



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute the Amendment Terminating Reimbursement Agreement Effective July 1, 2010 with North San Joaquin Water Conservation District for City Administrative Services Provided to the District

MEETING DATE: March 17, 2010

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute the amendment terminating the Reimbursement Agreement effective July 1, 2010 with North San Joaquin Water Conservation District for City administrative services provided to the District.

BACKGROUND INFORMATION: For the past several years, North San Joaquin Water Conservation District (District) has utilized the City Public Works Department (Department) administrative staff for administrative services including processing meeting minutes, distribution of Board packets, preparation of correspondence, and District mailings.

Over the past year, staff services provided to the District have significantly increased. At the same time, the Department has needed to cope with less staff, fewer work hours with furloughs and greater work load with a number of large capital projects including street maintenance, water meter installations, infrastructure replacement, surface water treatment plant, PCE cleanup program and others. As a result, it is in the City's best interest to terminate the Agreement at this time to allow the District to make arrangements to cover its administrative needs. Termination will be effective July 1, 2010.

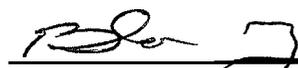
FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.



F. Wally Sandelin
Public Works Director

FWS/pmf
cc:  Steffani, North San Joaquin Water Conservation District

APPROVED: 

Blair King, City Manager

AMENDMENT TO NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT
REIMBURSEMENT AGREEMENT

THIS AMENDMENT TO NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT REIMBURSEMENT AGREEMENT, is made and effective this 1st day of July, 2010, by and between the City of Lodi, a municipal corporation, hereinafter called "CITY", and North San Joaquin Water Conservation District, hereinafter called "DISTRICT."

RECITALS

1. CITY and DISTRICT, entered into a Reimbursement Agreement dated April 10, 2008, whereby CITY agreed to provide DISTRICT with various administrative and engineering services associated with operations of DISTRICT based on an agreed fee schedule. A true and correct copy of the Reimbursement Agreement is attached hereto as Exhibit A and made a part hereof by this reference.
2. The Reimbursement Agreement did not set forth a term for the services of CITY or provision for termination of the Agreement.
3. CITY has determined that it will no longer be able to provide DISTRICT with its services after July 1, 2010.

NOW THEREFORE, CITY and DISTRICT agree as follows:

1. **TERMINATION DATE:** The Reimbursement Agreement, and all obligations of CITY and DISTRICT thereunder, will terminate on July 1, 2010.
2. **DISTRICT'S EVERGREEN DEPOSIT:** All funds remaining in the Evergreen Deposit, if any, shall be refunded to DISTRICT by CITY within 10-days of the termination of the Reimbursement Agreement.

IN WITNESS WHEREOF, CITY and DISTRICT have executed this Amendment to North San Joaquin Water Conservation District Reimbursement Agreement on _____, 2010.

"CITY"
CITY OF LODI, a municipal corporation

"DISTRICT"
NORTH SAN JOAQUIN WATER
CONSERVATION DISTRICT

BLAIR KING, City Manager

By: _____

Name: _____

Attest:

Title: _____

Address: _____

RANDI JOHL, City Clerk

Approved as to Form:

JANICE D. MAGDICH, Deputy City Attorney 

**NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT
REIMBURSEMENT AGREEMENT**

This Agreement is made on _____, 2008 by and between the City of Lodi, a municipal corporation, hereafter referred to as "CITY" and North San Joaquin Water Conservation District, hereafter referred to as "DISTRICT".

RECITALS

- A. DISTRICT wishes to SEEK the services of the CITY to complete various administrative and engineering services associated with the operations of the DISTRICT.
- B. The CITY'S policies and procedures require that the DISTRICT bear the full cost of providing the services requested by the DISTRICT including the payment of all CITY fees, payment of all CITY staff time, purchased supplies and equipment necessary to perform the engineering, legal, environmental and planning services requested by DISTRICT.

NOW THEREFORE in consideration of the mutual covenants made herein, the parties agree as follows:

1. RECITALS TRUE AND CORRECT. The parties agree that the "RECITALS" contained herein above are true and correct.
2. EXPENSE REIMBURSEMENT. DISTRICT will reimburse CITY for all CITY staff time, contract services, purchased supplies and equipment necessary to perform the administrative services requested by the DISTRICT, The applicable hourly rates for staff are presented in Attachment A.
3. CITY WORK A PRIORITY. DISTRICT acknowledges CITY will provide services and materials on an as-available basis. Nothing in this agreement requires CITY to provide services or grant DISTRICT needs priority over CITY needs.
4. DISTRICT'S DEPOSIT AND PAYMENT OF COSTS. Upon execution of the Agreement, DISTRICT shall deposit \$5,000.00 cash with the CITY. The CITY will hold the deposit and charge in house expenses incurred against the deposit. In the event that the deposit is drawn down to a balance of less than \$2,500.00, DISTRICT shall deposit additional funds in such amount as directed by CITY to maintain an Evergreen balance of at least \$5,000.00 ("Evergreen Deposit"). DISTRICT shall deposit the Evergreen Deposit within 15 days of receiving notice from the CITY. In the event that funds remain on deposit at the conclusion of the services contemplated by this agreement; they shall be refunded to DISTRICT.
5. DISTRICT'S FAILURE TO PAY. Should the DISTRICT fail to make any of the payments in the amounts and at the times stated in Section 4 DISTRICT'S DEPOSIT AND PAYMENT OF COSTS, the CITY may, at its option, stop all further work and not proceed until the sums due are paid. Should the DISTRICT discontinue the need for services from the CITY, the DISTRICT shall be responsible for the payment to CITY of all fees and costs incurred by the CITY at the time the services are discontinued, including such fees and costs for all work in progress but not yet billed.

6. NO DAMAGES FOR DELAY. The CITY, its officers, agents, or employees shall not be responsible or liable to the DISTRICT for any damages of any type or description which may result from any delays associated with the work whether caused by the negligence of the CITS, its officers, agents, employees, or otherwise.
7. CALIFORNIA LAW. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Joaquin, State of California, or any other appropriate court in such county, and DISTRICT covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.
8. WAIVER. No delay or omission in the exercise of the right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party or any default must be in writing and shall not be a waiver of any other default concerning the same and any other provision of this Agreement.
9. ATTORNEY FEES. If either party to this Agreement is required to initiate or defend or is made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on Commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.
10. INTERPRETATION. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.
11. INTEGRATION: AMENDMENT. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.
12. SEVERABILITY. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its validity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.
13. CORPORATE AUTHORITY. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv)

the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

14. INDEMNIFICATION, DEFENSE AND HOLD HARMLESS.

- a. DISTRICT shall indemnify, defend and hold harmless the CITY, its council members, officers, agents, employees, and representatives for damage or claims for damage arising out of the acts of DISTRICT or its agents or employees, its council members, officers, agents, employees or representatives. DISTRICT'S obligation shall not extend to any award of punitive damages against the CITY resulting from the conduct of the CITY, its council members, officers, agents, employees or representatives.
- b. With respect to any action challenging the validity of this Agreement or any environmental, financial or other documentation related to approval of this Agreement, DISTRICT further agrees to defend, indemnify, hold harmless, pay all damages, costs and fees, if any incurred to either the CITY or plaintiff (s) filing such an action should a court award plaintiff(s) damages, costs and fees, and to provide a defense for the CITY in any such action.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above,

ATTEST:

By:  _____

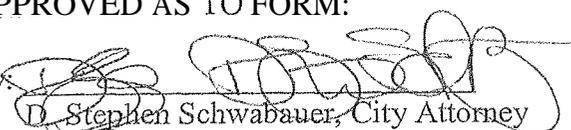
Randi Johl, City Clerk

THE CITY OF LODI

By:  _____

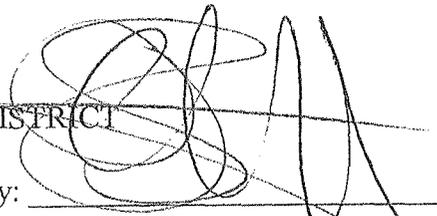
Blair King, City Manager

APPROVED AS TO FORM:

By:  _____

D. Stephen Schwabauer, City Attorney

DISTRICT

By:  _____

Name: ED STEFFANN

Title: GENERAL MANAGER

Address: PO BOX 428

CLEMENTS, CA 95227

Attachment A

PUBLIC WORKS ENGINEERING HOURLY RATES
FY 2007/08

• Public Works Director	\$110/Hr
• City Engineer	\$90/Hr
• Senior Civil Engineer	\$80/Hr
• Senior Traffic Engineer	\$80/Hr
• Associate Civil Engineer	\$75/Hr
• Junior Engineer/ Senior Engineering Technician	\$60/Hr
• Administrative Clerk	\$40/Hr
• Assistant Engineer	\$68/Hr
• Engineering Technician	\$55/Hr

RESOLUTION NO. 2010-27

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE
AMENDMENT TERMINATING THE REIMBURSEMENT
AGREEMENT WITH NORTH SAN JOAQUIN WATER
CONSERVATION DISTRICT FOR CITY ADMINISTRATIVE
SERVICES PROVIDED TO THE DISTRICT

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute the amendment terminating the Reimbursement Agreement effective July 1, 2010, with North San Joaquin Water Conservation District for City administrative services provided to the District.

Dated: March 17, 2010

I hereby certify that Resolution No. 2010-27 was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 17, 2010, by the following vote:

- AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce, and Mayor Katzakian
- NOES: COUNCIL MEMBERS – None
- ABSENT: COUNCIL MEMBERS – None
- ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk

CITY COUNCIL

PHIL KATZAKIAN, Mayor
SUSAN HITCHCOCK,
Mayor Pro Tempore
LARRY D. HANSEN
BOB JOHNSON
JOANNE L. MOUNCE

CITY OF LODI

PUBLIC WORKS DEPARTMENT

CITY HALL, 221 WEST PINE STREET
P.O. **BOX** 3006
LODI, CALIFORNIA **95241-1910**
(209) 333-6706
FAX (209) 333-6710
EMAIL pwdept@lodi.gov
<http://www.lodi.gov>

BLAIR KING
City Manager
RANDI JOHL
City Clerk
D. STEVEN SCHWABAUER
City Attorney
F. WALLY SANDELIN
Public Works Director

March 11, 2010

Mr. Ed Steffani, General Manager
North San Joaquin Water Conservation District
c/o City of Lodi Public Works Department
P.O. Box 3006
Lodi, CA 95241-1910

SUBJECT: Adopt Resolution Authorizing City Manager to Execute the Amendment
Terminating Reimbursement Agreement Effective July 1, 2010 with
North San Joaquin Water Conservation District for City Administrative
Services Provided to the District

Enclosed is a copy of background information on an item on the City Council agenda of
Wednesday, March 17, 2010. The meeting will be held at 7 p.m. in the
City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the consent calendar and is usually not discussed unless a
Council Member requests discussion. The public is given an opportunity to address
items on the consent calendar at the appropriate time.

If you wish to write to the City Council, please address your letter to City Council,
City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the
mail. Or, you may hand-deliver the letter to City Hall, 221 West Pine Street.

If you wish to address the Council at the Council Meeting, be sure to fill out a speaker's
card (available at the Carnegie Forum immediately prior to the start of the meeting) and
give it to the City Clerk. If you have any questions about communicating with the
Council, please contact Randi Johl, City Clerk, at 333-6702.

If you have any questions about the item itself, please call me at 333-6706.



for. F. Wally Sandelin
Public Works Director

FWS/pmf

Enclosure

cc: City Clerk