

TO: James L. App, City Manager

FROM: Brad Hagemann, Water Resources Manager

SUBJECT: Agreement with Templeton Community Services District Regarding Improvements to Sewage Lift Station #2 and Interceptor Line

DATE: September 6, 2005

NEEDS: For the City Council to consider approving an Agreement with the Templeton Community Services District (District) regarding cost sharing for improvements to sewage lift station #2 and associated sewage interceptor line.

FACTS:

1. In November 1997 the City of Paso Robles (City) and the District entered into a Capacity Agreement granting the District certain rights to capacity in the City's wastewater treatment plant, sewer interceptor line and associated sewage lift stations.
2. In 2003 the City completed a project that replaced sewage lift station #2 and associated sewage collection interceptor line that transports sewage to the City's wastewater treatment plant (Improvements).
3. The City and the District have agreed upon the amount to be paid by TCSD towards the cost of the Improvements.

**ANALYSIS
AND**

CONCLUSION: The City and the District have analyzed various methods to calculate a fair and equitable cost share between the City and the District for the Improvements to the sewage lift station and sewage interceptor line. The District has agreed to pay \$300,000 to cover the District share of the Improvements.

POLICY

REFERENCE: None

FISCAL

IMPACT: Reimbursement of \$300,000 spent by the City

OPTIONS:

- a. Adopt Resolution No. 05-xx approving the Agreement.
- b. Amend, modify, or reject the above option.

Attachments (2)

- 1) Resolution
- 2) Agreement

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Settlement Agreement") is made and entered into on this ____ day of ____, 2005, by and between the City of El Paso de Robles, a municipal corporation ("City") and the Templeton Community Services District, a public body corporate and politic ("District").

Recitals

- A. The City and District entered into an agreement dated November 17, 1997 ("Capacity Agreement"), granting the District certain rights to capacity in the City's wastewater treatment plant, sewer interceptor pipeline and a certain lift station.
- B. The City has replaced the City's Lift Station No. 2 and reaches of the sewer interceptor line which serve, in part, the District (the "Improvements"), as the Improvements are more particularly referenced in correspondence from the City to the District, dated November 27, 2000, May 6, 2004 and November 9, 2004, and attachments to such correspondence.
- C. The parties wish to settle a dispute over the amount required to be paid by District under the terms of the Capacity Agreement towards the cost of the Improvements.

Agreements

NOW, THEREFORE, in considerations of the execution of this Settlement Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and subject to the terms and conditions hereof, the City and District hereby agree as follows:

- 1. Incorporation of Recitals.** The foregoing recitals are true and correct and by this reference are hereby incorporated into this Settlement Agreement.
- 2. Payment by District.** Within five (5) business days after the date of this Settlement Agreement, District agrees it shall pay to City the sum of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00).
- 3. Release and Discharge.** Upon such payment, City releases and forever discharges District and the District's employees, principals, directors, officers, agents, sureties and each of them, from any and all claims, demands, actions, liabilities, damages and causes of action whatsoever, including costs and attorneys' fees, in regard to, or in any way arising from or relating to District's obligation to contribute to the cost of the Improvements by virtue of the Capacity Agreement or any other basis. City and District each understand that, except as otherwise provided herein, this release extends to any and all claims, demands, actions and causes of action of any and every kind or nature whatsoever, contractual, tortuous or otherwise, present or future, known or unknown, contemplated or un contemplated, in connection with, or in any way arising from the allocation of the costs of the Improvements under the Capacity Agreement or pursuant to any other basis.

4. Waiver The parties to this Settlement Agreement each waive, with respect to the releases contained herein, their respective rights given by Section 1542 of the Civil Code of the State of California, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each of the parties understands and acknowledges the significance and consequence of this specific waiver of Section 1542. In connection with such waiver and relinquishment, each party acknowledges that it is aware that it or its attorneys or accountants may hereafter discover claims or facts in addition to or different from those which it now knows or believes to exist with respect to the subject matter of this Settlement Agreement, but that it is its intention hereby to fully, finally and forever settle and release all matters, disputes and differences known or unknown, suspected or unsuspected, which now exist, may exist or heretofore have existed between the City and District, arising out of or concerning the District's responsibility to contribute to the costs of the Improvements. In furtherance of this intention, the releases herein given shall be and remain in effect as full and complete mutual releases notwithstanding the discovery or existence of any such additional or different claim or fact.

5. Exceptions to Release. Nothing herein shall be construed as a release by any party of any obligation or claim arising out of a breach of this Settlement Agreement.

6. Binding on Successors and Assigns. This Settlement Agreement shall inure to the benefit of and bind and be binding upon the managing agents, shareholders, officers, directors, agents, employees, attorneys, heirs, successors, partners and assigns of the undersigned parties.

7. Advice of Attorney. Each party warrants and represents that in executing this Settlement Agreement, it has relied on legal advice from the attorney of its choice; that the terms of this Settlement Agreement have been read and its consequences (including risks, complications, and costs) have been completely explained to it by that attorney; and that it fully understands the terms of this Settlement Agreement. Each party further acknowledges and represents that, in executing this Settlement Agreement, it has not relied on any inducements, promises, or representations made by the other party or any person representing or serving the other party.

8. Attorneys' Fees and Costs. The parties agree to bear their own attorneys' fees and costs in connection with the preparation and negotiation of this Settlement Agreement, as well as any fees and costs incurred in this matter prior to the execution of this Settlement Agreement.

9. Conditions of Execution. Each party acknowledges and warrants that its execution of this Settlement Agreement is freely given and voluntary. Each party acknowledges and warrants that it is authorized to execute this Settlement Agreement.

10. Entire Agreement. This Settlement Agreement contains the entire agreement between the parties regarding the subject matters stated herein.

11. Governing Law. This Settlement Agreement is entered into, and shall be construed and interpreted, in accordance with the laws of the State of California.

12. Settlement of Disputed Matters. The City and District understand and agree that the terms and conditions of this Settlement Agreement constitute the settlement of disputed matters. Neither the offer nor the acceptance of the terms and conditions hereof, nor the giving or receiving of the consideration herein, or the taking of any actions required herein, represents an admission of liability or responsibility on the part of any party, each party hereto expressly disclaiming any such liability.

CITY OF EL PASO DE ROBLES

TEMPLETON COMMUNITY SERVICES DISTRICT

By: _____
Frank Mecham, Mayor

By: _____
President, Board of Directors

ATTEST:

ATTEST:

By: _____
Sharilyn M. Ryan, Deputy City Clerk

By: _____
Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Iris P. Yang, City Attorney

By: _____
Stephen A. Kronick, Attorney for District

"CITY"

"DISTRICT"

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING AN AGREEMENT WITH THE TEMPLETON COMMUNITY SERVICES
DISTRICT REGARDING IMPROVEMENTS TO THE WASTEWATER COLLECTION SYSTEM

WHEREAS, in 1997 the City of Paso Robles and the Templeton Community Services District entered into a Capacity Agreement granting the District certain rights to capacity in the City's wastewater sewage collection and treatment facilities; and

WHEREAS, in 2003 the City completed an improvement project that replaced sewage lift station #2 and associated sewage collection interceptor line; and

WHEREAS, the City and the District have agreed upon the amount required to be paid by the District under the terms of the Capacity Agreement towards the cost of the Improvements.

THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. The City Council of the City of El Paso de Robles does hereby authorize the Mayor to sign the Agreement on behalf of the City, that provides for the District to pay \$300,000 to cover the District share of the Improvements.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 6th day of September 2005 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk