

RESOLUTION NO. 2014-156

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO
EXECUTE A REIMBURSEMENT AGREEMENT
WITH LODI IRON WORKS FOR A UTILITY
SERVICE PROJECT

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WHEREAS, as part of a utility service request from Lodi Iron Works, Lodi Electric Utility (EU) purchased and installed various utility improvements for a new building at 820 South Sacramento Street; and

WHEREAS, upon receipt of the estimated cost of the work from the City, Lodi Iron Works paid \$10,000 prior to the start of the work and then agreed to reimburse the balance of \$28,388.12 to the City by the end of the current fiscal year as outlined in the attached Reimbursement Agreement; and

WHEREAS, the work has been completed and the actual repayment amount will be based on the total final cost as provided by EU to Lodi Iron Works; and

WHEREAS, actual final costs will be trued up in accordance with EU rules and regulations; and

WHEREAS, all costs associated with the improvements will be reimbursed by Lodi Iron Works.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Reimbursement Agreement with Lodi Iron Works for a utility service project in the amount of \$38,388.12, for which the final amount will be determined based on final actual project costs.

Dated: August 20, 2014

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I hereby certify that Resolution No. 2014-156 was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 20, 2014, by the following vote:

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


JENNIFER M. ROBISON
City Clerk

**REIMBURSEMENT AGREEMENT
UTILITY SERVICE - 820 S. Sacramento Street
LODI IRON WORKS**

RECITALS

1. This Reimbursement Agreement (hereinafter "AGREEMENT") is entered into on July 22, 2014 by and between the CITY OF LODI, a municipal corporation, (hereinafter "CITY") and Lodi Iron Works (hereinafter "LODI IRON WORKS").

2. At the request of LODI IRON WORKS, CITY has agreed to purchase and install designated utility improvements more fully described in Exhibit A, attached hereto and made a part hereof, as part of a utility service project benefitting LODI IRON WORKS at 820 S. Sacramento Street, Lodi, San Joaquin County, California (hereinafter "PROJECT").

3. LODI IRON WORKS agrees to reimburse CITY for all costs associated with PROJECT pursuant to the terms and conditions set forth below.

WITNESSETH

WHEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. The total estimated cost of the utility materials and labor described in Exhibit A is the amount of \$38,388.12. The total final cost of the utility materials and labor described in Exhibit A will be provided to LODI IRON WORKS upon completion of PROJECT in the form of an invoice summarizing all materials, equipment, and labor costs incurred by CITY for PROJECT.

2. In the event that the labor required to perform PROJECT occurs outside of CITY operating hours, LODI IRON WORKS will be charged any and all additional labor costs over and above the costs identified in Exhibit A.

3. LODI IRON WORKS has paid CITY \$10,000.00, receipt of which is hereby acknowledged, for costs associated with PROJECT, as set forth in Exhibit B, attached hereto and made a part hereof.

4. The balance due and owing by LODI IRON WORKS for PROJECT will be payable to CITY in installments as identified in Exhibit B, until such time as the balance is paid in full, but in no event later than June 20, 2015. The final schedule of installment payments (Exhibit B) will be provided to LODI IRON WORKS following PROJECT completion and prior to the first installment payment due date, and will be based on the total final cost of PROJECT, as described in paragraphs 1 and 2 above. LODI IRON WORKS agree that it is responsible for the total final cost of PROJECT as determined by CITY.

5. This AGREEMENT is subject to approval by the Lodi City Council. In the event this AGREEMENT is not approved by the Lodi City Council, LODI IRON WORKS will be responsible for paying in full, all final costs associated with PROJECT no later than September 20, 2014.

6. Failure by LODI IRON WORKS to pay, in full, any payment required under this AGREEMENT when due, followed by written notice from CITY to LODI IRON WORKS of such failure, and ten (10) calendar days opportunity to cure, shall constitute an event of default under this AGREEMENT.

- a. Upon occurrence of such an event of default, the entire unpaid balance due under this AGREEMENT shall, at the option of CITY, become immediately due and payable upon written notice to LODI IRON WORKS without further demand by CITY.
- b. Failure of CITY to exercise the remedy set forth above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right of CITY to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by CITY of any payment which is less than the total amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express written consent of CITY, except as to the extent otherwise provided by law.
- c. LODI IRON WORKS agrees to pay all costs and expenses, including reasonable attorney's fees and any other professional service fees or costs, incurred by CITY in the event of default, regardless of whether suit is filed to seek enforcement under this AGREEMENT.

7. The provisions of this AGREEMENT are not intended to create, nor shall they in any way be interpreted, to create a joint venture, a partnership, or any other similar relationship between the parties.

8. All notices required by this AGREEMENT shall be in writing and delivered in person, by overnight delivery, or sent by certified mail, postage prepaid, as follows:

TO CITY:

Elizabeth Kirkley, Director
Lodi Electric Utility
1331 S. Ham Lane
Lodi, CA 95242

TO LODI IRON WORKS:

Kevin Van Steenberge
Lodi Iron Works
820 S. Sacramento Street
Lodi, CA 95240

9. No modification of this AGREEMENT shall be valid unless said modification is in writing and signed by both parties.

10. This AGREEMENT shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this AGREEMENT shall be venued with the San Joaquin County Superior Court. If any part of this AGREEMENT is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this AGREEMENT shall be in full force and effect. In the event of any dispute between the parties arising under or regarding this AGREEMENT, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

11. This AGREEMENT represents the entire understanding of CITY and LODI IRON WORKS as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

IN WITNESS HEREOF, the parties hereto have entered into this AGREEMENT effective as of the date set forth hereinabove.

CITY OF LODI, a municipal corporation

ATTEST:

JENNIFER M. ROBISON
City Clerk

STEPHEN SCHWABAUER
City Manager

APPROVED AS TO FORM:
JANICE D. MAGDICH, City Attorney

LODI IRON WORKS

By: _____


By: 
Name: Kevin Van Stenberg
Title: President

**EXHIBIT A
ESTIMATED PROJECT COST**

REIMBURSEMENT AGREEMENT
UTILITY SERVICE - 820 S. Sacramento Street
LODI IRON WORKS

PROJECT DESCRIPTION:

One transformer of (500 kVA), three phase 4-wire system
Distribution pole installation
12 kV riser cable and cut out switch arrangement
Pulling of low voltage cable from transformer to expected distribution panel

COST ESTIMATE INCLUDES:

One (1) transformer
Installation of transformer and low voltage conductors (cables and conductors) and accessories
Installation of one (1) 12 kV pole
Purchase and installation of (3) 12 kV riser cables, cut out switches and terminations
Administrative costs (including engineering and technical support staff)

COST ESTIMATE DOES NOT INCLUDE:

Distribution panel
Design and installation of customer's new equipment
Installation of one (1) transformer pad
Installation of trench, underground conduit and restoration of property in or adjacent to project

ESTIMATED PROJECT COST

Transformer cost	\$ 9,425.00
Transformer installation	\$ 997.71
Underground material	\$ 4,060.00
Installation of underground material	\$ 4,556.73
Overhead material	\$ 1,829.61
Installation of overhead material	\$ 4,370.91
Overhead costs	<u>\$13,148.16</u>
Total:	\$38,388.12

EXHIBIT B
SCHEDULE OF INSTALLMENT PAYMENTS

REIMBURSEMENT AGREEMENT
UTILITY SERVICE - 820 S. Sacramento Street
LODI IRON WORKS

Total Estimate: \$38,388.12

Down Payment: \$ (10,000.00)

	Due No Later Than	
Payment 1	09/20/14	\$2,840.00
Payment 2	10/20/14	\$2,840.00
Payment 3	11/20/14	\$2,840.00
Payment 4	12/20/14	\$2,840.00
Payment 5	01/20/15	\$2,840.00
Payment 6	02/20/15	\$2,840.00
Payment 7	03/20/15	\$2,840.00
Payment 8	04/20/15	\$2,840.00
Payment 9	05/20/15	\$2,840.00
Payment 10	06/20/15	<u>\$2,828.12</u>

Balance: \$0.00

Actual repayment schedule will be based on final project cost as provided by CITY and will be provided to LODI IRON WORKS following project completion prior to first installment payment due date.