



**CITY OF EL PASO DE ROBLES**  
*"The Pass of the Oaks"*

**CITY COUNCIL MINUTES**

**Tuesday, June 3, 2008 7:30 PM**

**MEETING LOCATION: PASO ROBLES LIBRARY/CITY HALL  
CONFERENCE CENTER, 1000 SPRING STREET**

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**PLEASE SUBMIT ALL CORRESPONDENCE FOR CITY COUNCIL PRIOR  
TO THE MEETING WITH A COPY TO THE CITY CLERK**

**7:30 PM – CONVENE REGULAR MEETING**

**CALL TO ORDER** – Downstairs Conference Center

**PLEDGE OF ALLEGIANCE**

**INVOCATION**

**ROLL CALL** Councilmembers John Hamon Gary Nemeth, Fred Strong, and Frank Mecham  
Absent: Duane Picanco

**PUBLIC COMMENTS**

- Pearl Munak, Transitional Food & Shelter, recognition of Mayor Pro Tem Nemeth and Councilman Strong
- Kathy Barnett

**AGENDA ITEMS TO BE DEFERRED (IF ANY)** – City Manager Jim App announced that Agenda Item No. 10 is being recommended for continuance.

**PRESENTATIONS** - None

**PUBLIC HEARINGS**

1. **Urban Water Management Plan**  
D. Monn, Public Works Director

The City Council held a Public Hearing regarding the Draft 2005 Urban Water Management Plan. A copy of the plan is available on the City's website. Christopher Alakel presented the staff report, and Iris Priestaf, Todd Engineers reviewed the plan.

Mayor Mecham opened the public hearing. Speaking from the public was Joyce Sprague, Kathy Barnett, Dale Gustin, and John Borst. There were no further comments from the public, either written or oral, and the public discussion was closed.

Mayor Mecham encouraged the public to provide comments on the Public Draft. The Final UWMP is tentatively scheduled for presentation to City Council for adoption on July 1, 2008.

## CONSENT CALENDAR

Mayor Mecham called for public comments on Consent Calendar items. There were no comments from the public, either written or oral, and the public discussion was closed.

2. Approve City Council minutes of May 20, 2008
3. Approve Warrant Register: Nos. 77424—77558 (05/16/08) and 77559—77716 (05/23/08), and Other Payroll Services
4. Receive and file Advisory Body Committee minutes as follows:  
Senior Citizen Advisory Committee meeting of April 14, 2008
5. Proclamation declaring June 9-10, 2008 as Special Olympics – Law Enforcement Torch Run Days in Paso Robles.
6. Adopt Resolution No. 08-084 approving an appropriation limit for the fiscal year 2009 operating and maintenance budget.
7. Adopt Resolution No. 08-085 approving a promissory note for a portion of the cost of the new City of Paso Robles telephone system in the amount of \$219,000.
8. Adopt Resolution No. 08-086 authorizing renewal of the Memorandum of Understanding between the City, YMCA, and the Paso Robles Joint Unified School District for the After School Enrichment Program, held at Centennial Park.
9. Adopt Resolution No. 08-087 approving renewal of the 2005 Cooperation Agreement with the County of San Luis Obispo to defer its entitlement status for CDBG funds in order to enable the County to qualify as an “urban county”.

Consent Calendar Items Nos. 2-9 were approved on a single motion by Councilmember Nemeth, seconded by Councilmember Strong, with Mayor Mecham abstaining on Warrant Register Items No. 077666.

Motion passed by the following roll call vote:

AYES: Hamon, Nemeth, Strong, and Mecham  
NOES:  
ABSTAIN:  
ABSENT: Picanco

## DISCUSSION

10. **Award of Membrane Filtration System for Water Treatment Plant**  
D. Monn, Public Works Director

The City Council considered awarding a contract to one of three pre-qualified vendors associated with Stage I of the Membrane Filtration System needed for the Water Treatment

Plant portion of the Nacimiento Water project. Linda Beck, City Attorney, provided additional information on the status of the bid packages regarding contract terms and technical specifications, and recommended that the city reject all bids. A letter from Castle & Associates, representing Pall Corporation, was distributed to Council and the public (attached).

Mayor Mecham opened the public hearing. Speaking from the public was Belle Mason, and John Borst (comment attached). There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Strong, seconded by Councilmember Nemeth, moved that all bids shall be rejected at this time, that the city amend the technical specifications in the bid document, and re-solicit proposals from the pre-qualified vendors, based on modified technical specifications.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Strong, and Mecham  
NOES: Picanco  
ABSTAIN:  
ABSENT:

## ADVISORY BODY COMMUNICATION

### 11. Schedule Interviews to Fill Current Vacancies on Advisory Bodies

R. Whisenand, Community Development Director and A. Robb, Director, Library and Recreation Services

The City Council set dates for interviews of candidates for filling vacancies on the City's advisory body committees.

Mayor Mecham opened the public hearing. There were no comments from the public, either written or oral, and the public discussion was closed.

By General Consent, Council set Thursday, June 19, 2008 at 7:30 PM to conduct interviews and make appointments to the Housing Authority and Project Area Committee, and July 10, 2008 at 7:30 PM to conduct interviews and make appointments to the Parks & Recreation Advisory Committee, the Senior Citizens Advisory Committee, the Library Board of Trustees, and the Youth Commission.

**COUNCIL COMMENTS (Including oral reports on conferences attended) - None**

## ADJOURNMENT at 8:55 PM

### Workshops

June 4-6, 2008

Mayors & Councilmembers Executive Forum,  
Squaw Creek Resort – Truckee, CA

Wednesday, June 11, 2008

UCSB Paso Robles Economic Forecast, Paso  
Robles Inn Historic Grand Ballroom

### Meetings

Tuesday, June 17, 2008

The Regular Meeting at 7:30 PM on, at the Library/City  
Hall Conference Center, 1000 Spring Street

Submitted:


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Catherine David, Deputy City Clerk

Approved:

**THESE MINUTES ARE NOT OFFICIAL OR A PERMANENT  
PART OF THE RECORDS UNTIL APPROVED BY THE CITY  
COUNCIL AT A FUTURE REGULAR MEETING.**

Item #1



**CITY OF  
EL PASO DE ROBLES**

**DRAFT  
URBAN WATER  
MANAGEMENT PLAN**

Public Hearing  
June 3, 2008  
Todd Engineers

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**UWMP Process**

- 2005 Urban Water Management Plan builds on
  - Update for the Paso Robles Groundwater Basin (2007)
  - Water Resources Plan Integration and Capital Improvement Program (2007)
  - 2006 Economic Strategy
  - Paso Robles Groundwater Basin Study (2002 and 2005)
  - 2003 General Plan Update
- Public draft released April 14, 2008
- June 3, 2008 Public Hearing - Draft UWMP
- July 1, 2008 Adopt final plan

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**Presentation Outline**

- Urban Water Management Plan Process
- Water Supply and Demand
- Water Shortage Contingency Plan
- Water Demand Management Measures

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**WATER SUPPLY AND  
DEMAND**

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Water Use Sectors	2000	2005	2010	2015	2020	2025
Single Family	4,500	4,435	5,006	5,577	6,149	6,720
Multi-family						
In other categories		729	1,480	2,232	2,983	3,735
Commercial/Industrial	700	1,101	1,711	2,320	2,930	3,540
Parks, Landscape Irrigation, Other	800	898	991	1,084	1,177	1,270
Sub Total	6,000	7,163	9,188	11,213	13,239	15,265
Unaccounted	449	252	664	831	968	1,135
Total	6,449	7,415	9,852	12,044	14,207	16,400


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### Current Water Supply Sources

Paso Robles Groundwater Basin

- A potential for overdraft
- Storage declines 1997-2006: 3,300 AFY
- Significant declines in Estrella subarea
- City is active in basin management




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### Current Water Supply Sources

Paso Robles Groundwater Basin

- Estimated yield: 97,700 AFY
- A shared resource: municipal, rural, agricultural uses
- Estimated pumping
- 1997: 73,996 AFY
- 2000: 82,638 AFY



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### Current Water Supply Sources, AFY

Salinas River Underflow

- Permitted diversion up to 8 cfs for 4,600 afy
- City is seeking a water rights license and has increased its river well pumping

Source	2000	2005	2007	2010	2015	2020	2025
Paso Robles Basin	2,797	2,856	4,103	930	2,856	2,856	2,856
Salinas River Underflow	3,652	4,558	4,023	4,600	4,600	4,600	4,600


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**The City has been unable to meet seasonal peak demands**

- Weather, customer irrigation, production limitations
- 2007 response: shut down City irrigation and request voluntary water conservation
- 2008 response: well work, irrigation management, and public outreach

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## Future Water Supply Sources

*Recycled Water*

Benefits:

- New source to meet irrigation demand and release available water for higher uses
- Reduces peak summer demands for potable water
- Reliable in drought
- Additional supply available

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## Future Water Supply Sources

*The City has committed to 4,000 AFY of Nacimiento Project Water.*

Benefits:

- A new source to meet seasonal + long-term demand
- Independent of local groundwater
- Reliable in drought
- Reduced water hardness for City customers, with water quality benefits to groundwater and recycled water
- Additional supply available


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## Current and Planned Supplies

Water Supply Sources, AFY	2005	2010	2015	2020	2025
Basin Wells	2,856	930	2,846	2,856	2,856
River Wells	4,558	4,600	4,600	4,600	4,600
Nacimiento Water	0	4,000	4,374	6,644	8,000
Recycled Water	0	0	0	0	944
<b>Total</b>	<b>7,414</b>	<b>9,530</b>	<b>11,830</b>	<b>14,100</b>	<b>16,400</b>


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## Water Supply and Demand

- Water demand is continuing to increase
- Current water demand is met with underflow and groundwater
- Future water demand will be met with a *portfolio* of the four sources
- Each source has distinct limitations and advantages
- All four will be needed...  
as will conservation.


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## Water Supply Shortages


- A recent study of impacts on City water supply of historical droughts
  - Single-year drought
  - Multi-year drought
- However, summer 2007 demonstrated that the City currently has minimal reserve capacity
- Development of Lake Nacimiento and recycled water sources will increase supply reliability

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## WATER SHORTAGE CONTINGENCY PLAN

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## Water Shortage Contingency Plan

Examines factors in water supply reliability

- Legal
- Environmental
- Water quality
- Climatic
- Catastrophic

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## Water Shortage Contingency Resolution

The City has Resolution 90-49 Water Management Contingency Plan

- Defines stages of action
- Presents methods to reduce water use
- Provides prohibitions and penalties
- But lacks analysis of financial impacts, measures to overcome impacts, and means to document water savings

A new water shortage contingency plan resolution is recommended

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## Water Conservation

The UWMP


- Summarizes existing City water conservation measures
- Outlines a multi-phase approach to sixteen measures
- Recommends retention of a water conservation coordinator as the first step

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## WATER DEMAND MANAGEMENT

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## Conclusions


- The City is facing increasing water demands
- Summer peaking is a near-term problem
- A portfolio of water supplies is needed
  - Additional Lake Nacimiento supply
  - Initiation of water recycling for irrigation
  - Intensified water conservation

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## Next Steps



- ❖ Revision of the Draft UWMP in response to comments
- ❖ City adoption of Final UWMP July 1, 2008

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**RECEIVED**  
CITY CLERK'S OFFICE  
JUN 03 2008  
CITY OF PASO ROBLES

June 3, 2008

City of Paso Robles  
1000 Spring Street  
Paso Robles, CA 93666

Re: Meeting Agenda Item Number 10: "Award of Membrane Filtration System for Water Treatment Plant." Pall Corporation's Responsive Bid to Provide the Membrane Filtration System.

**Meeting Location: Paso Robles Library/City Hall Conference Center**  
**Meeting Time: June 3, 2008 at 7:30 p.m.**

Dear Council Members:

Item 10 on the published agenda for tonight's City Council meeting asks the Council to decide whether the City should award a contract for Stage I of the Membrane Filtration System needed for the Water Treatment Plant portion of the Nacimiento Water project. As suggested on the published Agenda, the Council members likely will be asked to either adopt a resolution authorizing award of the contract to the lowest responsive bidder, or to adopt a resolution rejecting all bids, a pre-requisite for re-advertisement.

This law firm represents Pall Corporation (hereinafter "Pall"). Pall is a publicly traded corporation with divisions specializing in the engineering and manufacture of water filtration systems for use in commercial, industrial and municipal applications throughout the world.

On May 9, 2008, Pall submitted a responsive bid to provide the City with Pall's proprietary Aria membrane system in full technical compliance with the Membrane Filtration System specified by the City in its bid solicitation documents. In addition to Pall's proposal, the City received two other proposals from Pall's competitors. Pall's competitors' proposals contained serious exceptions to the bid solicitation requirements and thus are admittedly non-responsive. Because the City's solicitation clearly states that proposals containing exceptions to the solicitation requirements will be rejected, Pall endeavored at all cost to make its proposal fully responsive. Pall even conformed its proposal to the solicitation requirements where complying with the solicitation's technical requirements

## CASTLE & ASSOCIATES

City of Paso Robles

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increased Pall's proposal price without adding to the performance or functionality of its membrane system product. Consequently, Pall's bid is higher than its competitors, but it is also completely free of exceptions and is fully responsive to all technical specifications and contractual requirements that the City's engineers insisted were necessary for the City's project. Nevertheless, the City's staff has now informally informed Pall that it intends to recommend to the Council tonight that it vote to adopt a resolution **rejecting all proposals** on the grounds that each of the proposals received, including Pall's responsive proposal, are non-responsive to the call of the bid solicitation documents.

As will be explained below, to adopt such a resolution on the administrative record that will be presented to the Council tonight will violate both the bid evaluation criteria set forth in the City's own solicitation as well as the law applicable to competitive bidding of public works contracts.

First, it is hornbook law that "a bidder determined to be non-responsive is entitled **to notice of that fact** and is entitled to submit materials, in a manner defined by the . . . [the awarding authority], concerning the issue of responsiveness." *Taylor Bus Service, Inc. v. San Diego Bd. of Education* 195 Cal.App.3d 1331 (1987).<sup>1</sup> These minimal procedural steps are necessary to ensure that the awarding authority's bid evaluation process affords due process to participating bidders. Tonight, however, the staff intends to urge the Council to reject Pall's proposal as "non-responsive" **before** the staff has even given Pall notice of the alleged defect in its bid and before Pall has been given an opportunity to respond to the staff's contentions in writing as required by California law including the *Taylor Bus* precedent. As the Council can readily confirm, the City's staff will present the Council tonight with absolutely no evidence to demonstrate that Pall has been given notice of any alleged defect in its bid or that Pall has been given an opportunity to address the staff's non-responsiveness conclusion in writing. Consequently, on the administrative record that will be presented to the Council, the Council will be asked to reject Pall's bid as non-responsive before the City has fulfilled its duty under the law to afford Pall with an opportunity to defend its proposal as fully responsive.

Pall recognizes that it is within the Council's discretion under the law to reject all bids, even the lowest responsive bid, if the Council finds that it is in the best interests of the City. For instance, the City could reject all bids and seek to re-solicit bids if it believed that on re-solicitation it might receive a lower offer. This discretion to reject all bids, however, does not give the Council the power to lawfully reject all bids as "**non-responsive**" without first following proper procedures established by the law for rejecting bids as "non-responsive." Consequently, a resolution that rejects all bids as "non-responsive" **before** the City has afforded a bidder who challenges the City's non-responsiveness determination with an opportunity to address the City's non-responsiveness

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<sup>1</sup> A bid is responsive if it promises to do what the bidding instructions require." *Valley Crest Landscape Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1438.

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determination likely can be challenged and overturned in a writ proceeding because such a resolution will be both substantively arbitrary and procedurally unfair. See, *Usher v. County of Monterey* (1998) 65 Cal.App.4<sup>th</sup> 210, 215. [An abuse of discretion is established if the agency has not proceeded in the manner required by law].

Moreover, even without a writ action, the adverse consequences to the City of failing to comply with the law are not insignificant. If the City of Paso Robles proceeds to reject Pall's bid as "non-responsive" before allowing Pall to address and confront the City's non-responsiveness determination, it will send the message to responsible bidders like Pall that the City will bend objective bid evaluation criteria when necessary to satisfy administrative convenience or even administrative fiat and that the City doesn't care if it publicly justifies its award decisions on pre-textual grounds supported by nothing in the administrative record. Permitting such a precedent to be set will give the City of Paso Robles a bad reputation among those businesses who regularly work in the public works industry and discourage legitimate bidders from bidding on future City projects.

Pall's interest in defending the responsiveness of its bid goes beyond its significant interest in obtaining award of the Membrane Filtration System contract for this City project. Pall also has an interest in defending its reputation as a leader in water filtration system design and engineering that has the capability to equip its patented filtration products for optimal functionality in a wide spectrum of water treatment applications and technical or design constraints. A public determination that Pall's bid was non-responsive may falsely suggest that Pall's proposal and/or its products were not fully compatible with the City's technical requirements for its proposed water treatment facility. At a minimum, a non-responsiveness determination may falsely suggest that Pall's products did not meet the performance or design expectations of one of its potential municipal clients. Certainly, Pall should not suffer damage to its reputation on pre-textual grounds for rejection of its proposal.

Finally, Pall suspects that the City's staff hopes to secure the Council's adoption of a resolution authorizing rejection of all bids and then authorizing a re-solicitation of bids on pre-textual grounds because it does not wish to justify a re-solicitation on the actual basis that staff seeks a re-solicitation – the hope that it can obtain a responsive lower priced proposal. However, this strategy is not always successful.

“Rebidding a contract is fraught with certain dangers. While it is true that in some instances rebidding will benefit the public through achieving a lower price, the converse result of a higher contract price is also a factor to be considered. This is because the low bidder who may have given his best possible price may drop out of the bidding or other bidders by reason of insight gained through revelation of the

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City of Paso Robles  
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competition's bidding strategy may see the weaknesses in their own bids. One cannot presume that rebidding will ipso facto bring a lower price. There is also the potential in some instances for rebidding to be demanded until the "favorite son" candidate is awarded the contract." *Marvec Const. Corp. v. Township of Belleville* (1992) 254 N.J. Super. 282, 603 A.2d 184.

Pall believes that rejecting all bids and rebidding would be imprudent ultimately leading to delay and unnecessary expense. The City already has the lowest responsive proposal from Pall, a very responsible bidder. Consequently, Pall urges the Council to reject its staff's likely recommendation to reject all bids and to accept Pall's fully responsive bid instead. Alternatively, if the Council decides to consider staff's recommendation to reject all bids as non-responsive, Pall strongly advises the Council to afford Pall the procedural requirements under the law before it takes this action with respect to Pall. Pall must receive written notice of the purported defect in its bid and an opportunity to defend the responsiveness of its bid in writing.

Pall appreciated the opportunity to submit a proposal on this project and worked hard for many weeks in an effort to develop a proposal that would satisfy all of the City's unique design requirements. Consequently, Pall hopes that you will take this matter seriously and ensure that the City's bidding process comports with the law and ends with a result that is rational and fair to both the City and all bidders.

Thank you.

Very truly yours,



Nomi L. Castle

NLC/lm

Item #10

June 3, 2008

To: Paso Robles City Council and Attorney  
From: John Borst

Gentleman,

Good evening. I am speaking at this time in regards to Resolution No. 08-xx on tonight's agenda, Agenda Item 10. Before voting on this resolution I would like for each of you to give thoughtful consideration to Article XIII D Sec. 6 (b) (2) which reads:

"Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed."

I request from the City Attorney tonight a written explanation within two weeks as to why the proposed appropriation of \$100,000 to pay for a "Membrane Filtration System" is not a violation of the above cited California law. It is my understanding that fees/moneys collected from City Water Customers under Ordinance 882 does not lawfully include the right to appropriate those funds for the design and/or construction of a City water treatment plant.

Thank you,

John Borst  
209 Navajo Avenue  
Paso Robles, CA 93446