



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Authorizing City Manager to Execute Master Professional Services Agreement with Nolte Associates, Inc., of Manteca; Approving Task Order No. 1 to Provide Initial Engineering/Financial Services to Update Impact Mitigation Fee Program (\$46,500); and Appropriating Funds (\$55,000)

**MEETING DATE:** June 2, 2010

**PREPARED BY** Public Works Director

**RECOMMENDED ACTION:** Adopt a resolution authorizing the City Manager to execute a master professional services agreement with Nolte Associates, Inc., of Manteca; approving Task Order No. 1 to provide initial engineering/financial services to update the Impact Mitigation Fee Program in the amount of \$46,500; and appropriating funds in the amount of \$55,000.

**BACKGROUND INFORMATION:** The City's Development Impact Mitigation Fee (IMF) program consists of eight separate fee categories/funds, plus the public art set-aside. They are Water, Wastewater, Streets, Storm, Police, Fire, Parks and Recreation, and General City Facilities. The fees were established in 1991 to fund construction of new facilities serving new development and were updated last in 2006. An important implementation step of the new General Plan is an update to the impact mitigation fee program. A new fee is proposed to be added to the existing program to cover the costs of expanding the electric transmission/substation facilities.

The initial engineering/financial services will result in a concise Scope of Services for the update that will be bid out to qualified consulting firms. The agreement and scope of services are attached. The services include working with the Building Industry Association and the development community to define the scope of improvements to be covered by the fee program and to conceptually establish the fee program's share of those improvements. An important deliverable will be an assessment of master planning work required in each of the fee categories. **Also**, these initial services will define the operating assumptions that are the foundation of the updated fee program. Example assumptions include single or multiple fee zones by category, housing density, employee density, acre-based or unit-based fees, and outside funding sources. In this initial phase, the framework of an incentive program for development of the mixed-use corridors and other infill development will be created. **Cost** shares of major future projects (e.g. Water Treatment Plant, Harney Interchange, Harney Grade Separation, Century Boulevard Grade Separation and Kettleman Lane Widening) need to be assigned to new development and direction from the City Council will be requested based upon the alternatives to be provided.

Nolte Associates, Inc., will provide the initial engineering/financial services. Nolte, along with Public Works Director Sandelin, developed the existing fee program.

**FISCAL IMPACT:** Establishing appropriate fees ensures funding will be available to construct facilities required to serve new development.

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

  
Konradt Bartlam, Interim City Manager

Adopt Resolution Authorizing City Manager to Execute Master Professional Services Agreement with Nolte Associates, Inc., of Manteca; Approving Task Order No. 1 to Provide Initial Engineering/Financial Services to Update Impact Mitigation Fee Program (\$46,500); and Appropriating Funds (\$55,000)

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**FUNDING AVAILABLE:** The funding for this activity would, under the existing program, be funded by the General City Facilities sub-fund. But, there are insufficient funds in that sub-fund and a loan of funds from the Storm Drainage Impact Fund (326) is required.



Jordan Ayers

Deputy City Manager/Internal Services Director



F. Wally Sandelin

Public Works Director

FWS/pmf

Attachment

# MASTER PROFESSIONAL SERVICES AGREEMENT

## Engineering Support Services for the City of Lodi

This Master Professional Services Agreement (hereinafter "Agreement") is made and entered into by and between the City of Lodi, a municipal corporation (hereinafter "CITY") and NOLTE ASSOCIATES, INC., a California corporation/sole proprietor firm/partnership (hereinafter 'CONSULTANT').

### RECITALS

- A. CONSULTANT services are needed for initial engineering/financial services to update the Impact Mitigation Fee Program.
- B. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement. On June 2, 2010, the City Council, by Resolution, authorized the City Manager to execute this Agreement with CONSULTANT.

### NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** CONSULTANT shall perform the services as may be described in subsequent Task Orders which the parties agree are to be made a part hereof by this reference. The services shall be performed by, or under the direct supervision of, CONSULTANT'S Authorized Representative: Dave Richard, P.E. CONSULTANT shall not replace its Authorized Representative, nor shall CONSULTANT replace any of the personnel listed in the specific Task Order(s), nor shall CONSULTANT use any subcontractors or sub-consultants, without the prior written consent of CITY.
2. **TIME OF PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and Task Orders and the timing requirements set forth therein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. The CONSULTANT is not responsible for delays caused by factors beyond the CONSULTANT'S reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or disapprove of the CONSULTANT'S services or work product promptly, or delays caused by faulty performance by the Client or by contractors of any level. When such delays beyond the CONSULTANT'S reasonable control occur, the Client agrees the CONSULTANT is not responsible for damages, nor shall the CONSULTANT be deemed to be in default of this Agreement. CONSULTANT shall commence performance, and shall complete all required services no later than the dates set forth in each Task Order. CONSULTANT shall submit all requests for extensions of time to CITY in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

3. **INDEPENDENT CONTRACTOR STATUS.** CONSULTANT is an independent contractor and is solely responsible for all acts of its employees, including any negligent acts or omissions. CONSULTANT is not City's employee and CONSULTANT shall have no authority, expressed or implied, to act on behalf of CITY as an agent, or to bind CITY to any obligation whatsoever, unless CITY provides prior written authorization to CONSULTANT.
4. **CONFLICT OF INTEREST.** CONSULTANT (including its employees) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement and any Task Orders. In the event that CONSULTANT maintains or acquires such a conflicting interest; any contract (including this Agreement) involving CONSULTANT'S conflicting interest may be terminated by CITY in its sole and absolute discretion and without prior written notice as required by Paragraph 6 below.
5. **COMPENSATION**
  - 5.1 For services performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT on a time and expense basis, at the billing rate set forth in the Task Orders. CONSULTANT'S billing rates shall cover all costs and expenses of every kind and nature for CONSULTANT'S performance of the specific Task Orders. No work shall be performed by CONSULTANT in excess of the Not To Exceed amount as stated in the specific Task Orders without the prior written approval of CITY.
  - 5.2 CONSULTANT shall submit monthly invoices to CITY describing the services performed, including times, dates, and names of persons performing the service.
  - 5.3 Within thirty (30) days after CITY'S receipt of invoice, CITY shall make payment to the CONSULTANT based upon the services described on the invoice and approved by CITY, which approval shall not be unreasonably withheld.
  - 5.4 In the event that CONSULTANT'S negligent acts, errors, or omissions, or willful misconduct in fact result in damages to CITY, CONSULTANT shall reimburse CITY (or in City's discretion CONSULTANT'S payment under pending invoice(s) may be offset) to the extent of the damages incurred as the result of CONSULTANT'S negligent acts, errors, or omissions, or willful misconduct.
6. **TERMINATION.** CITY may terminate this Agreement or any Task Order hereunder by giving ten (10) days written notice to CONSULTANT. Upon termination, CONSULTANT shall give CITY all original documents, including preliminary drafts and supporting documents prepared by CONSULTANT. CITY shall pay CONSULTANT for all services satisfactorily performed in accordance with this Agreement and any Task Orders, up to the date notice of termination is given.
7. **OWNERSHIP OF WORK.** All original documents prepared by CONSULTANT under this Agreement and any Task Orders hereunder are the property of CITY, and shall be given to CITY at the completion of CONSULTANT'S services, or upon demand from CITY. CITY acknowledges that CONSULTANT documents are instruments of

professional service; nevertheless, the documents prepared under this Agreement and the specific Task Orders shall become the property of the CITY upon completion of the work and payment in full of all monies due to CONSULTANT by CITY. CITY shall not reuse or make any modification to the documents without notification to the CONSULTANT. CITY agrees, to the fullest extent permitted by law, to indemnify and hold CONSULTANT harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of unauthorized reuse or modification of the documents by CITY or any person or entity that acquires or obtains the documents from or through City without the written authorization of CONSULTANT. CONSULTANT shall be allowed to retain copies of all documents prepared under this Agreement and any Task Orders hereunder. In addition, CONSULTANT shall be allowed to release information to its insurance carriers in the event of a claim or when ordered by a subpoena.

8. **ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred as may be determined by a court of competent jurisdiction.
9. **INDEMNIFICATION.** CONSULTANT shall indemnify and hold harmless CITY (including its elected officials, officers, and employees) from and against any and all claims for damages, demands, liability, costs, and expenses including court costs and attorney's fees) to the extent that they arise out of CONSULTANT'S negligent act, error or omission(s) in the performance of services under this Agreement and its Task Orders.
10. **BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, CONSULTANT shall obtain a City of Lodi Business License.
11. **INSURANCE.**
  - 11.1 **General.** CONSULTANT shall, throughout the duration of this Agreement and any Task Orders, maintain insurance to cover CONSULTANT, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein. CONSULTANT shall be entitled to rely on all data, plans, surveys, maps, and other information provided by or on behalf of CITY in performing its services under this Agreement, and such reliance shall, in all events, be considered reasonable.
  - 11.2 **Commercial General Liability.** (with coverage at least as broad as ISO form CG 00 01 01 96) Coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
  - 11.3 **Automobile Liability.** (with coverage at least as broad as ISO form CA 00 01 07 97 for "any auto") Coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
  - 11.4 **Workers' Compensation.** Coverage shall be maintained as required by the State of California.

- 11.5 **Professional Liability.** Coverage shall be maintained to cover damages that may be the result of negligent acts, errors or omissions in the rendering of professional services by the CONSULTANT in an amount not less than \$1,000,000 per claim made.
- 11.6 **Endorsements.** CONSULTANT shall obtain endorsements to the automobile and commercial general liability with the following provisions:
- 11.6.1 CITY, its elected and appointed boards, commissions, officers, agents and employees shall be named as additional insureds.
- 11.6.2 For any claims related to this Agreement, CONSULTANT'S coverage shall be primary insurance with respect to CITY. Any insurance maintained by CITY shall be excess of the CONSULTANT'S insurance and shall not contribute with it.
- 11.7 **Notice of Cancellation.** CONSULTANT shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to CITY should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 11.8 **Authorized Insurers.** All insurance companies providing coverage to CONSULTANT shall be insurance organizations authorized by the Insurance Commission of the State of California to transact the business of insurance in the State of California.
- 11.9 **Insurance Certificate.** CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City's Risk Manager no later than five (5) days after the execution of this Agreement.
- 11.10 **Substitute Certificates.** No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, CONSULTANT shall provide a substitute certificate of insurance.
- 11.11 **CONSULTANT'S Obligation.** Maintenance of insurance by CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving CONSULTANT of any responsibility whatsoever (including indemnity obligations under this Agreement), and CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.
12. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of CONSULTANT'S duties be delegated, without the written consent of CITY. Any attempt to assign or delegate this Agreement without the written consent of CITY shall be void and of no force and effect. Consent by CITY to one assignment shall not be deemed to be consent to any subsequent assignment.

13. **NOTICES**

13.1 All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To CITY  
Director of Public Works  
City of Lodi  
221 West Pine Street  
Lodi, CA 95240-1910

To CONSULTANT  
Dave Richard  
Nolte Associates, Inc.  
1215 W. Center Street, Ste. 201  
Manteca, CA 95337-4227

13.2 Communications shall be deemed to have been given and received on the first to occur of: (1) actual receipt at the address designated above, or (2) three working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

14. **MODIFICATIONS.** This Agreement or any Task Orders hereunder may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
15. **WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
16. **SEVERABILITY.** In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.
17. **JURISDICTION AND VENUE.** The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement or any Task Orders shall be filed and heard in a court of competent jurisdiction located in the County of San Joaquin.
18. **ENTIRE AGREEMENT.** This Agreement and subsequent Task Orders comprise the entire integrated understanding between the parties concerning the services to be performed for any project. This Agreement supersedes all prior negotiations, representations, or agreements, whether oral or written.
19. **COMPLIANCE WITH THE LAW.** CONSULTANT shall comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement or any Task Orders hereunder.
20. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and CITY. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**IN WITNESS WHEREOF** the parties do hereby agree to the full performance of the terms set *forth* herein.

CITY OF LODI  
a municipal corporation

CONSULTANT

\_\_\_\_\_  
By: Konradt Bartlam  
Title: Interim City Manager  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: Dave Richard  
Title: Principal  
Date: \_\_\_\_\_  
Fed. Employer **ID No.** : \_\_\_\_\_

Attest:

\_\_\_\_\_  
By: Randi Johl  
Title: City Clerk  
  
Date: \_\_\_\_\_

Approved as to Form  
D. Stephen Schwabauer  
City Attorney

\_\_\_\_\_  
By: Janice D. Magdich   
Title: Deputy City Attorney

Date: \_\_\_\_\_

**RECEIVED**

MAY 03 2010

April 30, 2010  
BDNCWAT-WP



**CITY OF LODI**  
PUBLIC WORKS DEPARTMENT

**NOLTE**  
BEYOND ENGINEERING

Wally Sandelin, PE  
Director of Public Works  
City of Lodi  
221 West Pine Street/PO Box 3006  
Lodi, CA 95241

**SUBJECT: Proposal for Initial Engineering Services to Update the  
City of Lodi Impact Mitigation Fee Program**

Dear Wally:

The City of Lodi (City) is undertaking an update to the Impact Mitigation Fee (IMF) program. The Update will provide the City staff and the development community with: 1) revised fees for the existing facility categories in the IMF consistent with the recently adopted General Plan Update and current master plans and 2) an understanding of the methodology, policies, and assumptions that shape the IMF. The Update will focus on extending the time frame of the program, the scope of new development and the public improvements funded, as well as addressing changes in the cost and timing of public improvements currently in the IMF. A scope of services for the initial tasks associated with the update is summarized as follows.

**SCOPE OF SERVICES**

Nolte Associates, Inc. (Nolte) with Geoff Richman (GR) will assist the City in the preliminary phase of the IMF Update. The scope of services includes: 1) attend meetings with the City and BIA; 2) assess existing master plans; 3) research and compile other agency fees; 4) evaluate a single-fee zone within the City; 5) prepare framework Assumptions Report; and 6) develop a plan for the IMF Update. Each of these tasks is discussed in more detail below.

**Task 1 – Initial Meetings with City and BIA**

Nolte and GR will attend three meetings with the City and BIA of the Delta to review the current IMF program and to discuss *the* framework for the IMF update. Comments and concerns will be solicited and the results summarized in a brief technical memorandum for submission to the City.

**Task 2 – Assess Master Planning Needs**

The existing master plans will be reviewed to determine if any additional information needs to be provided by the master plan consultants for the IMF Update. A brief technical memorandum will be prepared summarizing the results of the review and any additional information the City may need from the master plan consultants.

### **Task 3 – Review Other Agency Impact Fee Levels**

In the competitive real estate market, the cost of infrastructure is a significant cost in the land development process. To understand the competitiveness of Lodi in terms of its impact fees, a comparison will be completed of the impact fees of other agencies in the region.

The impact fees from three similar municipalities as identified by the City will be researched to understand the relative infrastructure burden the Lodi IMF places on the development community. This effort will examine the impact fee burden placed on residential, commercial, and industrial development from each infrastructure category as well as the total burden from all fees in the Lodi IMF.

The total infrastructure cost from the three municipalities (i.e., CFDs, assessment districts, and infrastructure built directly by builders) will not be part of the analysis as these other costs vary significantly among sub-areas of each municipality and are most frequently passed on to the final owners or are not known in the case of infrastructure built by developers.

A brief technical memorandum will be prepared and submitted to the City with the results of the review.

### **Task 4 – Evaluate Single Fee Zone**

The City currently imposes the IMF on a citywide basis. Each infrastructure category will be reviewed to understand and evaluate any issues related to this approach given the anticipated development patterns and infrastructure requirements of the upcoming IMF update. A brief technical memorandum will be prepared with the results of the evaluation.

### **Task 5 – Preliminary Assumptions Report**

A preliminary Assumptions Report will be prepared and submitted to the City. The intent of this document is to identify the numerical, methodological, and policy assumptions that will be used in the preparation of the IMF Update. Elements to be addressed in the preliminary Assumptions Report include:

1. Time frame for the IMF update
2. Specific infrastructure projects funded by the IMF versus other outside funding sources
3. Definition of land use categories
4. Generation or demand rates by specific land uses for facilities
5. Inflation and interest rates
6. Inter-fee-fund borrowing policy
7. Project costing parameters
8. Development densities and intensities and fee calculation methodology

The preliminary Assumptions Report is critical to lay the foundation for a consistent set of assumptions to be used by all parties working on the IMF update. It is anticipated that the Assumptions Report will

be updated and revised during the preparation of the IMF Update and will be completed in tandem with the IMF Update.

An electronic copy of the preliminary Assumptions Report will also be provided to the City that can be updated in the final phase of the IMF Update.

**Task 6 - Plan for IMF Update**

It is our understanding the City will be issuing a Request for Proposal (RFP) to consultants for the preparation of the IMF Update. Nolte will prepare and submit to the City a preliminary schedule for the IMF Update process, an estimated budget, and a RFP scope document for the City to use in the selection process. One draft set of documents and one final package are anticipated under this task.

**ESTIMATED FEE**

The following is the estimated fee to complete the tasks identified above:

Task 1 – Initial Meetings with City and BIA	\$5,000
Task 2 – Assess Master Planning Needs	\$7,500
Task 3 – Review Other Agency Impact Fee Levels	\$5,000
Task 4 – Evaluate Single Fee Zone	\$10,000
Task 5 – Preliminary Assumptions Report	\$15,000
Task 6 - Plan for IMF Update	<u>\$4,000</u>
<b>TOTAL</b>	<b>\$46,500</b>

We look forward to working with you and your staff on this critical project. If you have any questions or would like to discuss our scope further, please give us a call.

Sincerely,

**Nolte Associates, Inc.**



Dave Richard, PE  
Principal

RESOLUTION NO. 2010-74

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING CITY MANAGER TO EXECUTE MASTER PROFESSIONAL SERVICES AGREEMENT AND APPROVING TASK ORDER NO. 1 TO PROVIDE INITIAL ENGINEERING/FINANCIAL SERVICES TO UPDATE IMPACT MITIGATION FEE PROGRAM AND FURTHER APPROPRIATING FUNDS

WHEREAS, the City's Development Impact Mitigation Fee (IMF) program consists of eight separate fee categories/funds (Water, Wastewater, Streets, Storm, Police, Fire, Parks and Recreation, and General City Facilities), plus the public art set-aside. The fees were established in 1991 and updated last in 2006. A new fee is proposed to be added to cover the costs of expanding the electric transmission/substation facilities; and

WHEREAS, the initial *engineering/financial* services will result in a concise Scope of Services for the update that will be bid out to qualified consulting firms. The services include working with the Building Industry Association and the development community to define the scope of improvements to be covered by the fee program and to establish the fee program's conceptual share of those improvements, assessing master planning work required in each of the fee categories, and defining the operating assumptions that are the foundation of the updated fee program; and

WHEREAS, the firm of Nolte Associates, Inc., will provide the initial *engineering/financial* services. Nolte, along with Public Works Director Sandelin, developed the existing fee program.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a master professional services agreement with Nolte Associates, Inc., of Manteca, California, and approve Task Order No. 1 in the amount of \$46,500 to provide initial *engineering/financial* services to update the Impact Mitigation Fee Program; and

BE IT FURTHER RESOLVED that funds in the amount of \$55,000 be appropriated from the Storm Drainage Impact Fund.

Dated: June 2, 2010

I hereby certify that Resolution No. 2010-74 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 2, 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