



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Memorandum of Understanding (MOU) with San Joaquin County for Provision of Domestic Wastewater Treatment Services for County Service Area 31 (Flag City)

MEETING DATE: April 4, 2007

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute the attached MOU with San Joaquin County for provision of domestic wastewater treatment services for County Service Area 31 (Flag City).

BACKGROUND INFORMATION: In 2006, the City Council authorized negotiations with San Joaquin County with regard to domestic wastewater service for County Service Area 31 (Flag City). This was in response to a formal request made in December 2005 from the Board of Supervisors requesting Lodi consider providing sewer service to Flag City. The County is faced with making a decision about sewer treatment plant upgrades to meet regulatory requirements. Connection to Lodi's facility is the preferred alternative of several that were studied.

In 2006, City staff stated a key reason to consider the County's request was to secure greater influence with regard to development in the Flag City area and to prevent the County from securing wastewater service from the City of Stockton or expand the CSA to achieve greater economy of scale. The City Attorney referenced the *Dateline Builders v. Santa Rosa* case where the City of Santa Rosa provided limited sewer service to avoid a proliferation of additional wastewater treatment facilities that facilitated development outside of the city limits. In addition to controlling development, staff felt it could propose an agreement that would not only be revenue neutral but would allow the City to realize additional income.

Our respective staffs have drafted the attached MOU, which has been approved by the Board of Supervisors. Major points are:

- The MOU facilitates the goals of the City and County in supporting compact land use and development, and discouraging "leap frog development" and "urban sprawl".
- The service area will be issued a City discharge permit with typical requirements, including our ability to make changes in the event of changes in State or Federal requirements. The only limitation is that the permit can be no stricter than the City's State permit.
- Annual volume is limited and potential increases are linked to tax-sharing agreements.
- Service charges would be at standard City wastewater service rates plus a 35% surcharge. (Note, the charges would be based on actual flow, biochemical oxygen demand (BOD) and suspended solids as currently done for high strength users, as measured at one point of service. The City would bill the County; we would not be billing individual customers.)
- Wastewater Impact Fees (Capacity fees) would be paid. (The amount is roughly \$6 million, however, an engineering analysis may provide alternatives that could reduce the capacity impacts and associated costs.)
- An administrative fee of \$250,000 is to be paid to the City upon execution of the agreement and City adoption of ordinance allowing the connection.

APPROVED: _____
Blair King, City Manager

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- The County will build the necessary facilities to connect to the City's facilities. The agreement covers treatment only; collection system maintenance is not included.
- The service area is limited to the existing established service area unless the City agrees to the change which is linked to tax-sharing.
- The agreement provides for City review of new development.
- The County consents to adding Flag City in the Lodi Tourism Business Improvement District, however, the City will have to process the change.
- All costs of evaluating impacts to the City's facility, processing environmental review and associated staff costs are to be paid by the County.

The proposed MOU limits the County to 0.19 MGD (190,000) of the Wastewater Plant's 8.5 MGD capacity without a new tax sharing agreement. If the County exceeds the 0.19 MGD limit, then the County may negotiate a new tax sharing agreement for additional wastewater capacity up to a not-to-exceed limit of 0.21 MGD.

If the Council were to deny the agreement, we would assume that the County would proceed to make improvements to the existing Flag City Wastewater Treatment facility. However, these improvements would be costly. To mitigate the costs of wastewater treatment to the businesses at Flag City, the County could expand the boundaries of the CSA in order to achieve economies of scale and spread the cost over a larger base. The County could also approach the City of Stockton to secure wastewater treatment services.

The County studied several alternatives to meeting State discharge requirements and concluded that connecting to the City provides better long-term certainty and the economies of scale advantages of being part of a larger system.

Approval of this request would require an amendment to the Municipal Code, which currently prohibits domestic wastewater service outside the City limits. Staff would propose that the ordinance be amended to allow such service to public agencies only, and if this action is approved, an ordinance revision would be brought back to the Council at a later date.

FISCAL IMPACT: Depending on actual flow and strength, the surcharge revenue to the General Fund would be in the range of \$50,000 to \$100,000 per year. The capacity fee would be a significant cash infusion to the Wastewater Fund, which has a number of high-cost capital needs in the near future. One potential long-term concern is that Flag City's effluent is considerably higher in salts than the City's effluent. This is partly due to their source water (wells) and the nature of the businesses located in the District. The City's new discharge permit is likely to have a salinity limit. While it appears we will be able to meet that limit including Flag City, this could be problematic in the future. This potential impact is mitigated by our ability to amend their discharge permit to require a reduction in the salinity of their wastewater.

FUNDING AVAILABLE: Not applicable.

Richard C. Prima, Jr.
Public Works Director

RCP/pmf
Attachment

cc: Steve Schwabauer, City Attorney
Randy Hatch, Community Development Director
Tom Flinn, San Joaquin County Public Works Director

Charlie Swimley, Water Services Manager
Manuel Lopez, San Joaquin County Administrator

**County Service Area No. 31 “Flag City”
Domestic Waste Connection Memorandum of Understanding**

THIS Memorandum of Understanding (“MOU”) is entered into this ____ day of _____, 2007, (the "Effective Date"), between THE COUNTY OF SAN JOAQUIN, a political subdivision of the State of California (“County”); COUNTY SERVICE AREA No. 31, a County Service Area established by the County of San Joaquin pursuant to the County Service Area Law of the State of California (“Flag City”); and the CITY OF LODI, a municipal corporation organized and existing under the laws of the State of California (“City”). Flag City, as a County Service Area, is merely an administrative unit of County and is referred to separately in the Agreement purely for administrative convenience.

RECITALS

This MOU is predicated upon the following findings:

A. Flag City is a County Service Area located at the intersection of Highway 12 and Interstate 5, in San Joaquin County, California, four (4) miles west of the corporate limits of the City of Lodi. Flag City currently operates a secondary wastewater collection system and treatment facility, however the treatment facility needs major upgrades to meet State discharge requirements.

B. The City, through its general plan is committed to encouraging agricultural uses in the area surrounding the City and discouraging urban uses. The City of Lodi’s General Plan contains the following land use element goals:

- a.. Policy LU-A.1 – The City shall seek to preserve Lodi’s small-town and rural qualities.
- b. Goal LU-B – To preserve agricultural land surrounding Lodi and to discourage premature development of agricultural land with nonagricultural uses, while providing for urban needs.
- c. Policy LU-B.1 – The City shall encourage the preservation of agricultural land surrounding the City.
- d. Policy LU-B.2 – The City should designate a continuous open space greenbelt around the urbanized area of Lodi to maintain and enhance the agricultural economy.
- e. Policy LU-B.6 – The City shall encourage San Joaquin County to retain agricultural uses on lands adjacent to the City.

C. The City encourages compact development and discourages leapfrog development and urban sprawl within the Highway 12/Interstate 5 corridor, all of which would be inconsistent with the above general plan goals. The City’s General Plan is committed to the above goals within its own boundaries as well, stating the following:

- a. A-5 The City shall require specific development plans in areas of major new development.

- b. E-2 The City shall promote downtown Lodi as the primary pedestrian-oriented, commercial area of Lodi.
 - c. E-4 The City shall ensure the new commercial development be designed to avoid the appearance of strip development.
 - d. E-7 In approving new commercial projects, the City shall seek to ensure that such projects reflect the City's concern for achieving and maintaining high quality development.
- D. Providing wastewater treatment service to Flag City on the condition that service not be afforded to developments that conflict with the goals set forth herein furthers those goals by concentrating development in an existing County Service Area with set boundaries.
- E. County acknowledges the goals set forth in the Lodi General Plan as set forth above and has similar provisions in its General Plan which encourage agricultural uses, compact land use and development, and discourage "leap frog development" and "urban sprawl." Toward these ends, the County General Plan provides:
- 1. To make efficient use of land and promote a functional development pattern with varied and compatible land uses.
 - 2. To minimize the effect on agricultural lands and other environmental resources while providing for orderly growth.
 - 3. To create a visually attractive County.
 - 4. To avoid the problems and costs imposed on local government by development that does not have adequate services.
 - 5. Rural Communities Shall:
 - (a) be planned to have minimal growth, mainly infill development, with expansion discouraged;
 - (b) be planned to serve the immediate needs of the community's residents or the surrounding agricultural community;
 - (c) have a minimum land area of 50 acres or have been identified on the General Plan 1995 map as a residential area.
 - 6. Development shall be orderly and compact.
 - 7. Development should occur on vacant lots within existing communities as "infill" before extending beyond the current developed areas of a community.

8. Freeway Service.

- (1) Function: Provide for commercial uses oriented almost exclusively to serving the needs of the freeway traveler.
- (2) Typical Uses: Travel-related businesses including gasoline service stations, food and beverage sales, eating and drinking establishments, and hotels and motels.
- (3) Development and Locational Criteria: Freeway Service areas shall be:
 - (A) designated only adjacent to full freeway interchanges where development will be easily accessible and visible to the freeway traveler.
 - (B) limited in number to encourage clustering of uses at selected interchanges;
 - (C) limited in area in order to reduce impacts on surrounding land uses and control the physical and visual extent of these areas;
 - (D) developed so that buildings occupy no more than 60 percent of the lot and are no more than 3 stories in height; and
 - (E) designed in an attractive manner that creates a favorable impression of the County by considering the overall site design, landscaping, scale of development, signage, relationship to adjacent uses, circulation and parking, and architecture.

- F. There is a need for upgraded sewer treatment facilities to service Flag City and the parties wish to cooperatively ensure that any development that occurs in Flag City is orderly, compact and in compliance with the goals of the City and County General Plans.

NOW THEREFORE, the parties to this MOU agree as follows:

1. Definitions. Unless otherwise defined in this MOU, all capitalized terms will have the definitions ascribed to them in Lodi Municipal Code Section 13.12.020.
 - a. The Term Highway 12/Flag City Corridor shall mean the area bounded by the White Slough Water Pollution Control Facility ("WSWPCF") on the west, the City of Lodi on the East, ½ mile north of Highway 12 on the north and ½ mile south of the trunk sewer line connecting the City of Lodi to the WSWPCF on the south.

- b. Flag City Service Area shall mean all properties within the boundaries of County Service Area 31, as set forth in Exhibit A.
2. Terms of Connection. Any delivery of wastewater permitted pursuant to the MOU shall be subject to the following terms:
- a. Permit: Flag City shall comply with the terms of a Discharge Permit to be issued by the City which will include but not be limited to limitations on maximum flow, BOD, ph, TDS and suspended solid concentrations and prohibitions on discharge of hazardous waste in conformance with the City's NPDES Permit. The terms of this Discharge Permit will be no more stringent than those required under the City's NPDES permit. However, City may change the terms of the discharge permit without notice if necessary to comply with State or Federal requirements.
 - b. Volume: The intent of this MOU is to provide sewer treatment services to the properties within the Flag City Service Area boundaries, as set forth in Exhibit A. Current volume of wastewater is 0.11 MGD (annual average). Estimated volume at build out of the Flag City Service Area is .19 MGD (annual average). Flag City shall not exceed .19 MGD annual average without negotiating a tax sharing agreement with the City of Lodi for all new development contributing to the increased flow. In all events, the volume of wastewater shall not exceed 0.21 MGD (annual average).
 - c. Rate/Surcharge: Flag City's charge for treatment will be as established by the City for its high strength customer users plus a 35% surcharge.
 - d. Capacity Charge: Flag City shall pay a one-time capacity charge based on the then-current rates for new city development at the time of connection. (These charges are adjusted annually). Additional capacity charges at the current City rates will apply for each increment of effluent over the amount initially paid. Capacity charge reductions or credits may be granted for steps taken by Flag City to minimize impacts to City's overall treatment plant capacity through pre-treatment, off-peak delivery, or other mutually agreed strategies.
 - e. Administrative Charge: County shall pay City \$250,000 as a one time administrative charge upon the execution of this MOU and fulfillment of section 8 below.
 - f. Flag City will be solely responsible for all costs associated with installing a pipeline ("Collection Facilities") to connect to Lodi's Waste Water Treatment Plant.
 - g. City will bill for its services directly to Flag City and not to individual customers. Annual billing will commence with commencement of flow to the City's facility and will be billed in advance for a twelve (12) month period, based on estimated flow and strength. Subsequent annual billings will be based on actuals for the prior twelve (12) months. Flag City will pay all invoices within thirty days of the date of the invoice.

- h. Neither County nor Flag City will knowingly allow any person or entity to discharge to its Collection Facilities whose property is outside the Flag City Service Area, without prior City approval, which City may withhold in its absolute discretion. In the event County or Flag City violate the terms of this paragraph, the responsible party shall have three months from receipt of written notice of the violation to cure the violation without penalty. Thereafter, Flag City shall pay a 100 percent surcharge on Flag City's then current daily rate until cured.
 - i. Working cooperatively with City staff, Flag City will develop an application for connection to its Collection Facilities and require that all future applicants submit responses to questions designed to elicit their facilities compliance with the goals contained in this MOU and the discharge permit issued by City to Flag City. Flag City will copy City with all applications so submitted within 5 business days of receipt.
 - j. County represents that it is its existing policy that areas in the Highway 12/Flag City Corridor will only be approved for development to the extent they are consistent with the County's goals and policies set forth in this MOU.
 - k. Business Improvement District: Pursuant to California Streets and Highways Code Section 36521.5, County hereby consents to the inclusion of County Service Area No. 31 in the Lodi Tourism Business Improvement District codified in Lodi Municipal Code Section 12.07 et seq. City shall be solely responsible for the implementation and collection of any such tax and/or fee associated with the inclusion of the District and County's consent is limited to allowing City to follow proper procedures for implementation and collection of such fee and or tax.
 - l. District Expansion: County agrees that it will not expand the boundaries of the Flag City Service Area in a manner that results in the need for additional City sewer capacity, without the express written consent of City, which City may withhold in its absolute discretion. County and City agree that a minimum condition for this approval will be entry of a tax sharing agreement for all property added to the service area
 - m. Design Guidelines: Working cooperatively with City staff, County will develop design guidelines for all new construction within County Service Area No. 31, for adoption through applicable land-use hearing processes.
3. Reimbursement. County shall reimburse the City for all costs incurred by the City in connection with the project. The City will provide County with an estimate of these costs in advance of connection. County shall deposit the estimate with the City within 30 days of receiving the estimate. City will bill all costs against the deposit. In the event the deposit is exceeded, County shall pay the difference to the City within 30 days of notice. Any excess will be refunded to County within 30 days.

4. Relationship of Parties.

- a. It is understood that the relationship between the parties is an MOU relationship between public agencies and not an agency; and nothing herein shall be construed to the contrary.
- b. The Parties agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the parties joint venturers or partners.
- c. This MOU is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person, including but not limited to the residents (past, current, anticipated or future) of County Service Area No. 31, or developers or owners proposing projects within or outside the boundaries of County Service Area 31, shall have any right of action based upon any provision in this MOU. Moreover, this MOU creates no rights for any property owner to obtain sewer service directly from the City of Lodi.

5. Notices. All notices required or provided for under this MOU shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the City and Flag City and its representative and Flag City's successors and assigns. Notice shall be effective on the date it is delivered in person, or the date when the postal authorities indicate the mailing was delivered to the address of the receiving party indicated below:

Notice to City: City of Lodi
City Manager
221 W. Pine Street
Lodi, CA 95240

Notice to Flag City: CSA 31
Director of Public Works
P.O. Box 1810
Stockton, California 95201

Notice to County: San Joaquin County
County Administrator
Courthouse-222 E. Weber Ave.
Stockton, CA 95202

6. Indemnification, Defense and Hold Harmless.

- a. County and Flag City agree to and shall indemnify, defend and hold the City, its council members, officers, agents, employees and representatives harmless from liability for damage or claims of damage,

for personal injury, including death, and claims for property damage which may arise from or relate to this MOU.

- b. With respect to any action challenging the validity of this MOU or any environmental, financial or other documentation related to approval of this MOU, County and Flag City further agree to defend, indemnify, hold harmless, pay all damages, costs and fees, if any incurred to either the City or plaintiff (s) filing such an action should a court award plaintiff(s) damages, costs and fees, and to provide a defense for the City in any such action.
- 7. Environmental Documentation: County shall at its sole cost and expense, perform all environmental review required by the California Environmental Quality Act or other applicable environmental law or regulation.
- 8. Binding Effect of Agreement. The parties acknowledge that this MOU may be subject to environmental review and is subject to the Lodi City Council revising its wastewater ordinance to permit the discharge contemplated in this MOU. The terms of this MOU will therefore only take effect if any necessary environmental approvals are obtained and if the Lodi City Council makes the necessary ordinance revisions.

IN WITNESS WHEREOF this MOU has been executed by the parties on the day and year first above written.

CITY OF LODI, a municipal corporation

COUNTY OF SAN JOAQUIN, a political subdivision of the State of California

BLAIR KING

VICTOR MOW, Chairman
Of the Board of Supervisors

City Manager

ATTEST:

RECOMMENDED:

Randi Johl
City Clerk

T. R. FLINN
Director of Public Works

APPROVED AS TO FORM:

APPROVED AS TO FORM:

D. STEPHEN SCHWABAUER
City Attorney

LAWRENCE P. MEYERS
Deputy County Counsel

RESOLUTION NO. 2007-_____

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE MEMORANDUM OF UNDERSTANDING WITH SAN JOAQUIN COUNTY FOR PROVISION OF DOMESTIC WASTEWATER TREATMENT SERVICES FOR COUNTY SERVICE AREA 31 (FLAG CITY)

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute Memorandum of Understanding with San Joaquin County for provision of Domestic Wastewater Treatment Services for County Services Area 31 (Flag City), on behalf of the City of Lodi, on file in the office of the City Clerk.

Dated: April 4, 2007

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I hereby certify that Resolution No. 2007-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 4, 2007, by the following vote:

- AYES: COUNCIL MEMBERS –
- NOES: COUNCIL MEMBERS –
- ABSENT: COUNCIL MEMBERS –
- ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk