



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Arbitrage Rebate Services

**MEETING DATE:** June 16, 1993

**PREPARED BY:** Finance Director

**RECOMMENDED ACTION:**

That the City Council authorize the City Manager by motion action to terminate the contract with Jones, Hall, Hill & White to provide arbitrage rebate calculations and enter into an agreement with Ernst & Young to provide these services.

**BACKGROUND INFORMATION:**

On February 19, 1992, the City Council authorized the City Manager to enter into an agreement with Jones, Hall, Hill & White to prepare the arbitrage calculation as discussed in the attached Council Communication dated February 19, 1992.

On April 19, 1993, Jones, Hall, Hill & White notified the City that they had made a decision to discontinue offering rebate calculation services and asked that Lodi transfer the arbitrage service contract to Ernst & Young (letter dated April 7, 1993 attached). Ernst & Young is a nationally recognized accounting firm who offers these services to local government for the same fee charged by Jones, Hall, Hill & White.

On April 21, 1993, Ernst & Young contacted the City and requested that we enter into a contract with them to provide arbitrage rebate calculations (letter dated April 21, 1993 attached). They had been contacted by Jones, Hall, Hill & White and requested to provide these services.

**FISCAL IMPACT**

No additional cost will be incurred by the City. The remaining cost to the city over the next three years will be \$7,500.

APPROVED: \_\_\_\_\_

THOMAS A. PETERSON  
City Manager



recycled paper

April 21, 1993

Mr. Dixon Flynn  
Finance Director  
City of Lodi  
221 West Pine Street  
Lodi, CA 95240

**RECEIVED**

APR 26 1993

Finance Dept.

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ARBITRAGE CALCULATION SERVICES

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Dear Mr. Flynn:

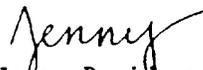
As you know, Jones Hall Hill & White ("JHH&W") has been recommending the transfer of their arbitrage rebate contracts to Ernst & Young. We have agreed to provide to you the same service for the same fee as originally contracted by JHH&W. The methodology which we use is equivalent to that used by them.

Please find enclosed two copies each of a Substitution Agreement relating to the City's two COP issues which appoints Ernst & Young as successor to JHH&W in preparing the rebate calculations. Please sign where indicated, retain one copy of each for your files and return the others to us in the envelope provided.

In order to proceed with the calculations, we would need to receive copies of the monthly trust statements for all active funds since JHH&W's last report. Receipt of those statements available to date would allow us to commence. We can arrange for copies of prior reports and legal documentation directly from JHH&W.

If you have any questions, please do not hesitate to contact me at (412) 362-5220. We look forward to working with you.

Very truly yours,



Jenny Davidson Summers  
Senior Manager

Enclosures

JDS/alt

## Substitution Agreement

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of April, 1993 by and between the City of Lodi, California (the "City") and Ernst & Young ("E&Y").

### Witnesseth

WHEREAS, on August 7, 1991, the City and Jones Hall Hill & White, a Professional Law Corporation ("Attorneys") entered into an Agreement for Rebate Calculation Services (the "Rebate Agreement") relating to the City's \$9,415,000 Certificates of Participation (1988 Wastewater Treatment Plant Expansion Project); and

WHEREAS, the Rebate Agreement has been terminated;

Now, therefore the City employs E&Y and E&Y accepts such employment upon the same terms and conditions of the above referenced Rebate Agreement with the exception that E&Y will provide in lieu of a legal opinion, a signed Accountant's Report stating that the Rebate Amount has been determined as described in Section 148(f)(2) of the Internal Revenue Code of 1986 and related Regulations.

IN WITNESS WHEREOF, the City and E&Y have hereunto set their name by their officers thereunto duly authorized all as of the date set forth above.

City of Lodi, California

By \_\_\_\_\_

Ernst & Young

By  \_\_\_\_\_  
William F. Baridon, Partner

## Substitution Agreement

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of April, 1993 by and between the City of Lodi, California (the "City") and Ernst & Young ("E&Y").

### Witnesseth

WHEREAS, on February 19, 1992, the City and Jones Hall Hill & White, a Professional Law Corporation ("Attorneys") entered into an Agreement for Rebate Calculation Services (the "Rebate Agreement") relating to the City's \$11,170,000 Certificates of Participation; and

WHEREAS, the Rebate Agreement has been terminated;

Now, therefore the City employs E&Y and E&Y accepts such employment upon the same terms and conditions of the above referenced Rebate Agreement with the exception that E&Y will provide in lieu of a legal opinion, a signed Accountant's Report stating that the Rebate Amount has been determined as described in Section 148(f)(2) of the Internal Revenue Code of 1986 and related Regulations.

IN WITNESS WHEREOF, the City and E&Y have hereunto set their name by their officers thereunto duly authorized all as of the date set forth above.

City of Lodi, California

By \_\_\_\_\_

Ernst & Young

By   
William F. Baridon, Partner

**JONES HALL HILL & WHITE,**  
A PROFESSIONAL LAW CORPORATION  
ATTORNEYS AT LAW

RECEIVED

APR 08 1993

Finance Dept.

CHARLES F. ADAMS  
STEPHEN R. CASALEGGIO  
MICHAEL D. CASTELLI  
THOMAS A. DOWNEY  
ANDREW C. HALL, JR.  
GREG HARRINGTON  
KENNETH I. JONES  
WILLIAM H. MADISON  
R. WADE NORRIS\*  
DAVID J. OSTER  
BRIAN D. QUINT  
PAUL J. THIMNIG  
DAVID A. WALTON  
SHARON STANTON WHITE

\* ADMITTED TO GEORGIA BAR ONLY

FOUR EMBARCADERO CENTER  
NINETEENTH FLOOR  
SAN FRANCISCO, CA 94111  
(415) 391-5780

FACSIMILE  
(415) 391-5784  
(415) 391-5785  
(415) 956-6308

April 7, 1993

ROBERT J. HILL (1922-1988)

Dixon Flynn  
Finance Director  
City of Lodi  
221 West Pine Street  
Lodi, CA 95240

RE: \$9,415,000 City of Lodi, California Certificates of Participation (1988 Wastewater Treatment Plant Expansion Project)  
and  
\$11,170,000 City of Lodi, California Certificates of Participation

Dear Mr. Flynn:

This will confirm our conversation today. Our firm currently is under contract with City of Lodi for completion of annual rebate calculations for the captioned obligations. We have made a policy decision within our firm to discontinue offering rebate calculation services. In those instances in which we have an existing contractual arrangement with respect to rebate calculations, we will continue to honor our contractual commitment through the term of the contract; however, for business planning purpose we are asking our rebate clients if they would consider transferring the contract to another entity.

While there are many accounting firms who perform rebate calculations services, we have identified Ernst & Young, 1100 Citibank Tower, One South Church Avenue, Tucson, Arizona 85701 as a firm which provides rebate calculation services very similar to those that which we have provided in the past. Jenny Summers (Tel. #412-362-5220) is our contact person at Ernst & Young, and has agreed to assume responsibility for our rebate calculation contractual commitments at the same fee that we have been charging.

Mr. Flynn  
City of Lodi  
April 7, 1993  
Page 2

In order to accomplish the transfer, it would be appropriate for you to sign the enclosed termination agreements, to return one original to Dorinda Mercado at our office, and to enter into a substitute arrangement with Ernst & Young.

If you have any questions about our policy decision, the enclosed termination agreements or our due diligence with respect to Ernst & Young, please feel free to call me at (415) 391-5780.

Very truly yours,



Robert M. Saman  
Financial Analyst

Enclosures

cc: Jenny Summers, Ernst & Young  
Sharon Stanton White, Esq.

TERMINATION AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1993, by and between the City of Lodi (the "City") and Jones Hall Hill & White, A Professional Law Corporation ("Attorneys");

WITNESETH:

WHEREAS, on August 7, 1991 and February 19, 1992 the City and Attorneys entered into Agreements for Rebate Calculation Services relating to the \$9,415,000 City of Lodi, California Certificates of Participation (1988 Wastewater Treatment Plant Expansion Project) and \$11,170,000 City of Lodi, California Certificates of Participation (the "Rebate Agreements"), respectively; and

WHEREAS, the City and Attorneys desire to terminate the Rebate Agreements;

NOW, THEREFORE, in consideration of the above premises and for other valuable consideration, the City and Attorneys hereby agree that the Rebate Agreements are terminated as of the date hereof.

IN WITNESS WHEREOF, the City and Attorneys have hereunto set their name by their officers thereunto duly authorized all as of the date set forth above.

City of Lodi

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

Jones Hall Hill & White,  
A Professional Law Corporation

By:  \_\_\_\_\_  
Sharon Stanton White



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Arbitrage Rebate Services Contract

**MEETING DATE:** February 19, 1992

**PREPARED BY:** Finance Director

**RECOMMENDED ACTION:** The City Council authorize the City Manager to execute an agreement with the firm of Jones, Hall, Hill & White to calculate the City's arbitrage liability and prepare arbitrage reports for the Certificates of Participation re-financed December 18, 1991.

**BACKGROUND INFORMATION:** On August 7, 1991, the City Council authorized the City Manager to execute an agreement with the firm of Jones, Hall, Hill & White to calculate the City's arbitrage liability and to prepare arbitrage reports required by the Internal Revenue Service for the Certificates of Participation issued by the City to finance construction at the White Slough Water Pollution Control Facility. On December 18, 1991, the City refinanced these Certificates of Participation to obtain better interest rates. Accordingly, a new agreement is required to continue the rebate calculation services provided by Jones, Hall, Hill & White.

As discussed in the Council Communication dated August 7, 1991, arbitrage earnings are the interest earnings from the investment of bond proceeds at interest rates greater than the rates paid to bond holders. In short, the City is prohibited from making a profit by investing bond proceeds. Under the 1986 Tax Reform Act, excess earnings (profit) must be reported to the Internal Revenue Service yearly and then paid to the Internal Revenue Service at the end of five years from the date the bonds were issued. The 1986 Tax Reform Act requires that bond proceeds be expended in full by the end of the fifth year from when they were received. Failure to comply with the 1986 Tax Reform Act could result in withdrawal of the "tax exempt" status of these Certificates of Participation and would result in the interest earnings paid to bond holders becoming "taxable earning" versus "non-taxable earning" which they now are. This would also adversely affect the future credibility of the City in the bond market when seeking financing.

Because of the importance of the arbitrage calculation to bondholders and to the City, it is recommended that the City continue to contract with a firm that specializes in preparing these calculations and reports.

Jones, Hall, Hill & White was recommended and approved by Council on August 7, 1991 to be the firm to prepare the rebate calculations and official reports based on their prior experience and reputation. Jones, Hall, Hill & White was selected by the City after review of four proposals for this service.

APPROVED: \_\_\_\_\_

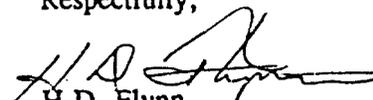
THOMAS A. PETERSON  
City Manager

Considering that only six months have passed since the contract was first awarded to Jones, Hall, Hill & White, it is the staff's recommendation that the City continue to contract for these services with this firm.

The cost to the City for Fiscal Year 1991-92 will be \$4,000, \$2,000 for each year for each of the next four years and \$500 per year for the bond reserve fund.

**FUNDING:** Sewer Fund.

Respectfully,



H.D. Flynn  
Finance Director

Attachments  
Resolution  
Agreement with Jones, Hall, Hill and White

RESOLUTION NO.

A RESOLUTION OF THE LODI CITY COUNCIL  
AUTHORIZING THE CITY'S ENTERING INTO AN AGREEMENT FOR ARBITRAGE  
REBATE SERVICE (REBATE CALCULATION SERVICES)

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WHEREAS, Lodi Municipal Code, Section 3.20.070, authorizes dispensing with bidding procedures for purchases of supplies, services, or equipment when the City Council determines that the purchase or method of purchase would be in the best interest of the City; and

WHEREAS, on August 7, 1991, the City entered into an agreement with Jones, Hall, Hill and White to provide the City with Arbitrage Rebate Calculation Services for the Certificates of Participation issued for the construction at the White Slough Water Pollution Control Facility; and

WHEREAS, in 1988, the City issued Certificates of Participation to finance construction of the White Slough Water Pollution Control Facility expansion; and

WHEREAS, on December 18, 1991, the City refinanced the above Certificates of Participation to obtain better interest rates; and

WHEREAS, prior to awarding a contract to Jones, Hall, Hill and White to provide "arbitrage rebate services", the City solicited proposals from four firms that provide these services and determined that the contract should be awarded to Jones, Hall, Hill and White based on the firm's expertise, reputation as bond counsel, and the City's past relationship with this firm; and

WHEREAS, it is the City Manager's recommendation that the City enter into an agreement for said services with the firm of Jones, Hall, Hill and White.

NOT THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the City's entering into an agreement for the above described Rebate Calculations services with Jones, Hall, Hill and White in the amount of \$4,000 for Fiscal year 1991-92, \$2,000 for Fiscal Years 1992 through 1996 and \$500 for each bond year for the reserve fund, and further authorizes execution of said Agreement by the City Manager.

Dated: February 19, 1992

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I hereby certify that Resolution No. \_\_\_\_\_ Was passed and adopted by the City Council of the City of Lodi in a regular meeting held February 19, 1992 by the following vote:

Ayes:

Noes:

Absent:

Alice M. Reimche  
City Clerk