

Julie A. Hamill
jhamill@rwglaw.com

August 26, 2011

Palmdale Water District
2029 East Avenue Q
Palmdale, CA 93550

Re: **Government Claim for Refund and Damages Presented by City of Palmdale in Connection with Palmdale Water District's Unconstitutional Water Rate Structure**

To Whom It May Concern:

Pursuant to California Government Code section 905 *et seq.*, the City of Palmdale ("City") hereby presents this claim for a refund and damages from the Palmdale Water District ("PWD") in connection with PWD's unconstitutional water rate structure.

a. Name and Address of Claimant

City of Palmdale
38300 Sierra Highway
Palmdale, California 93550

b. Name and Address of Person to Whom Notices Should Be Sent

Julie A. Hamill/Gregory M. Kunert
Richards, Watson & Gershon
355 S. Grand Avenue, 40th Floor
Los Angeles, California 90017
jhamill@rwglaw.com
gkunert@rwglaw.com

c. Description of Claim

In May 2009, PWD adopted a new water rate structure and increased its water rates. The following day, the City filed a complaint seeking to invalidate the unconstitutional water rate increase. On August 9, 2011, the Court of Appeal of the State of California deemed PWD's rate increase and rate structure unconstitutional and invalid.

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For more than two years, the City endured the illegally imposed and charged rates for water use under PWD's unconstitutional rate structure. In addition, PWD's invalid rate structure forced the City to cease watering many of its parks and facilities, resulting in significant damage. PWD continues to charge the City rates determined to be invalid and unconstitutional, and, as a result, the City continues to be damaged every day that PWD's rates exceed those charged prior to May 2009. By this claim, the City seeks damages to compensate the City for injuries suffered as a direct result of PWD's unconstitutional actions, as well as a refund of the money it paid, and will pay, to PWD under the illegal and invalid rate structure.

In addition, PWD was grossly negligent in the implementation of its invalid rate structure in that its billing software was not thoroughly vetted and produced bills to the City that contained thousands of errors resulting in overcharges, duplicative charges, randomized billing dates among other errors. Many of these errors still continue more than two years after PWD imposed the illegal rate increase. The grossly negligent implementation of this software and PWD's intentionally complicated and duplicative billing appeals process forced the City into time-consuming and expensive billing appeals. After forcing the City through this appeal process on multiple occasions for hundreds of separate billings, PWD conceded that its errors were numerous and significant and entered into the attached agreement whereby the City was not obligated to appeal each and every billing.

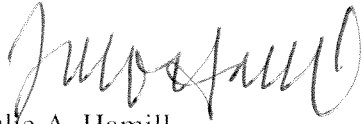
The City seeks a refund of the unconstitutional rates it paid, and will pay, to PWD, damages sustained as a result of these invalid rates and the erroneous charges caused by its grossly negligent implementation of the new rate system, all refunds, damages and errors estimated to exceed \$3,000,000. Based on the anticipated refund and amount of damages, this matter would constitute an unlimited civil case.

d. Conclusion

The City appreciates PWD's attention to this claim, and anticipates a response within 45 days pursuant to Government Code Section 912.4(a).

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Very truly yours,

A handwritten signature in black ink, appearing to read "Julie A. Hamill". The signature is fluid and cursive, with the first name being the most prominent.

Julie A. Hamill

Attachment: Agreement Between City of Palmdale and Palmdale Water District
Concerning City Appeal of Water District Invoices

P6399-1252\1386934v3.doc

AGREEMENT BETWEEN THE CITY OF PALMDALE
AND PALMDALE WATER DISTRICT CONCERNING
CITY APPEAL OF WATER SERVICE INVOICES

This Agreement (the "Agreement") between the City of Palmdale (the "City") and Palmdale Water District (the "District") concerning City appeals of water service invoices is entered into on May 27, 2010.

RECITALS

A. Pursuant to the District's Rules and Regulations, the City has filed a series of protests of invoices for water services issued by the District. The dates of the City protests are November 10, 2009, March 4, 2010 (three separate protests), March 9, 2010, March 10, 2010, March 16, 2010, March 17, 2010, March 25, 2010, April 1, 2010, April 13, 2010, April 14, 2010, April 15, 2010, April 22, 2010, April 28, 2010 (two separate protests), and May 5, 2010 (two separate protests). All of these protests are collectively referred to herein as the "City Protests".

B. The District General Manager has issued determinations in response to each of the City Protests as required by the District's Rules and Regulations. The City has appealed all of the General Manager Determinations ("City Appeals") to the District Board of Directors ("Board"). The Board has considered the City Appeals at its Board meetings on February 24, 2010, March 10, 2010, March 24, 2010, and April 28, 2010, respectively. The Board has scheduled a hearing to consider City appeals on May 26, 2010.

C. Several of the grounds for protest raised in the City Protests are recurring and involve the same issues. The parties desire to enter into a stipulation relative to these issues as set forth herein.

AGREEMENT

In consideration of the Recitals above, and the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and District agree as follows:

A. The District Board has denied each of the City's previous appeals and is hereby denying the City's appeals scheduled to be heard on May 26, 2010. Each of these denials constitutes a final decision of the District on each of the following grounds for protest by the City:

- 1) That the water service invoices are missing the following information which the City contends is necessary or required by law: (a) the date the meter was read and the date of the last reading; (b) the classification of service (i.e.

residential, commercial etc.) assigned to the property being billed; (c) the square footage of parcel or historical water usage of parcel as applicable; (d) the evapotranspiration (ET) data from the CIMIS; (e) the amount of water allocated that month for the "water budget"; and (f) the amount of water billed at each tier.

3*) That the District is using an erroneous ETAF (landscape factor) in calculating charges. The City contends the landscape factor should be .8 and for parks it should be 1.0.

4) That the number of days in a billing period varies. The City contends invoices should be done on a monthly basis.

6) That the invoices contain erroneous classifications of property, primarily the classifications of "fire line" or "fire protection," which are not recognized classes of service under the District's rate structure adopted in May 2009.

7) That the invoices contain unauthorized fee(s) or charge(s) in violation of District Rules and Regulations, State law and the California Constitution, or District Board did not properly adopt such fees. The specific fees involved in this claim by the City are fire service, fire line, maintenance fees, misc. fees, and other fees charged by the District, which were not approved by the Board in Resolution 09-08.

8) That the invoices utilize erroneous parcel areas in calculating the water budget. The City contends parcel areas for irrigation only accounts should be based on the entire parcel, rather than only that area actually being irrigated.

*The numbers are not consecutive but reflect the number used for the objection in the City's protests and appeals.

B. The District agrees that the City has exhausted its administrative remedies regarding the objections identified in Section A for water service invoices dated after April 2010 ("Future Invoices"). Therefore, the District agrees that the City is not required to file protests on Future Invoices in order to exhaust its administrative remedies, under the District's Rules and Regulations for protesting and appealing Future Invoices on the grounds set forth in Section A. The District agrees that it will not raise the defense of failure to exhaust administrative remedies in any court action filed by the City concerning Future Invoices based on the grounds set forth in Section A and the City may rely upon this Agreement in any future Court action.

C. The Parties agree that this Agreement shall not constitute, and shall not be interpreted or implied as, any waiver by the City of any objection to waters

service invoices issued by the District or a waiver by the District of any defense to any claims or actions by the City, except as set forth in Section B.


D. The Parties represent they have been fully advised by their respective attorneys concerning their rights and have been further advised by their attorneys as to the terms and effects of this Agreement.


E. The Parties each certify, represent and warrant that the individual(s) signing below on its behalf has authority to execute this Agreement on behalf of the Party, and may legally bind the Party to the terms and conditions of this Agreement. Any amendment to this Agreement shall be in writing signed by both the City and District.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

PALMDALE WATER DISTRICT


CITY OF PALMDALE


By: 
Dennis D. LaMoreaux
General Manager

By: 
Stephen H. Williams
City Manager


APPROVED AS TO FORM

APPROVED AS TO FORM

By: 
Timothy J. Gosney, Esq.
Lagerlof, Senecal, Gosney & Kruse, LLP
Attorney for Palmdale Water District

By: 
Wm. Matthew Ditzhazy
City Attorney

ATTEST

By: 
Victoria L. Hancock, CMC
Acting City Clerk