



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Contract with Jones, Hall, Hill & White for Arbitrage Services

MEETING DATE: August 7, 1991

PREPARED BY: Finance Director

RECOMMENDED ACTION: The City Council authorize the City Manager to enter into an agreement with Jones, Hall, Hill & White to calculate the City's arbitrage liability and prepare arbitrage reports.

BACKGROUND INFORMATION: In 1988, the City issued Certificates of Participation (COP) to finance construction at White Slough. Under the 1986 Tax Reform Act, these COP's are classified as "arbitrage bonds"; and as such, the arbitrage earnings must be reported in the City's annual financial reports and to the Internal Revenue Service in the fifth year after the bonds are issued to settle arbitrage earnings.

Arbitrage earnings are the investment earnings from bond proceeds in excess of the bond yield paid to bond holders. In concept, this calculation appears to be a simple requirement; however, Congress and the Internal Revenue Service continue to change the rules by which arbitrage is calculated and have made several exemptions and exceptions in the original calculation rules. This, combined with the fluctuating yield on investments, has made this a complex calculation which requires specialized expertise, much like preparing an annual tax return.

Because of the possible liability to the City resulting from this calculation, the disclosure of the City's arbitrage liability is a significant disclosure in the City's audited financial reports. The reliability and credibility of the "arbitrage return" is important to both the City's bondholders and to the Internal Revenue Service at the time settlement is made. For this reason, the firm of Jones, Hall, Hill & White is recommended from four firms that submitted proposals. This selection is based on their expertise, reputation as bond counsel and the City's past relationship with this firm as bond counsel for issue of the 1988 COP's.

The cost to the City for Fiscal Year 1991-92 will be \$8,000 and \$500 for Fiscal Year 1992-93.

FUNDING: Sewer Fund

Respectfully,


Dixon Flynn
Finance Director

Attachment

APPROVED:



THOMAS A. PETERSON
City Manager



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

CHARLES F. ADAMS
HAROLD W. BANK*
STEPHEN R. CASALEGGIO
BRUCE R. COLEMAN
THOMAS A. DOWNEY
ANDREW C. HALL, JR.
KENNETH I. JONES
WILLIAM H. MADISON
E. WADE NORRIS**
DAVID J. OSTER
BRIAN D. QUINT
PAUL J. THIMMIG
SHARON STANTON WHITE

* ADMITTED TO NEW YORK AND
DISTRICT OF COLUMBIA BARS ONLY
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(415) 391-5780

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

ROBERT J. HILL (1922-1988)

AFTER EXECUTION PLEASE RETURN TO:

Jones Hall Hill & White,
A Professional Law Corporation
Four Embarcadero Center, 19th Floor
San Francisco, CA 94111
Attention: Ms. Jennifer Viksten

AGREEMENT FOR REBATE CALCULATION SERVICES

THIS AGREEMENT, is made and entered into this _____ day of _____, 1991,
by and between the CITY OF LODI, CALIFORNIA (herein called "City") and JONES HALL HILL &
WHITE, A PROFESSIONAL LAW CORPORATION, San Francisco, California (herein called
"Attorneys");

WITNESSETH:

WHEREAS, on August 25, 1988 the City issued its \$9,415,000 certificates of participation
(1988 wastewater treatment plant expansion project) (the "Certificates");

WHEREAS, in order to assure that interest on the Certificates is excludable from gross income
pursuant to Section 103 of the Internal Revenue Code of 1986 (the "Code"), it is necessary that the
City assure compliance with Section 148(f) of the Code relating to rebate of certain excess investment
earnings to the United States; and

WHEREAS, the City has determined that Attorneys are qualified by training and experience to
perform the services required, and Attorneys are willing to provide such services;

NOW, THEREFORE, the City employs Attorneys, and Attorneys accept such employment, upon the following terms and conditions:

ARTICLE I

DUTIES OF ATTORNEYS

Attorneys shall perform and render the following services to the extent necessary to provide for compliance with Section 148(f) of the Code in connection with the Certificates:

A. Perform rebate calculations required by Section 148(f) of the Code and applicable regulations.

B. Provide instructions to the City concerning compliance with Section 148(f) of the Code and applicable regulations.

C. Consult and cooperate with the City and its agents and employees, as necessary to provide for compliance by the City with the requirements of Section 148(f) of the Code for the Certificates.

D. Upon the request of the City following any rebate calculation, and assuming compliance with rebate instructions provided by Attorneys, provide a legal opinion stating that the exclusion from gross income of interest on the Certificates for federal income tax purposes has not been adversely affected by reason of failure to comply with Section 148(f) of the Code.

E. Upon the request of the City following any rebate calculation, provide advice to assist in most effectively reducing or satisfying potential rebate liability, if any.

ARTICLE II

COMPENSATION AND COSTS

For the services of Attorneys set forth in Article I, the City shall pay Attorneys a service fee of \$2,000.00 for the first bond year and each additional bond year until depletion of the Project Fund. Upon completion of the Project Fund, the City shall pay Attorneys a service fee of \$500.00 per bond year for all remaining active accounts or funds. All fees will be payable following performance of duties required of Attorneys under Article I.

In addition to the compensation set forth in the preceding paragraph, the City shall reimburse Attorneys for direct out-of-pocket expenses for Federal Express or other courier, messenger, delivery or special mail services, telecopying services, photocopying, binding and (upon request by the City for the same) expenses for travel outside of the State of California in connection with the services rendered by Attorneys hereunder.

ARTICLE III

RESPONSIBILITIES OF CITY

The City shall cooperate with Attorneys in the performance of their services under Article I, and shall provide Attorneys with information requested by Attorneys regarding investments made by the City with bond proceeds and transferred proceeds and amounts to be used for payment of the Certificates or shall assist Attorneys in obtaining such information.

In the event of redemption of the Certificates in whole or in part prior to their maturity, the City shall notify Attorneys of said redemption at least thirty (30) days prior to such redemption.

In the event of an advance or current refunding of the Certificates in whole or in part prior to their maturity, the City shall notify Attorneys of said refunding at least thirty (30) days prior to such refunding.

ARTICLE IV

TERM OF AGREEMENT

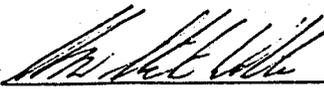
This Agreement shall terminate on on the first day of the third full calendar month following the fifth bond year of the Certificates unless earlier renewed by supplemental agreement between the parties hereto, or unless the City shall, upon ten (10) days written notice to Attorneys, terminate this Agreement for failure of Attorneys to perform the duties set forth in Article I hereof in a manner satisfactory to the City.

IN WITNESS WHEREOF, the City and Attorneys have caused this Agreement to be executed, in duplicate, in their respective corporate names, by one of their respective duly authorized officers, all as of the day and year first above written.

CITY OF LODI

By _____
Title:

JONES HALL HILL & WHITE,
A Professional Law Corporation

By  _____
Sharon Stanton White

RESOLUTION NO. 91-151

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

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 interests of the City; and

WHEREAS, in 1988, the City issued Certificates of Participation to finance construction of the White Slough Water Pollution Control Facility expansion for which arbitrage earnings must be reported to the Internal Revenue Service; and

WHEREAS, the City received four proposals from various firms for the preparation of calculations and reports for the arbitrage reporting; and

WHEREAS, said proposals have been compared and checked and a report thereof filed with the City Manager; 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 & White, based on that firm's expertise, reputation as bond counsel, and the City's past relationship with this firm;

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the City's entering into an agreement for the above-described Rebate Calculation Services with Jones, Hall, Hill & White in the amount of \$8,000 for Fiscal Year 1991-92 and \$500 for Fiscal Year 1992-93, and further authorizes execution of said Agreement by the City Manager.

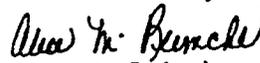
Dated: August 7, 1991

I hereby certify that Resolution No. 91-151 was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 7, 1991 by the following vote:

Ayes: Council Members - Pennino, Pinkerton, Sieglock, Snider
and Hinchman (Mayor)

Noes: Council Members - None

Absent: Council Members - None


Alice M. Reimche
City Clerk

91-151

RES91151/TXTA.02J

CITY COUNCIL

DAVID M. HINCHMAN, Mayor
JAMES W. PINKERTON, Jr.
Mayor Pro Tempore
PHILLIP A. PENNINGO
JACK A. SIEGLOCK
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634
FAX (209) 333-6795

THOMAS A. PETERSON
City Manager
ALICE M. REIMCHE
City Clerk
BOB McNATT
City Attorney

August 8, 1991

Jones, Hall, Hill & White
A Professional Law Corporation
Attention: Ms. Jennifer Viksten
Four Embarcadero Center, 19th Floor
San Francisco, CA 94111

Subject: Agreement for Rebate Calculation Services

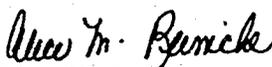
Dear Ms. Viksten:

Please be advised that the Lodi City Council at its Regular Meeting of August 7, 1991 adopted Resolution No. 91-151 entitled, "A Resolution of the Lodi City Council Authorizing the City's Entering into an Agreement for Arbitrage Rebate Services (Rebate Calculation Services)."

Enclosed please find a fully executed copy of the subject agreement and a certified copy of the authorizing resolution.

Should you have any questions regarding this matter, please do not hesitate to call this office.

Very truly yours,


Alice M. Reimche
City Clerk

AMR/jmp

Enclosure

cc: Dixon Flynn
Finance Director

JONES HALL HILL & WHITE,
A PROFESSIONAL LAW CORPORATION
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CITY OF LODI

Attest:

Alice M. Reimche
Alice M. Reimche
City Clerk

By

Thomas A. Peterson
Title: Thomas A. Peterson
City Manager

JONES HALL HILL & WHITE,
A Professional Law Corporation

Approved as to form:

By

Sharon Stanton White
Sharon Stanton White

Bobby McNatt
Bobby McNatt
City Attorney

CC-90
CC-300
8/7/91

8/7

CITY OF LODI
SPECIAL ALLOCATION REQUEST

TO: Finance Director
FROM: City Clerk

DATE: August 7, 1991
PROJECT NUMBER:

Request is made for funds to accomplish the following project which was not included in the current budget:

Description of Project	Estimated Cost
Funds needed for contract with Jones, Hall, Hill and White for arbitrage services	\$8,000.00

Funding source	-	Sewer	Fund
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(If you need more space, use additional sheet and attach to this form)

Date of Approval - 8/7/91 Amount Approved - \$8,000

Council _____XXXXX City Manager _____

FUND OR ACCOUNT TO BE CHARGED

Current Budget	\$ _____	Prior Year Reserve	\$ _____
Contingent Fund	\$ _____	General Fund Surplus	\$ _____
Capital Outlay Reserve	\$ _____	Gas Tax Fund	\$ _____
Utility Outlay Reserve	\$ _____	Other (Election)	\$ _____
Hotel/Motel Tax Reserve	- \$ _____		
General Fund Operating Reserve	\$ _____		

Dixon Flynn, Finance Director

Alice M. Reimche

Alice M. Reimche,
City Clerk

Submit this form in duplicate to the Finance Director. Distribution after approval will be as follows: 1) Originating Department 2) Finance Department