill #R-2015-38 – Approving associate membership in the California Enterprise Development Authority (CEDA); authorizing the City to join the Figtree PACE Program to allow the financing of renewable energy, energy efficiency, seismic retrofits, electric vehicle charging infrastructure, and water efficiency improvements through the levy of contractual assessments and the issuance of improvement bonds subject to the consent of the participating owner of each lot or parcel on which an assessment is levied**

Assistant City Manager Bolowich presented the item, stating that adoption of the proposed resolution would allow willing property owners to enter into voluntary contractual assessments to finance the installation of

distributed generation renewable energy sources, energy efficiency and/or water conservation improvements that are specified and permanently fixed to real property. The financing is known as PACE (Property Assessed Clean Energy).

He explained that Figtree was a private PACE financing company that provided 100 percent upfront financing to residential and commercial property owners for eligible improvements; repayment is made through the owner's annual property tax payment.

**Motion by Popescu, seconded by Dupper and unanimously carried to adopt Council Bill #R-2015-38.**

**Resolution No. 2870**

A Resolution of the City Council of the City of Loma Linda, California, approving associate membership by the City in the California Enterprise Development Authority; authorizing and directing the execution of an Associate Membership Agreement relating to associate membership of the City in the Authority; authorizing the City to join the Figtree PACE Program; authorizing the California Enterprise Development Authority to conduct contractual assessment proceedings and levy contractual assessments within the territory of the City of Loma Linda; and authorizing related actions

**Reports of Councilmen**

Councilman Popescu indicated that he had received complaints about the condition of the property south of the Civic Center. Referred to Staff.

Councilman Dailey commented on the backup of traffic at Mt. View Avenue and the I-10 Freeway. It was noted that the traffic signal was regulated by CalTrans. City Manager to contact CalTrans for resolution.

**Reports Of Officers**

**CC-2015-086 - 2015 Drought Update**

City Manager Thaipejr presented a PowerPoint that compared the City's amount of water pumped from 2013 through 2015, noting that the drought regulations did not take growth into consideration. He indicated that although the City had reduced water consumption by 24.5 percent, the City did receive a warning letter. Other cities who had not complied with the regulations, received fines.

**CC-2015-087 - Christmas Tree Lighting Ceremony - December 7**

City Manager Thaipejr announced the Christmas Tree Lighting Ceremony was scheduled for 5:00 p.m., Monday, December 7 at the northwest corner of Loma Linda Drive and Barton Road, near the monument sign. Everyone was invited.

**CC-2015-088 - November meeting schedule**

City Manager Thaipejr noted that the City of San Bernardino increased its sewer rates relating to the pass-through for the City of Loma Linda for sewer treatment. The first reading of the ordinance to implement the new rate effective January 1, 2016 was scheduled for public hearing on November 24.

The meeting adjourned at 8:33 p.m.

Approved at the meeting of \_\_\_\_\_, 2015.

\_\_\_\_\_  
City Clerk



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Phillip Dupper, Mayor pro tempore  
Ronald Dailey, Councilman  
Ovidiu Popescu, Councilman  
John Lenart, Councilman

COUNCIL AGENDA: November 24, 2015

TO: City Council

FROM: T. Jarb Thaipejr, City Manager/Public Works Director T.J.T

SUBJECT: Acceptance of Offer of Right-of-Way Dedication at Northeast  
Corner of Barton Road and Campus Street

Approved/Continued/Denied By City Council Date _____
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## **RECOMMENDATION:**

It is recommended that City Council accept Loma Linda Medical Centers offer of 8.5' dedication of Right-of-Way along the east side of Campus Street, north of Barton Road and authorize the City Manager to sign the acceptance document.

## **BACKGROUND:**

The City has been supportive of the Loma Linda University Medical Center campus transformation project. The project is a very complex, phased expansion centered on a new hospital tower. The offer of an additional 8.5' R-O-W is for relocation of a Southern California Edison Company (SCE) utility power pole guy wire support anchor and the widening of Campus Street.

## **ANALYSIS:**

The street widening and guy wire support anchor requires the additional 8.5' R-O-W for installation and maintenance. The project engineer has prepared the documents needed for the design and offer of dedication. The City Clerk will be responsible for recording the dedication documents with the County. The street improvement plans will be processed through the Engineering Division.

## **Attachments**

I:\Public Works Admin\Staff Reports\R-O-W Dedication Campus at Barton.doc

# **EXHIBIT 'A'**

## **LEGAL DESCRIPTION**

**THE WEST 8.50 FEET OF THE SOUTH 306.67 FEET OF PARCEL 2  
OF PARCEL MAP 6296, RECORDED IN BOOK 63, PAGES 59-60,  
OFFICIAL RECORDS OF THE COUNTY OF SAN BERNARDINO,  
STATE OF CALIFORNIA.**

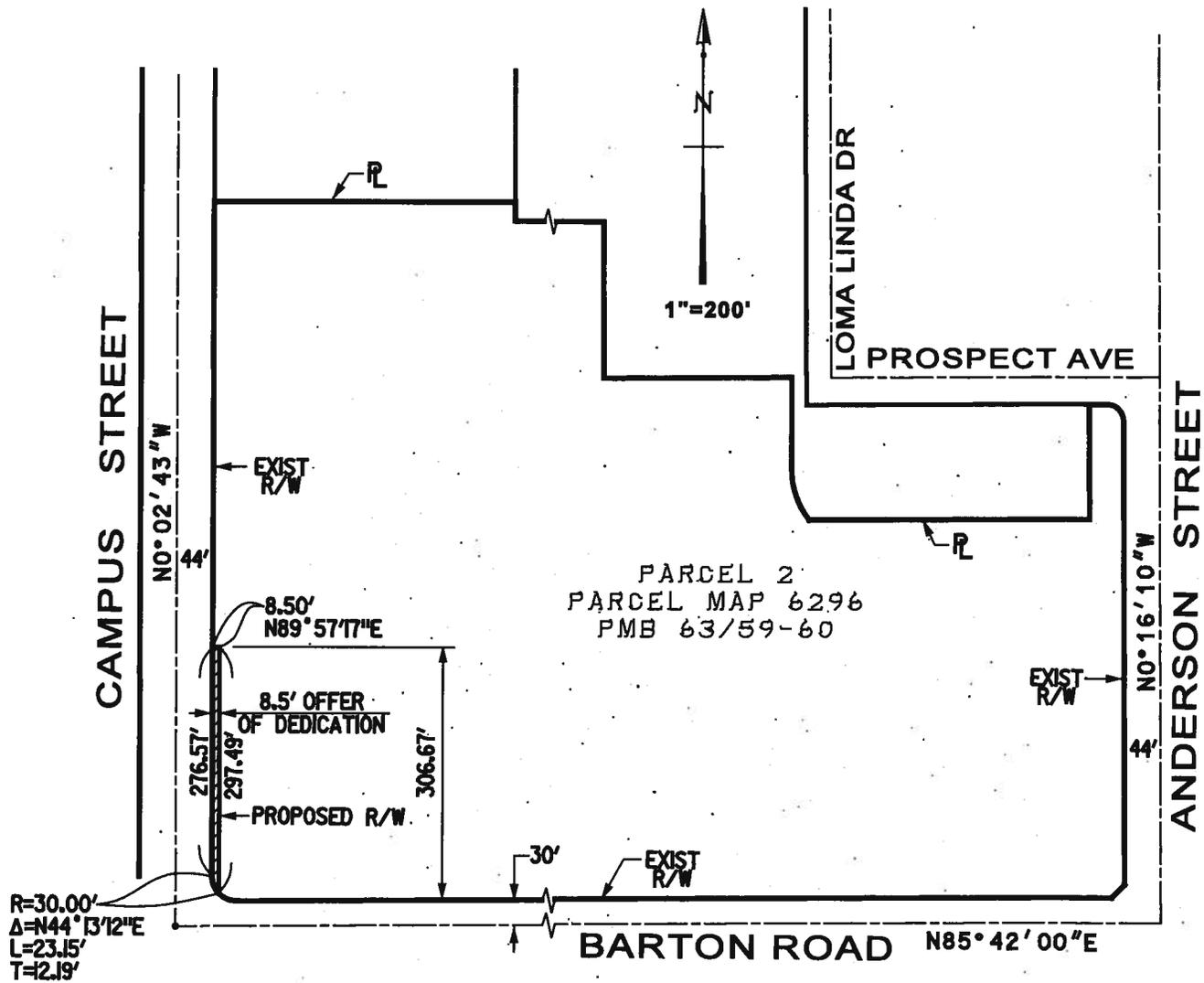
**CITY OF LOMA LINDA  
STREET DEDICATION**

**A.P.N. 0284-083-33**

**DATE: NOVEMBER 2015**

**SCALE: N/A**

# EXHIBIT 'B'



CITY OF LOMA LINDA  
STREET DEDICATION

A.P.N. 0284-083-33

DATE: NOVEMBER 2015

SCALE: 1"=200'



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Phillip Dupper, Mayor pro tempore  
Ronald Dailey, Councilman  
John Lenart, Councilman  
Ovidiu Popescu, Councilman

COUNCIL AGENDA: November 24, 2015

TO: City Council

FROM: T. Jarb Thaipejr, City Manager/Public Works Director **TJT**

SUBJECT: Appropriate \$37,045 and Award Contract for Community Room  
Flooring (CIP 15-836)

Approved/Continued/Denied By City Council Date _____
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## **RECOMMENDATION**

It is recommended that City Council approve an appropriation from General Fund balance of \$37,045 into the Facilities Maintenance Account for Repairs and Maintenance of City Facilities. It is then recommended that City Council award a contract for installation of flooring in the Community Room to New Image Commercial Flooring of San Bernardino, CA in the amount of \$33,645.00 and authorize a contingency allocation of \$3,400.00.

## **BACKGROUND**

The flooring in the Community Room is at the end of its life expectancy. Staff prepared a Request for Proposal and invited five (5) qualified vendors to participate in a mandatory pre-proposal job walk. Four (4) vendors participated on October 29, 2015.

## **ANALYSIS**

Three bids were received, opened and reviewed on November 12, 2015. Bids ranged from a low of \$33,645.00 to a high of \$59,283.85 (see attached). The low bidder, New Image Commercial Flooring of San Bernardino, CA, has been checked for references and license. This contractor has previously performed satisfactorily for the City. It is not unusual for a construction project to experience the need to add or reduce the quantities of work items or the scope of work as field conditions dictate. This is generally caused by unforeseen circumstances or work needed to maintain the integrity of the project. Therefore, Staff recommends an allocation of \$3,400.00 ( $\pm 10\%$  of contract) for such circumstances. City staff will provide inspection and management services.

## **FINANCIAL IMPACT**

Appropriate \$37,045 from General Fund balance to expenditure account and 01-3400-1300 to repair and maintain City facilities.

## City of Loma Linda

**Bid Opening - November 12, 2015**

**Community Room Flooring**

ITEM	DESCRIPTION	UNIT	QUANTITY	Engineering Estimate		New Image		Kenaston Flooring		Mac's Custom Flooring	
				UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	Install new Community Room Flooring	LS	1	40,000.00	40,000.00	33,645.00	33,645.00	56,600.00	56,600.00	59,283.85	59,283.85
			<b>TOTAL</b>		<b>\$40,000.00</b>		<b>\$33,645.00</b>		<b>\$56,600.00</b>		<b>\$59,283.85</b>



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Phillip Dupper, Mayor pro tempore  
Ronald Dailey, Councilman  
John Lenart, Councilman  
Ovidiu Popescu, Councilman

COUNCIL AGENDA: November 24, 2015

TO: City Council

FROM:

T. Jarb Thaipejr, City Manager/Public Works Director . *TJT*

SUBJECT:

Appropriate \$46,200 and Award Contract for Repaint Fire Station  
251 Mansard Roof (CIP 15-837)

Approved/Continued/Denied By City Council Date _____
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## RECOMMENDATION

It is recommended that City Council approve an appropriation from General Fund balance of \$46,200 into the Facilities Maintenance Account for Repairs and Maintenance of City Facilities. It is then recommended that City Council award a contract for repainting Fire Station 251 mansard roof to Tri County Painting of Riverside, CA in the amount of \$42,000.00 and authorize a contingency allocation of \$4,200.00.

## BACKGROUND

The mansard roofing at Fire Station 251 is peeling and flaking off. Staff prepared a Request for Proposal and invited six (6) qualified vendors to participate in a mandatory pre-proposal job walk. Three (3) vendors participated on October 29, 2015.

## ANALYSIS

Two bids were received, opened and reviewed on November 12, 2015. The bids, \$42,000.00 from Tri County Painting of Riverside, CA and \$55,231.00 from Watson Painting Corporation of Riverside, CA. Tri County Painting, were reviewed and evaluated. Tri County Painting, the low bidder, has been checked for references and license. It is not unusual for a construction project to experience the need to add or reduce the quantities of work items or the scope of work as field conditions dictate. This is generally caused by unforeseen circumstances or work needed to maintain the integrity of the project. Therefore, Staff recommends an allocation of \$4,200.00 ( $\pm 10\%$  of contract) for such circumstances. City staff will provide inspection and management services.

## FINANCIAL IMPACT

Appropriate \$46,200 from General Fund balance to expenditure account and 01-3400-1300 to repair and maintain City facilities.



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Phillip Dupper, Mayor pro tempore  
Ronald Dailey, Councilman  
John Lenart, Councilman  
Ovidiu Popescu, Councilman

COUNCIL AGENDA: November 24, 2015

TO: City Council

FROM: T. Jarb Thaipejr, City Manager/Public Works Director *TJT*

SUBJECT: Appropriate \$40,150 and Award Contract for Repaint Civic Center Lobby (CIP 15-838)

Approved/Continued/Denied By City Council Date _____
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## **RECOMMENDATION**

It is recommended that City Council approve an appropriation from General Fund balance of \$40,150 into the Facilities Maintenance Account for Repairs and Maintenance of City Facilities. It is then recommended that City Council award a contract for repainting Civic Center lobby to Tri County Painting of Riverside, CA in the amount of \$36,500.00 and authorize a contingency allocation of \$3,650.00.

## **BACKGROUND**

The Civic Center lobby paint is in need of freshening. Staff prepared a Request for Proposal and invited six (6) qualified vendors to participate in a mandatory pre-proposal job walk. Three (3) vendors participated on October 29, 2015.

## **ANALYSIS**

Two bids were received, opened and reviewed on November 12, 2015. The bids, \$36,500.00 from Tri County Painting of Riverside, CA and \$38,328.00 from Watson Painting Corporation of Riverside, CA. Tri County Painting, were reviewed and evaluated. The low bidder, Tri County Painting, has been checked for references and license. It is not unusual for a construction project to experience the need to add or reduce the quantities of work items or the scope of work as field conditions dictate. This is generally caused by unforeseen circumstances or work needed to maintain the integrity of the project. Therefore, Staff recommends an allocation of \$3,650.00 ( $\pm 10\%$  of contract) for such circumstances. City staff will provide inspection and management services.

## **FINANCIAL IMPACT**

Appropriate \$40,150 from General Fund balance to expenditure account and 01-3400-1300 to repair and maintain City facilities.

*I:\Public Works Admin\Staff Reports\Award of Contract\Re Paint Civic Center Lobby.docx*

CC AGENDA ITEM 6c



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Phillip Dupper, Mayor pro tempore  
Ronald Dailey, Councilman  
John Lenart, Councilman  
Ovidiu Popescu, Councilman

COUNCIL AGENDA: November 24, 2015

TO: City Council

FROM: T. Jarb Thaipejr, City Manager/Public Works Director TJT

SUBJECT: Award Contract for Tree Removal

Approved/Continued/Denied  
By City Council  
Date \_\_\_\_\_

### **RECOMMENDATION**

It is recommended that City Council award a contract for tree removal to Mowbray's Tree Service of San Bernardino, CA in an amount not to exceed \$16,300.00 and authorize a contingency allocation of \$1,600.00.

### **BACKGROUND**

The City Council at the regular meeting of November 10, 2015 appropriated funding to remove trees at various locations in the City. Staff requested quotes from four (4) qualified vendors to complete this work.

### **ANALYSIS**

Three bids were received, reviewed and evaluated. Bids ranged from a low of \$16,300.00 to a high of \$35,250.00 (see attached). The low bidder, Strong Scape Services of Redlands, CA, has been checked for references and license. This contractor has previously performed satisfactorily for the City. It is not unusual for a construction project to experience the need to add or reduce the quantities of work items or the scope of work as field conditions dictate. This is generally caused by unforeseen circumstances or work needed to maintain the integrity of the project. Therefore, Staff recommends an allocation of \$1,600.00 ( $\pm 10\%$  of contract) for such circumstances. City staff will provide inspection and management services.

### **FINANCIAL IMPACT**

Funding is available in Account No. 01-3200-1300.

**City of Loma Linda**

11/15/2015

**Tree Removals**

				<b>Engineering Estimate</b>		<b>Strong Scape Services</b>		<b>Mowbrays</b>		<b>California Arbor Care</b>	
<b>ITEM</b>				<b>UNIT</b>		<b>UNIT.</b>		<b>UNIT</b>		<b>UNIT</b>	
<b>NO.</b>	<b>DESCRIPTION</b>	<b>UNIT</b>	<b>QUANTITY</b>	<b>PRICE</b>	<b>TOTAL</b>	<b>PRICE</b>	<b>TOTAL</b>	<b>PRICE</b>	<b>TOTAL</b>	<b>PRICE</b>	<b>TOTAL</b>
<b>1</b>	<b>Tree Removals</b>	<b>LS</b>	<b>1</b>	30,000.00	30,000.00	16,300.00	16,300.00	20,050.00	20,050.00	35,250.00	35,250.00
	<b>TOTAL</b>				<b>\$30,000.00</b>		<b>\$16,300.00</b>		<b>\$20,050.00</b>		<b>\$35,250.00</b>



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Phillip Dupper, Mayor pro tempore  
Ovidiu Popescu, Councilman  
Ronald Dailey, Councilman  
John Lenart, Councilman

COUNCIL AGENDA: November 24, 2015

TO: City Council

VIA: T. Jarb Thaipejr, City Manager

FROM: Konrad Bolowich, Assistant City Manager

SUBJECT: Request for Approval of an Addendum to the Agreement for Professional Services with Lilburn Corporation to expand the scope of services of the Supplemental Environmental Impact Report (due to proposed changes in design) for Precise Plan of Design No. 13-018--Integrated Campus Master Plan and, the use of funds deposited as Pass-Through-Fees paid for by the Applicant to cover the cost of the expanded scope of services.

Approved/Continued/Denied  
By City Council  
Date \_\_\_\_\_

## **RECOMMENDATION**

It is recommended that the City Council takes the following actions:

1. Approve the Addendum to the existing Agreement for expanded scope of services for the previously approved Integrated Campus Master Plan; and,
2. Approve the use of funds to be deposited in the amount of \$24,035 (includes a 10% contingency fee) as a pass through fee paid for by the applicant to cover the costs of the proposed changes to the Integrated Campus Master Plan, which includes contract services and preparation of environmental documents for the proposed project.

## **BACKGROUND**

On April 14, 2015, the City Council approved an amendment to the agreement with Lilburn Corporation to process changes to the Campus Master Plan and prepare a Supplemental Environmental Impact Report (SEIR) for those changes.

On April 8, 2014, the City Council approved an agreement with Lilburn Corporation to process and provide professional support services and prepare environmental documents associated with Precise Plan of Design No. 13-018 – The Integrated Campus Master Plan.

On January 14, 2014, the City Council approved PPD No. 13-018 and certified the Final Environmental Impact Report (EIR) for the multi-phased development, which included new facilities and improvements to the existing campus facilities to accommodate the existing demands in the services provided and to comply with regulatory requirements.

## **ANALYSIS**

The April 14, 2015 approved amendment to prepare the SEIR was based on the following changes:

- An increase in the Adult Hospital tower from a 13-story (approximately 215 feet in height), approximately 732,000 square-foot hospital to a 15-story 960,000 square-foot hospital.
- Tenant improvements for reuse of the existing hospital; new uses will maintain existing functions, but in an outpatient capacity.

No other changes to the Project Description that the 2014 Final EIR was based on were proposed by the Applicant. Subsequent to the preparation of the scope of work, several meetings were held between the Applicant and the City, with Lilburn Corporation in attendance at some of those meetings.

The Notice of Preparation that was circulated for the Supplemental EIR in August was based on the outcome of these meetings and documents the preparation of a Supplemental EIR for a Project Description that differs from that which was the basis of the scope of work. At this time, the substantial changes to the Campus Master Plan which will require supplemental evaluation under CEQA include:

- Air Quality/GHG Assessment & EIR Section \$13,500
- Traffic EIR Section \$4,175
- Utilities EIR Section \$4,175

These changes will require an addendum to the contract. The cost to provide these services is \$21,850, not including the 10% contingency fee.

### **FINANCIAL IMPACT**

The proposed amendment to the Agreement to change the scope of the SEIR associated with PPD No. 13-018 will not result in any financial impacts to the City. The associated costs will be borne by the project applicant, as indicated by the request to use funds deposited by the applicant as a pass through fee.

Attachment: Lilburn Corporation Budget Augmentation Proposal

ATTACHMENT



Strategic Planning & Environmental Services

November 10, 2015

City of Loma Linda  
Community Development Department  
ATTN: Mr. Guillermo Arreola, Senior Planner  
25541 Barton Road  
Loma Linda, CA 92354

**SUBJECT: Change Order Request to Add Tasks for LLUH Campus Master Plan – Supplemental EIR**

Dear Guillermo:

An Agreement for Consultant Services was signed between the City of Loma Linda and Lilburn Corporation on May 6, 2015 for the preparation of a Supplemental EIR to address changes to the LLUMC Campus Master Plan Project. Exhibit A to that Agreement details the Scope of Work to be performed. The scope of work was based upon the following proposed changes to the 2013 Master Plan:

- An increase in the Adult Hospital tower from a 13-story (approximately 215 feet in height), approximately 732,000 square-foot hospital to a 15-story 960,000 square-foot hospital.
- Tenant improvements for reuse of the existing hospital; new uses will maintain existing functions, but in an outpatient capacity.

No other changes to the Project Description that the 2014 Final EIR was based on were proposed by the Applicant. Subsequent to the preparation of Exhibit A, several meetings were held between the Applicant and the City, with Lilburn Corporation in attendance at some of those meetings.

The Notice of Preparation that was circulated for the Supplemental EIR in August was based on the outcome of these meetings and documents the preparation of a Supplemental EIR for a Project Description that differs from that which was the basis of Exhibit A. At this time, the substantial changes to the Campus Master Plan which will require supplemental evaluation under CEQA include:

- An increase in the number of licensed beds from 650 (2014 EIR) to 719
- An increase in the co-generation/utility plant from 22 MW (2014 EIR) to 32 MW
- Defined tenant improvements for reuse of the existing hospital as all out-patient rather than maintaining the existing functions, continued outpatient services, and possible future educational.
- Reduction in access points on Barton Road from two (2014 EIR) to one.

It was therefore determined that three new sections be added to the Supplemental EIR, being: 1) Air Quality/GHG; 2) Traffic/Circulation; and 3) Utilities. As you will recall the 2014 certified EIR did not include a traffic section as the "no change in bed count" justified the "no increase in traffic generation". Additionally, the 22 MW co-generation plant resulted in emissions exceeding thresholds and the need for the City to adopt overriding considerations for the impacts.

The currently proposed project, with an additional 228,000 square-feet of new building, the re-use of all 400,000 square-feet of old building for out-patient services, and the change in Barton Road access has led to the City's determination that the Supplemental EIR include an analysis of impacts in the above three resource areas as well as Aesthetics which could be potentially impacted by the 17-story high building. The Applicant has agreed to provide architectural renderings and massing models that will indicate visual impacts to view from the south and east.

The Applicant has contracted with Kunzman Associates, Inc. to prepare the traffic study which will be incorporated into the EIR. They have also agreed to provide the data that will be required for the EIR related to the increase in demand for utilities (water/sewer) and the resulting changes in the designs for the Central Utility Plan. Lilburn Corporation has estimated that the cost increase resulting from the other new requirements for the EIR will be \$21,850.00.

- Air Quality/GHG Assessment & EIR Section \$13,500
- Traffic EIR Section \$ 4,175
- Utilities EIR Section \$ 4,175

Please call me if you need this information to be amended or clarified.

Sincerely,



Cheryl A. Tubbs  
Vice President



# City of Loma Linda Official Report

Rhodes Rigsby, Mayor  
Phillip Dupper, Mayor pro tempore  
Ronald Dailey, Councilman  
Ovidiu Popescu, Councilman  
John Lenart, Councilman

COUNCIL AGENDA: November 24, 2015

TO: City Council

FROM: T. Jarb Thaipejr, City Manager/Public Works Director

SUBJECT: Increase CDBG Revenue for Fiscal Year 2015-16 by \$13,600 and Appropriate those Funds to the Expenditure Accounts for the City Project and Inland Temporary Homes Public Service Activity Program

Approved/Continued/Denied  
By City Council  
Date \_\_\_\_\_

## **RECOMMENDATION:**

It is recommended that the City Council approve to increase CDBG revenue for Fiscal Year 2015-16 by \$13,600 and appropriate funds to the expenditure accounts for Inland Temporary Homes Public Service Activity Program by \$2,100 and the City Project by \$11,500.

## **BACKGROUND:**

On February 10, 2015, the City Council approved the CDBG project prioritization list for fiscal year 2015-2016. Following the City Council approval, the San Bernardino County Community Development and Housing Department informed the City that the CDBG allocations would be increased due to the change in demographics throughout the county and cooperating cities compared to the national change. The funding increase for the City was \$13,600.

## **ANALYSIS:**

The City appropriated the additional CDBG funding to Inland Temporary Homes, Public Service Activity Program (\$2,100) and to the City project of Installation of new 8" Waterlines at Rosarita Dr. and Yardley Place (\$11,500). There were no funding changes for the San Bernardino County Library (\$10,000). That allocation amount remained the same.

## **FINANCIAL IMPACT**

Increase Revenue Account No. 32-9321 by \$13,600 and appropriate expenditures to account no. 32-5400-1830, Contractual Agreements, by \$2100 and 32-5400-8500, Infrastructure, by \$11,500.