

RESOLUTION NO. 92-34

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

I hereby certify that Resolution No. 92-34 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: Council Members - Hinchman, Pennino, Sieglock and
Pinkerton (Mayor)

Noes: Council Members - None

Absent: Council Members - Snider


Alice M. Reimche
City Clerk

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

CHARLES F. ADAMS
STEPHEN R. CASALEGGIO
THOMAS A. DOWNEY
ANDREW C. HALL, JR.
KENNETH I. JONES
WILLIAM H. MADISON
R. WADE NORRIS*
DAVID J. OSTER
BRIAN D. QUINT
PAUL J. THIMMIG
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

ROBERT J. HILL (1922-1988)

AFTER EXECUTION PLEASE RETURN TO:

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

AGREEMENT FOR REBATE CALCULATION SERVICES

THIS AGREEMENT, is made and entered into this 19th day of February, 1992, by and between the CITY OF LODI, CALIFORNIA (herein called "City") and JONES HILL HILL & WHITE, A PROFESSIONAL LAW CORPORATION, San Francisco, California (herein called "Attorneys");

WITNESSETH:

WHEREAS, on December 18, 1991 the City issued its \$11,170,000 Installment Sale Agreement, dated as of December 1, 1991 (the "Agreement") and caused the delivery of certificates of participation (the "Certificates") representing installment payments under the Agreement (the "Installment Payments");

WHEREAS, in order to assure that the interest component of Installment Payments and interest payable with respect to 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 Agreement and 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 Agreement and 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 \$4,000.00 for the first bond year and a service fee of \$2,000.00 per bond year thereafter until depletion of the Improvement Account. Upon termination of the Improvement Fund, there will be a service fee of \$500.00 per bond year for the Reserve Fund. All fees will be payable following performance of duties required of Attorneys for the bond year in question.

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 proceeds of the Certificates and amounts to be used for payment of the Installment Payments and the Certificates or shall assist Attorneys in obtaining such information.

In the event of prepayment of Installment Payments and 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 Installment Payments and 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 end of the fifth bond year pertaining to the Agreement and 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, CALIFORNIA

Approved as to form:

Bobby W. McNatt
City Attorney, Bobby W. McNatt

Attest:

Alice M. Reimche
City Clerk, Alice M. Reimche

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

JONES HALL HILL & WHITE,
A Professional Law Corporation

By Sharon Stanton White
Sharon Stanton White