

TO: James L. App, City Manager
FROM: Mike Compton, Director of Administrative Services
Brad Hagemann, Water Resources Manager
SUBJECT: Nacimiento Water Project Pre-construction Funding
DATE: April 19, 2005

NEEDS For the Council to consider approval of Memorandum of Understanding with the San Luis Obispo County Flood and Water Conservation District (District) relating to the method of payment of Nacimiento Water Project pre-construction costs.

FACTS:

1. On December 7, 2004, pre-construction costs (Costs) funding options were presented to Council (copy of staff report attached).
2. The current Nacimiento Water Project contract requires that the Costs be paid by each participant in a lump sum amount at the beginning of the project.
3. Project participants have requested consideration to pay the Costs as expenses are incurred rather than lump sum.
4. The County is agreeable to allowing participants to make quarterly payments based upon cash flow projections for the Costs.
5. The County desires to formalize this payment option via the attached MOU (First Amendment to the Nacimiento Project Water Delivery Entitlement Contract).

**ANALYSIS
AND
CONCLUSION:**

The Nacimiento Water Commission has taken action to allow participants to pay for pre-construction costs on a "pay as you go basis" rather than paying the entire cost upfront. The Board of Supervisors has re-affirmed this option but wants it formalized via the MOU presented herein.

Instead of paying \$8 million lump sum up front, the City may pay based upon projected cash flow needs.

Ultimately, the Costs will be reimbursed to the City from the proceeds of the bond sale for the construction portion of the project. If the project were not to move forward, the City's Water Operations Fund will bear the burden of all costs incurred until that date.

**FISCAL
IMPACT:**

The City currently has cash resources of \$12.3 million in the Water Operations Fund from which these pre-construction costs may be paid. Some of this cash will be used for various capital improvement projects over the next four years. Given historical experience, it is unlikely that all of the projects will be started or completed within the time frame allotted. Additionally, cash

resources will continue to accrue over time and, as noted above, pre-construction costs advanced would be fully reimbursed from construction cost financing.

OPTIONS:

- a. That the Council:
 1. Approve the Memorandum of Understanding (First Amendment to the Nacimientto Project Water Delivery EntitlementContract) attached herewith and authorize the Mayor to execute same;
 2. Adopt Resolution 05-xx regarding Nacimientto water project financing and intent to reimbursement expenditures from construction bond proceeds; and
 3. Adopt Resolution 05-xx regarding approval of a Memorandum of Understanding relating to method of payment for pre-construction expenses.
- b. Amend, modify, or reject the above option.

Attachments (3)

- 1) December 7, 2004 City Council Staff Report
- 2) Memorandum of Understanding (First Amendment to the Nacimientto Project Water Delivery EntitlementContract)
- 3) Design Phase Projected Cash Flow
- 4) Resolution 05-xx (Reimbursement)
- 5) Resolution 05-xx (Approving MOU)

TO: James L. App, City Manager
FROM: Mike Compton, Director of Administrative Services
SUBJECT: Nacimiento Water Pre-construction Funding
DATE: December 7, 2004

Needs: To present options for funding Nacimiento Water pre-construction project costs.

Facts:

1. Before project financing bonds can be sold, certain costs must be incurred; i.e. environmental studies, project design, right-of-way acquisitions and project management.
2. Current estimates place these costs at \$19 million.
3. Paso's share is estimated at \$8 million subject to minor change relating to possible adjustments to the distribution formula.
4. The financing representatives of each participating agency met November 3rd with County project staff, project consultants and financial advisors to discuss how to fund these pre-construction costs.
5. All of the participants indicated both the capacity and willingness to pay cash for these costs with the expectation that these costs would be reimbursed, to the degree each participant may choose to do so, from the proceeds of the construction financing bonds.
6. Certain data, statistics and information must be provided by each participating agency in preparation of undertaking the construction financing. Thus, the finance group decided to move forward with this effort now and develop an option for short-term revenue anticipation financing as a temporary funding alternative.
7. Participating agencies could choose to participate or not, depending upon their own financial considerations, without impeding those that might choose to move forward with short-term revenue anticipation financing.
8. The final decision need not be made until late spring or early summer when the financial advisors return with details relating to the short-term revenue anticipation financing option.

Analysis
and
Conclusion:

The Nacimiento Water Commission has already taken action to allow participants to pay for pre-construction costs on a “pay as you go basis” rather than up fronting the entire estimated cost. However, the Board of Supervisors must re-affirm this option. County staff expects the Board will agree to allow the “pay as you go” option. For Paso, this means instead of paying \$8 million lump sum up front, we’ll be allowed to pay based upon projected cash flow needs (copy attached).

Given the “pay as you go” option, paying cash with the expectation that the City would be reimbursed from construction proceeds appears to be the most favorable means of paying for the pre-construction costs. This option would eliminate interest costs that would be incurred on any short-term financing and the City has the cash resources to do so. However, it is staff’s recommendation to defer the final decision until such time as the details of the short term financing alternative are known.

Should the Board of Supervisors not allow the “pay as you go” option, staff would definitely recommend participation in the short-term revenue anticipation financing.

Fiscal
Impact:

None at this time.

The City currently has \$12.3 million in Water Operations Fund cash resources from which these pre-construction costs may be paid. Of this amount, \$6 million is budgeted for various capital improvement projects over the next four years. Given historical experience, it is unlikely that all of the projects will be started or completed within the time frame allotted. Additionally, cash resources will continue to accrue over time and, as noted above, pre-construction costs advanced would be fully reimbursed from construction cost financing.

If the project did not move forward, the funding alternative is moot. The City would need pay cash for all costs advanced regardless of whether or not the City participates in the short-term temporary financing.

Options:

- a. Receive and file. Informational only.
- b. Amend, modify, or reject the above option.

MEMORANDUM OF UNDERSTANDING

(First Amendment to Nacimiento Project Water Delivery Entitlement Contract)

This Memorandum of Understanding (the “MOU”) is entered into by and between the San Luis Obispo County Flood Control and Water Conservation District, a Flood Control and Water Conservation District duly established and existing under the San Luis Obispo County Flood Control and Water Conservation Act, Act 7205 of the Uncodified Acts of the California Water Code (the “District”), and the City Paso Robles, a municipal corporation (the “Participant”), is undertaken with regard to the following facts:

RECITALS:

WHEREAS, the Participant has contracted with the District pursuant to that certain Nacimiento Project Water Delivery Entitlement Contract, approved by the District on August 17, 2004 (as originally executed, the “Original Contract” and as amended hereby, the “Contract”) regarding the financing, construction and operation of a water pipeline project intended to reach from Lake Nacimiento to the Participant (the “Project”) for the delivery of additional water for the use and benefit of the lands and inhabitants served by the Participant; and

WHEREAS, the Contract requires the Participant to make semiannual payments with respect to the Participant’s allocation of costs accumulated in connection with the financing and later operation of the Project;

WHEREAS, notwithstanding such payment schedule in the Contract, the Participant and the District desire to follow a separate payment schedule with respect to the initial financing of the preliminary, planning and design costs of the Project;

WHEREAS, the Participant and the District now wish to use this MOU to effect an amendment to the Contract to reflect an additional option available to the Participant for its share of such costs; and

WHEREAS, in compliance with Article 32 of the Contract, all Other Participants (as defined in the Contract) are also being provided with a Memorandum of Understanding (First Amendment to Nacimiento Project Water Delivery Entitlement Contract) (each, an “Other MOU”), all of which shall be executed by the respective Other Participants as a condition to the effectiveness hereof;

NOW, THEREFORE, be it agreed and understood by the parties hereto, as follows:

Section 1. Recitals; Defined Terms. The foregoing recitals are true and correct. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Contract.

Section 2. Amended and Added Definitions. The following definitions shall replace the definitions of “Design Phase” and “Construction Phase” in the Original Contract:

“Design Phase” shall mean that period of time preceding the Construction Phase during which the design, engineering and/or planning for the construction of the Nacimiento Project are being undertaken. The Design Phase shall conclude with the opening of the first group of Construction Bids resulting in the award of a construction contract for all, or a sub-phase of, the Nacimiento Project. Any costs incurred for the design, engineering, and/or planning of the Nacimiento Project after the Design Phase still constitute part of the Nacimiento Project Construction Costs.

“Construction Phase” shall mean the period of time following the opening of the first group of Construction Bids resulting in the award of a construction contract for all, or a sub-phase of, the Nacimiento Project. During the Construction Phase, the District shall apply the proceeds of the Municipal Obligations to pay the Nacimiento Project Costs.

The following new definitions shall be added to the Original Contract:

“Cash Contribution” shall mean the cash payment(s) made to the District by the Participant towards its *pro rata* share of Design Phase Costs pursuant to Article 2.5. Proceeds of Notes do not constitute the payment of a Cash Contribution.

“Design Phase Costs” shall mean the costs and expenses incurred by or on behalf of the District, the Participant or any Other Participant in connection with the design, engineering and/or planning of the Nacimiento Project during the Design Phase.

Section 3. Correction of Clerical Error in Article 2(D). The words “on the Opt-out Date” and “on an Opt-out Date” in the second and third sentences respectively of paragraph (D) of Article 2 of the Original Contract are hereby both corrected and replaced with the words “by the Opt-out Date.”

Section 4. Addition of New Article to Contract. A new Article is hereby added to the Contract, to be inserted between Article 2 and Article 3 of the Contract, and to read in its entirety as follows:

ARTICLE 2.5

ALTERNATE FINANCING OF DESIGN PHASE COSTS

(A) Financing Design Phase Costs. The Participant is obligated to pay to the District its *pro rata* share of the Design Phase Costs. The parties have determined that the Design Phase Costs may be financed initially with Cash Contributions from the Participant and from some or all the Other Participants and/or from the proceeds of certain Tax-Exempt and/or taxable Notes to be issued by the District or by the SLO County Financing Authority on behalf of the Participant and/or Other Participant(s). To the extent that the Participant elects to make Cash Contributions towards its *pro rata* share of Design Phase Costs, such Cash Contributions shall be calculated and become due in accordance with this MOU.

(B) Notice of Election. In order to make Cash Contributions under this Article, the Participant shall provide the District with its written election to make Cash Contributions towards Design Phase Costs by a date no later than 30 days following the effective date of this MOU, as described in Section 7 of this MOU. In the event the Participant does not elect to make

a Cash Contribution, or in the event that the Cash Contributions described herein do not completely cover the Participant's *pro rata* share of all Design Phase Costs, the Participant confirms and ratifies the authorization of the District to issue or cause to be issued Notes on behalf of the Participant.

(C) Cash Contribution Amount. If the Participant elects to use the Cash Contribution method described in this Article, the amount of said Cash Contributions is hereby established as follows:

(i) *Current Cash Contribution Amount.* The amount of the Participant's Cash Contribution is set forth in the attached Exhibit A, which is incorporated herein by this reference, and made a part hereof. Exhibit A also sets forth the District's current estimate of the total Design Phase Costs and the Participant's and each Other Participant's *pro rata* share of that estimate. Participant shall pay its Cash Contribution to the District pursuant to the payment schedule set forth on Exhibit A.

(ii) *Methodology for Calculating Any Additional Cash Contributions.* The Parties understand and agree that the amount of the current Cash Contribution is based upon a District estimate of the cost of the various services and tasks needed to complete the Design Phase, and that the actual Design Phase Costs may actually be higher or lower than these estimates. In the event the Design Phase Costs exceed the District's original estimates, additional Cash Contributions may be necessary to pay for the total Design Phase Costs. The exact amount of any such additional Cash Contributions will depend upon (1) the actual Design Phase Costs incurred to date, (2) any anticipated additional Design Phase Costs need to complete the Design Phase, and (3) whether any Notes have or will be issued to finance Design Phase Costs. Any such additional Cash Contributions shall be evidenced by a revised Exhibit A to this MOU which will reflect the increases in Design Phase Costs calculated by the District. Any such revised Exhibit A shall be submitted by the District to the Nacimientto Project Commission ("NPC") for the NPC's approval. No revision to Exhibit A will be presented to the NPC until after the District has provided written notice of such revision to the Participants. Once approved by the NPC and delivered by the District to the Participant, the amount of any additional Cash Contributions set forth in the revised Exhibit A shall be binding upon the Participant. Only one revision of Exhibit A is allowed under this paragraph.

Regardless of whether any additional Cash Contribution(s) are required of Participant under this Article, the Participant is still obligated to pay its *pro rata* share of the total Design Phase Costs. In the event the NPC should fail to approve future revisions to Exhibit A, any Design Phase Costs not paid through Cash Contribution(s) shall be financed as provided in the Contract. In such event, the Participant understands and agrees that it may not be possible to complete the Design Phase unless the District issues or causes to be issued Notes in the name and on behalf of one or more of the Participants in order to fund the remaining Design Phase Costs not covered by Exhibit A.

(D) Participant's Access to Information. At Participant's request, the District shall provide the Participant with any and all updated engineering or design information, contract terms and other information relating to the Project which supports the District's calculation of the Cash Contribution.

(E) Payment Schedule. The Participant covenants and agrees that, in the event it elects to make a Cash Contribution, it will make installment payments to the District pursuant to the payment schedule included on Exhibit A. The payment schedule for any additional Cash Contributions shall be set forth in any further revision to Exhibit A. The Participant understands that, unless it has opted out under the provisions of Article 2(B) of the Contract, its Cash Contribution(s), if any, may (at the option of the Participant, and only to the extent covered by the terms of a resolution adopted by the governing body of the Participant in compliance with U.S. Treasury Regulation Section 1.150-2) be reimbursed to the Participant from the proceeds of the Notes and/or the Revenue Bonds. The parties understand and agree that any payment schedule for the Notes and/or the Revenue Bonds shall be dictated by financial market conditions on such date of issuance and that payments due from the Participant in connection with its proportionate share of the Notes and/or the Revenue Bonds may be made more frequently, or less frequently, and in larger or smaller amounts than the Participant's payments hereunder.

Section 5. Governing Law. This MOU shall be governed by the provisions of the laws of the State of California applicable to contracts made and performed in such State.

Section 6. Counterparts. This MOU may be executed in counterparts, each of which shall, together, constitute an entire document.

Section 7. Effective Date. This MOU shall become effective as of the last date upon which the District, the Participant, and the Other Participants shall execute this MOU or one of the Other MOUs, in accordance with Article 32 of the Contract.

Section 8. Ratification. In all other respects, the provisions of the Original Contract are confirmed and ratified.

IN WITNESS WHEREOF, the parties have each executed this MOU by their duly authorized representatives as of the first date set forth above:

CITY OF PASO ROBLES

By _____
Authorized Representative

Date _____

**APPROVED AS TO FORM:
[PARTICIPANT ATTORNEY]**

**ATTEST:
[PARTICIPANT CLERK]**

By _____

By _____

**SAN LUIS OBISPO COUNTY FLOOD
CONTROL AND WATER CONSERVATION
DISTRICT**

By _____
Chairperson, Board of Supervisors

Date _____

**APPROVED AS TO FORM:
COUNTY COUNSEL:**

By _____
Deputy County Counsel

Date _____

**ATTEST:
JULIE L. RODEWALD, COUNTY CLERK**

By _____
Deputy County Clerk

Date _____

EXHIBIT A

ESTIMATED DESIGN PHASE COSTS AND CASH CONTRIBUTIONS

The current estimated total Design Phase Costs of the Project are \$18,890,000, within which the District calculates the following numbers as the Cash Contributions of various Participants:

| <u>Participant</u> | <u>Total Estimated Cash Contribution</u> |
|-------------------------|--|
| City of San Luis Obispo | \$ 6,630,202 |
| City of Paso Robles | 7,846,339 |
| Templeton CSD | 490,384 |
| Atascadero MWC | <u>3,923,075</u> |
| Total | \$18,890,000 |

Payment Schedule

| <u>Installment No.</u> | <u>Participant</u> | <u>Due Date</u> | <u>Amount</u> |
|------------------------|--------------------|-----------------|---------------|
| 1 | SLO City | April 1, 2005 | \$816,964 |
| | Paso Robles | April 1, 2005 | \$966,815 |
| | Templeton | April 1, 2005 | \$60,425 |
| | AMWC | April 1, 2005 | \$483,396 |
| 2 | SLO City | July 1, 2005 | \$616,514 |
| | Paso Robles | July 1, 2005 | \$729,597 |
| | Templeton | July 1, 2005 | \$45,599 |
| | AMWC | July 1, 2005 | \$364,790 |
| 3 | SLO City | October 1, 2005 | \$681,447 |
| | Paso Robles | October 1, 2005 | \$806,441 |
| | Templeton | October 1, 2005 | \$50,401 |
| | AMWC | October 1, 2005 | \$403,211 |
| 4 | SLO City | January 1, 2006 | \$659,510 |
| | Paso Robles | January 1, 2006 | \$780,480 |
| | Templeton | January 1, 2006 | \$48,779 |
| | AMWC | January 1, 2006 | \$390,231 |

Payment Schedule Continued

| <u>Installment No.</u> | <u>Participant</u> | <u>Due Date</u> | <u>Amount</u> |
|------------------------|--------------------|-----------------|---------------------|
| 5 | SLO City | April 1, 2006 | \$922,753 |
| | Paso Robles | April 1, 2006 | \$1,092,008 |
| | Templeton | April 1, 2006 | \$68,249 |
| | AMWC | April 1, 2006 | \$545,990 |
| 6 | SLO City | July 1, 2006 | \$1,473,526 |
| | Paso Robles | July 1, 2006 | \$1,743,806 |
| | Templeton | July 1, 2006 | \$108,985 |
| | AMWC | July 1, 2006 | \$871,882 |
| 7 | SLO City | October 1, 2006 | \$1,459,487 |
| | Paso Robles | October 1, 2006 | \$1,727,192 |
| | Templeton | October 1, 2006 | \$107,947 |
| | AMWC | October 1, 2006 | \$863,575 |
| Total | | | \$18,890,000 |

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING A MEMORANDUM OF UNDERSTANDING RELATING
TO THE METHOD OF PAYMENT OF NACIMIENTO WATER
PRE-CONSTRUCTION EXPENSES

WHEREAS, the City has entered into the Nacimiento Project Water Delivery Entitlement Contract with the San Luis Obispo County Flood and Water Conservation District; and

WHEREAS, the Contract calls for the City to make a lump sum payment of estimated pre-construction expenditures; and

WHEREAS, the San Luis Obispo County Flood and Water Conservation District is agreeable to providing a means for participants to pay estimated pre-construction expenditures over time rather than lump sum; and

WHEREAS, the City is desirous of paying the estimated pre-construction expenditures over time rather than lump sum.

THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles approves the Memorandum of Understanding (First Amendment to the Nacimiento Project Water Delivery Entitlement Contract) attached herewith and authorizes the Mayor to execute same.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 19th day of April 2005 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Frank Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

RESOLUTION NO. 05 -

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
IN CONNECTION WITH THE FINANCING OF THE NACIMIENTO WATER
CONSTRUCTION PROJECT AND DECLARING ITS INTENT TO REIMBURSE
CERTAIN EXPENDITURES FROM CONSTRUCTION BOND PROCEEDS

WHEREAS, the City of El Paso de Robles (the "City") has heretofore entered into a Nacimiento Project Water Delivery Entitlement Contract (the "Contract") with the San Luis Obispo County Flood Control and Water Conservation District (the "District"), pursuant to which, among other things, the City has agreed to pay its pro rata share of the costs of construction of a water pipeline from Lake Nacimiento to the City (the "Project"); and

WHEREAS, the District now desires to commence the design and engineering phase of the Project (the "Design Phase") and the City and the District wish to provide for the advancement of funds, from time to time, by the City to pay the City's pro rata share of the Design Phase costs (the "Reimbursable Expenditures"); and

WHEREAS, the District has advised the City that it intends to cause to be issued certain tax-exempt bond anticipation notes (the "Notes") and/or revenue bonds (the "Bonds") to reimburse the City among others for the Reimbursable Expenditures and to pay for additional Design Phase and/or Project construction expenditures; and

WHEREAS, Section 1.150-2 of the Treasury Regulations requires the Council to declare its reasonable official intent to reimburse such Reimbursable Expenditures for the Project with proceeds of such Notes or Bonds which the City reasonably expects will be issued to finance the costs of the Design and Construction Phases incurred prior to the date of issuance of the Notes or Bonds and that certain of the proceeds of such Notes or Bonds (collectively, the "Obligations") in the amount of not to exceed \$200,000,000 will be used to reimburse the Reimbursable Expenditures;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are true and correct.

Section 2. Intention to Reimburse. The Council hereby declares its reasonable official intention to use a portion of the proceeds of the Anticipation Notes or Construction Bonds to reimburse itself for the Reimbursable Expenditures.

Section 3. Intention to Issue Obligations. The District presently intends and reasonably expects to issue or cause to be issued the Obligations on behalf of the City within 18 months of the date of the expenditure of moneys on the Design Phase or the date upon which the Project is placed in service or abandoned, whichever is later (but in no event more than 3 years after the date of the original expenditure of such moneys), and to allocate an amount of not to exceed \$200,000,000 of the proceeds thereof to the Reimbursable Expenditures in connection with the Project. All of the Reimbursable Expenditures covered by this Resolution were made not earlier than 60 days prior to the date of this Resolution.

Section 4. Compliance with Treasury Regulations. This Resolution is adopted for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations.

Section 5. Official Actions. The City Treasurer and the City Clerk of the City (the “Authorized Representatives”) are hereby authorized and directed to take all actions and do all things necessary or desirable hereunder in connection with the financing of the Design Phase Construction Phase including but not limited to the execution and delivery of any and all related agreements, filings, instruments and other documents which they, or any of them, may deem necessary or desirable and not inconsistent with the purposes of this Resolution.

Section 6. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

ADOPTED by the City Council of the City of El Paso de Robles at a regular meeting of said Council held on the 19th day of April 2005 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

CLERK'S CERTIFICATE

I, Sharilyn M. Ryan, Deputy Clerk of the City Council of the City of El Paso de Robles, hereby certify as follows:

The foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of the City Council of the City of El Paso de Robles of duly and regularly and legally held at the regular meeting place thereof on April 19, 2005, of which meeting all of the members of the City Council of the City of El Paso de Robles had due notice and at which a quorum was present.

An agenda of said meeting was posted at least seventy-two (72) hours before said meeting at 1000 Spring Street, Paso Robles, California, a location freely accessible to members of the public, and a brief general description of said resolution appeared on said agenda.

I have carefully compared the same with the original minutes of said meeting on file and of record in my office and the foregoing is a full, true and correct copy of the original resolution adopted at said meeting and entered in said minutes.

Said resolution has not been amended, modified or rescinded since the date of its adoption, and the same is now in full force and effect.

Dated: _____, 2005.

Sharilyn Ryan, Deputy City Clerk

[Seal]