

RESOLUTION NO. 2008-08

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING AMENDMENT OF WATER SALE  
AGREEMENT BETWEEN WOODBRIDGE IRRIGATION  
DISTRICT AND THE CITY OF LODI

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby find that California Environmental Quality Act review of the Amendment is not required because there is no potential of a significant effect on the environment and, therefore, approves the amendment to the Water Sale Agreement between Woodbridge Irrigation District and the City of Lodi, as shown on Exhibit A attached hereto.

Dated: January 16, 2008

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I hereby certify that Resolution No. 2008-08 was passed and adopted by the City Council of the City of Lodi in a regular meeting held January 16, 2008, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Katzakian, and Mayor Mounce

NOES: COUNCIL MEMBERS – Hitchcock and Johnson

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL  
City Clerk

FIRST AMENDMENT TO AGREEMENT  
FOR PURCHASE OF WATER FROM WOODBRIDGE  
IRRIGATION DISTRICT BY CITY OF LODI

This First Amendment to the May 13, 2003 Agreement for Purchase of Water from the Woodbridge Irrigation District by the City of Lodi is entered into by the parties this \_\_\_\_ day of \_\_\_\_\_, 2007.

WHEREAS, the parties entered into an Agreement for Purchase of Water from the Woodbridge Irrigation District by the City of Lodi on May 13, 2003 ("2003 Agreement") providing that Woodbridge Irrigation District (District) would provide 6,000 acre feet of water per year to the City of Lodi (City), subject to dry year curtailments and the City's ability to take the water, under the terms set forth in the 2003 Agreement, for a period of forty (40) years (until May 13, 2043); and

WHEREAS, Section 8.a of the 2003 Agreement allowed the City to bank up to 18,000 acre feet of unused water during the initial three years under the 2003 Agreement to allow the City time to develop its plans for utilization of such water; and

WHEREAS, the City has taken more time than anticipated to study alternative methods of using the water provided by the District, including groundwater-recharge or by direct use after treatment, and consistent with the District's recommendation, the City has determined that its preferred alternative is to construct treatment works and deliver the treated water to the City's customers, but the City has not yet finalized its plans for utilizing the 6,000 acre-feet of water per year made available under the 2003 Agreement; and

WHEREAS, City expects to commence using the water purchased under the 2003 Agreement within the next four years. and the City has requested that the term of the 2003 Agreement for the purchase of the water from the District be extended for approximately four years, to October 15, 2047, and that it also be allowed until October 15, 2047 to bank any unused water under the Agreement for later usage; and

WHEREAS, the District is also currently negotiating and agreement with the City of Stockton for the sale of surplus water of the District to Stockton, and it is necessary to make some changes to the District's 2003 Agreement with Lodi so that the contract rights to the two Cities will not be in conflict with Each other;

**NOW, THEREFORE, THE CITY OF LODI AND THE WOODBRIDGE  
IRRIGATION DISTRICT AGREE AS FOLLOWS:**

1. The final sentence of Section 1 of the 2003 Agreement is amended to read as follows:

Any of such water which is not taken by the City in that initial year shall be included as a part of the 18,000 acre feet of carryover water which the City may

take at a later date as provided for in paragraph 8 hereof

2. The first sentence of Section 3 is amended to read as follows:

The District agrees to deliver the water to the City at the location of the District's new fish screen at the Main Canal Intake Headworks at \_\_\_\_\_ Lower North Lower Sacramento Road, Woodbridge, and also at any mutually agreeable location or locations on the District's Canal that may be determined at a later date.

3. Subsection b of Section 3 is amended to read as Follows:

b. At such times as it is possible for the District to deliver water during the remaining months of the year, or to deliver water in excess of 6,000 acre feet during the period from March 1 through October 15, then by mutual agreement of the parties, delivery of such water to the City may be made by the District. The City shall pay the District \$100 per acre foot for any such additional water delivered to the City. The determination of whether any such water is available for delivery shall be made solely by the District. In the event that both the City of Lodi and the City of Stockton request any such available water during the same period(s) that the water can be delivered, the water shall be apportioned between them if necessary in the manner and times that they shall agree upon. In the event they do not agree, such water shall be apportioned between them by the District in the ratio of 50/50, or one-half to each; provided that, if such apportionment would result in either party losing any deficiency curtailment water banked to the credit of that party because of non-use within the required eight-year period under Section 8.b., that party shall have a first right to such portion of the available water that will avoid such loss.

4. Sections 4(a) and 4(b) of the 2003 Agreement ("Term of Agreement") are amended to read as follows:

4.(a) This Agreement shall be effective from the date of execution hereof, and shall remain in effect until October 15, 2047, unless extended. Payment by the City for the water made available by the District during the four-year extension under this Amendment, i.e., until October 15, 2047, will continue to be on the same terms as provided in Section 1 of the 2003 Agreement, to wit, the basic payment of \$1,200,000 per year as escalated annually commencing on January 1, 2010, as provided in Section 3.e of the 2003 Agreement.

4.(b) Upon receipt by the District of a written notice and request for renewal from the City at least two years in advance of the termination of the Agreement, the District agrees to renew this Agreement for an additional forty (40) year term, on terms and conditions that are reasonable and equitable, provided that the price for the water upon renewal will be at the then fair market value of the water, but not less than the price being paid by Lodi under the 2003 Agreement (said new price to also be adjusted thereafter in accordance with the CPI formula in the existing Agreement).

5. A new Section 4.1 is added to the 2003 Agreement as follows:

4.1. Right to Purchase Additional Water. The City shall have the further right during the initial term of this Agreement to buy up to an additional 6,000 acre-feet of water from the District based upon the annexation of additional lands within the District to the City of Lodi after the completion and commencement of operation of the City's new Water Treatment Plant, and which as a result of such annexation will be taken out of agricultural production, as follows. For each acre of land so annexed after such date which is now zoned agricultural and which has been irrigated with District water:

- and for which a tentative subdivision map is approved for such acreage for use other than agriculture,
- and which is to be served a water supply by the City of Lodi's utility water system,

the City will be entitled to purchase an additional 3.0 acre-feet of water per such acre from the District, on the same terms and subject to the same conditions herein applicable to the 6,000 acre-feet under this Agreement.

6. Section 7.a. of the 2003 Agreement is amended to read as follows:

a. The District agrees that it will deliver up to 6,000 acre feet per annum to the City under this Agreement except to the extent that the District's Regulated Base Supply of 60,000 acre feet under its Agreements with East Bay Municipal Utility District is reduced in dry years by thirty-five (35) percent. In the event of such a reduction, the District may reduce the amount of water to be provided under this Agreement by up to fifty percent (50%). District shall on or about May 1 of each year make a preliminary estimate of whether the City's deliveries may be curtailed that year, and will provide a final estimate of any curtailment on or about July 1. In such event, the City shall only be obligated to take 35% of its estimated delivery before July 1 in that year. There shall be no reduction in the amount of the City's annual payment to the District in such years under paragraph 1.

7. A new Section 7.1 is added to the 2003 Agreement, as follows:

Section 7.1. Lodi acknowledges that District is negotiating with the City of Stockton to sell a base supply of 6,500 of water to the City of Stockton, at a price per acre-foot which is approximately the same price as provided in the District's May 13, 2003 Agreement with Lodi. The delivery of the 6,500 acre-feet of water to Stockton shall be subordinate to Lodi's right to receive its 6,000 acre-feet of water, provided that:

- a. Lodi waives and will not exercise, under the last sentence of paragraph 4(c) of the 2003 Agreement, its right of first refusal to purchase the 6,500 acre-feet of water being sold to Stockton; that

- h. The delivery of the 6,500 acre-feet of water to Stockton, and Stockton's right to purchase additional water based upon the future annexation of agricultural lands within the District to Stockton, shall take precedence over Lodi's rights to purchase additional water under paragraph 3.b; and
- c. Lodi's right to receive banked water under paragraph 8 of the 2003 Agreement will be on a parity with the right of Stockton to receive banked water under its Stockton's agreement with Woodbridge, i.e., in the event both Cities want to withdraw more banked water than is available that year, such water will be allocated one-half to each unless they agree on another allocation, as provided in the new subsection c added to paragraph 8.

8. Section 8 is amended as follows:

8. **Carry-over of Entitlements.** Unused water may not be carried over by the City from year to year except that the **right to receive water** may be "banked" as follows:

- a. If during the period from May 13, 2003 to October 15, 2010, the City does not take the water which is available to the City under this Agreement or takes less than the amounts which are available, then the City may carry over and have credit for such water not taken during that period. not to exceed a total of, 6,000 acre feet per year or a total of **42,000** acre feet, for later delivery during the remaining term of this Agreement, i.e., until October 15, 2047, at such times as the City requests delivery of the water and the District has extra water available as determined solely by the District. There will be no additional charge for the delivery of such banked water.
- b. If after October 15, 2010, delivery of water to the City is curtailed under paragraph 7.a. by reason of a dry year condition or by District's maintenance or other District activities, then the City may carry over and have credit for the amount of such curtailment for later delivery at such time(s) as the City requests delivery of the water and the District has extra water available as determined solely by the District. Any City credits for curtailed segments of carryover water shall expire at the end of **eight (8) years from the end of the period in which** the curtailment for that segment of curtailed water occurred. Such credits for delivery of curtailed carryover water within said eight-year period may extend beyond the termination of this Agreement on October 15, 2047. There will be no additional charge for delivery of such banked water.
- c. The determination of whether any such banked water or curtailment water is available for delivery shall be made solely by the District. In the event that both the City and the City of Stockton request such water during the same period(s) that water is available for delivery, the water shall be apportioned between them if necessary in the manner and times that they shall agree upon. In the event they do not agree, such water shall be apportioned between them by the District in the

ratio of 50/50 or one-half to Lodi and one-half to Stockton.; provided that, if such apportionment would result in either party losing any deficiency curtailment water banked to the credit of that party because of non-use within the ~~required~~ *eight*-year period under Section 8.b., that party shall have a first right to ~~such~~ portion of the available water that will avoid such loss.

d. Except as provided in subparagraph a, no credits shall accrue for water that is available to ~~but~~ is unused by the city.,

9. Section 14 of the 2003 Agreement ~~is amended~~ to read as follows:

14. City Use of District Rights ~~of~~ Way. The District agrees to cooperate with City and to agree to the City's use of any District right of way along the District's Main Canal needed by the City for the conveyance or distribution of water it obtains from the District, ~~provided~~ that such use does not interfere with District's use of its right of way and that District's right of way permits such use by City. The District agrees ~~that~~ City may continue any such use ~~of~~ the right of way established during the ~~term~~ of this Agreement after the ~~term~~ of this Agreement expires.

10. Section 14.a. ~~is~~ added to the 2003 Agreement as follows:

14.a. District Installation of Quality Control Structures on City's Storm Water Discharge Locations. Under the City's October 20, 1993 Storm Drainage Discharge Agreement with the District, City has the right to discharge into District canals, waters collected by the City's storm drainage system (excluding industrial waste and sewage effluent), under the terms and conditions set forth in said Agreement. District shall be entitled at its option to construct or install from time to time at convenient locations on the City's property at or near any of the City's stormwater discharge points into the District's canal system, and to operate and maintain, at the District's cost, ~~filtration/sedimentation~~ structures or other water quality control or improvement devices at said ~~point(s)~~, subject to the City's prior approval the ~~plans~~ and specifications for such installations, which approval shall not be unreasonably withheld. Nothing herein shall alter City's obligations under said Agreement with respect to the quality of the storm waters and storm drainage into the District's Canals, and all provisions thereof ~~shall~~ continue in full force and effect.

11. All terms and provisions of the 2003 Agreement remain in full force and effect, except ~~as~~ they are expressly amended or modified by this First Amendment to Agreement.

IN WITNESS WHEREOF, the parties hereto **have** executed this instrument on the day of \_\_\_\_\_, 2007

Attest:

WOODBIDGE IRRIGATION DISTRICT

\_\_\_\_\_

\_\_\_\_\_

Attest:

CITY OF LODI, A MUNICIPAL CORPORATION

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

By \_\_\_\_\_  
\_\_\_\_\_. Mayor

APPROVED **AS** TO FORM:

\_\_\_\_\_  
\_\_\_\_\_. City Attorney