



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Storm Drain Impact Mitigation Fee One-Time Reimbursement Agreement with Temple Baptist Church of Lodi and Appropriating Funds (\$122,282.82)

MEETING DATE: July 17, 2013

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute Storm Drain Impact Mitigation Fee One-Time Reimbursement Agreement with Temple Baptist Church of Lodi and appropriating funds in the amount of \$122,282.82.

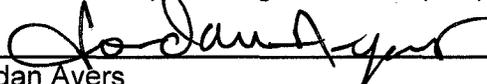
BACKGROUND INFORMATION: At the time of approval of the Temple Baptist Church (Owner) master development plan and the phase one construction project in 1978, there were no City-owned storm drainage facilities in the area, and private onsite storm drainage facilities were constructed to serve the project. These facilities consist of storm drainage conveyance piping and a storm drainage retention basin. It has been confirmed that the private onsite storm drainage facilities have sufficient capacity to serve all existing and future phases of the master development plan.

In August 2012, the City Council adopted the updated Impact Mitigation Fee Program (Program) wherein no storm drainage impact fee was established for the Church property yet to be developed. An option was preserved in the Program for the Owner to permanently utilize the private onsite storm drainage facilities and be refunded the storm drainage mitigation fees paid to date amounting to \$122,282.82. The reimbursement funds were set aside in the Program for reimbursement to this Owner and several others.

The Owner is constructing a new education building that would normally be required to pay storm drainage impact mitigation fees. Instead, the Owner has selected the option to remove their property from the City's storm drainage service area and receive reimbursement, without interest, of the fees paid to date. The Storm Drainage Impact Mitigation Fee One-Time Reimbursement Agreement attached as Exhibit A covers the reimbursement and the maintenance in perpetuity of the private onsite storm drainage facilities.

FISCAL IMPACT: Slight reduction in future storm drainage facility maintenance costs for facilities planned for future construction.

FUNDING AVAILABLE: Requested Appropriation:
Storm Drain Impact Mitigation Fees (175) - \$122,282.82


Jordan Ayers

Deputy City Manager/Internal Services Director


F. Wally Sandelin

Public Works Director

FWS/pmf
Attachment

APPROVED:


Konrad Bartlam, City Manager

WHEN RECORDED, RETURN TO:
City Clerk
City of Lodi
221 West Pine Street
Lodi, CA 95240

STORM DRAIN IMPACT MITIGATION FEE ONE-TIME
REIMBURSEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, hereinafter referred to as "City" and TEMPLE BAPTIST CHURCH OF LODI, hereinafter referred to as "Owner".

RECITALS:

Owner is the owner of that certain real property situated in the City of Lodi, County of San Joaquin, known as 801 S. Lower Sacramento Road, situs address: 2649 West Vine Street, (APN 027-400-12) and described as follows:

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN, CITY OF LODI, AND IS DESCRIBED AS FOLLOWS:

THE SOUTH ONE-HALF OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 3 NORTH, RANGE 6 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAN JOAQUIN COUNTY, EXCEPT THE WEST 1692 FEET THEREOF.

WHEREAS, at the time of initial approval of development project known as 801 S. Lower Sacramento Road within the Property described herein, the City required the project to employ on-site storm drainage runoff control measures to serve the development project until such time City-owned storm drainage facilities were constructed; and

WHEREAS, the Owner has constructed storm drainage retention facilities conforming to City Design Standards having capacity to serve the entire development; and

WHEREAS, the Owner has constructed individual phases of the project conforming to the approved Use Permit U-94-18 Phased Development Plan and the Owner has paid Storm Drainage Impact Mitigation Fees at the time of development of each phase in the total amount of \$122,282.82; and

WHEREAS, the City Council adopted in August 2012 the Impact Mitigation Fee Program wherein no fee was established for the area in which said development project is located on the premise the required facilities would be constructed and funded by property owners served by the facilities; and

WHEREAS, the Owner has opted to permanently provide the development project's storm drainage service using the private onsite storm drainage retention facilities and no longer participate in funding, through the Impact Mitigation Fee Program, the City-owned facilities and

accept a one-time reimbursement of the fees paid without interest in the amount of \$122,282.82.

NOW THEREFORE, it is mutually stipulated and agreed as follows:

1. Owner shall use its best efforts to diligently maintain the private storm drainage facilities in a manner assuring peak performance at all times.
2. In the event Owner, or its successors or assigns, fails to commence the necessary maintenance contemplated by this Agreement, within 30 days of being given written notice by City, City is hereby authorized to cause any maintenance necessary to be done and charge the entire cost and expense to Owner, or Owner's successors or assigns, including administrative costs, attorneys fees and interest thereon at the maximum rate authorized by the Civil Code from the date of the notice of expense until paid in full, and Owner hereby agrees to pay such charge within 30 days of receipt of City's written demand for payment.
3. In the event the Owner, or its successors or assigns, has caused the City to act under the provisions of paragraph 2 above, then upon written notice by the City to Owner, City may require the Owner to post security in a form and for a time period satisfactory to City to guarantee the performance of the obligations stated herein. Should Owner fail to perform the obligations under this Agreement, City may, in the case of a cash bond, act for Owner using the proceeds from it, or in the case of a surety bond, require the sureties to perform the obligations of this Agreement. As an additional remedy, the Public Works Director may suspend any previous stormwater related approval with respect to the property on which a Device has been installed until such time as Owner repays to City its reasonable costs incurred in accordance with paragraph 2 above.
4. This Agreement shall be recorded in the Office of the Recorder of San Joaquin County, California, at the expense of Owner and shall constitute notice to all successors and assigns of the title to said Property of the obligation herein set forth. This Agreement shall serve as a lien on the Property in such amount as will fully reimburse City for all costs incurred in fulfilling Owner's obligation under this Agreement, including interest as herein above set forth.
5. In event of legal action occasioned by any default or action of Owner, or its successors or assigns, then Owner and its successors or assigns agree(s) to pay all costs incurred by City in enforcing the terms of this Agreement, including reasonable attorney's fees and costs, and that the same shall become a part of the lien against said Property.
6. It is the intent of the parties hereto that burdens and benefits herein undertaken shall constitute covenants that run with said Property and constitute a lien there against.
7. The obligations herein undertaken shall be binding upon the heirs, successors, executors, administrators and assigns of the parties hereto. The term "Owner" shall include not only the present Owner, but also its heirs, successors, executors, administrators, and assigns. Owner shall notify any successor to title of all or part of the Property about the existence of this Agreement. Owner shall provide such notice prior to such successor obtaining an interest in all or part of the Property. Owner shall provide a copy of such notice to City at the same time such notice is provided to the successor.
8. Time is of the essence in the performance of this Agreement.

9. Any notice or demand for payment to a party required or called for in this Agreement shall be served in person, or by deposit in the U.S. Mail, first class postage prepaid, to addresses listed on Page 1 of this Agreement either for Owner or City. Notice(s) shall be deemed effective upon receipt, or seventy-two (72) hours after deposit in the U.S. Mail, whichever is earlier. A party may change a notice address only by providing written notice thereof to the other party.

IN WITNESS THEREOF, the parties hereto have affixed their signatures as of the date first written above.

CITY OF LODI, a municipal corporation

Dated: _____, 2013

By: _____
KONRADT BARTLAM
City Manager

Attest:

Randi Johl, City Clerk

TEMPLE BAPTIST CHURCH OF LODI,
a corporation

Dated: _____, 2013

By: _____

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney
City of Lodi 

1. AA# _____
 2. JV# _____

**CITY OF LODI
 APPROPRIATION ADJUSTMENT REQUEST**

TO: Internal Services Dept. - Budget Division
 3. FROM: Rebecca Areida-Yadav 5. DATE: 7/8/2013
 4. DEPARTMENT/DIVISION: Public Works

6. REQUEST ADJUSTMENT OF APPROPRIATION AS LISTED BELOW

	FUND #	BUS. UNIT #	ACCOUNT #	ACCOUNT TITLE	AMOUNT
A. SOURCE OF FINANCING	175		3205	Fund Balance	\$ 122,283.00
B. USE OF FINANCING	175	175044	1836.1900	Temple Baptist Reimbursement	\$ 122,283.00

7. REQUEST IS MADE TO FUND THE FOLLOWING PROJECT NOT INCLUDED IN THE CURRENT BUDGET

Please provide a description of the project, the total cost of the project, as well as justification for the requested adjustment. If you need more space, use an additional sheet and attach to this form.

Reimbursement of Storm Drain Impact Fees to Temple Baptist Church.

If Council has authorized the appropriation adjustment, complete the following:
 Meeting Date: _____ Res No: _____ Attach copy of resolution to this form.
 Department Head Signature: Allyson Sander

8. APPROVAL SIGNATURES

 Deputy City Manager/Internal Services Manager Date

Submit completed form to the Budget Division with any required documentation.
 Final approval will be provided in electronic copy format.

RESOLUTION NO. 2013-131

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING
AND AUTHORIZING THE CITY MANAGER TO EXECUTE A
STORM DRAIN IMPACT MITIGATION FEE ONE-TIME
REIMBURSEMENT AGREEMENT WITH TEMPLE BAPTIST
CHURCH OF LODI AND FURTHER APPROPRIATING FUNDS

WHEREAS, at the time of approval of the Temple Baptist Church (Owner) master development plan and the phase one construction project in 1978, there were no City-owned storm drainage facilities in the area, and private onsite storm drainage facilities were constructed to serve the project. These facilities consist of storm drainage conveyance piping and a storm drainage retention basin. It has been confirmed that the private onsite storm drainage facilities have sufficient capacity to serve all existing and future phases of the master development plan; and

WHEREAS, in August 2012, the City Council adopted the updated Impact Mitigation Fee Program (Program) wherein no storm drainage impact fee was established for the Church property yet to be developed. An option was preserved in the Program for the Owner to permanently utilize the private onsite storm drainage facilities and be refunded the storm drainage mitigation fees paid to date amounting to \$122,282.82. The reimbursement funds were set aside in the Program for reimbursement to this Owner and several others; and

WHEREAS, the Owner is constructing a new education building that would normally be required to pay storm drainage impact mitigation fees. Instead, the Owner has selected the option to remove their property from the City's storm drainage service area and receive reimbursement, without interest, of the fees paid to date.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Storm Drain Impact Mitigation Fee One-Time Reimbursement Agreement with Temple Baptist Church of Lodi; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute the agreement; and

BE IT FURTHER RESOLVED that funds in the amount of \$122,282.82 be appropriated from the Storm Drain Impact Mitigation Fees account.

Dated: July 17, 2013

I hereby certify that Resolution No. 2013-131 was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 17, 2013, by the following vote:

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


RANDI JOHL-OLSON
City Clerk