

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BBB*  
DATE: NOVEMBER 20, 2008

**AGENDA ITEM**  
**E-3**  
**NOVEMBER 26, 2008**

**WILLOW ROAD WATERLINE EXTENSION PROJECT PHASE 1  
REIMBURSEMENT AGREEMENT WITH SAN LUIS OBISPO COUNTY**

**ITEM**

Consider approval of reimbursement agreement with San Luis Obispo County for Construction of Willow Road Waterline Extension Project Phase 1 [RECOMMEND APPROVAL].

**BACKGROUND**

San Luis Obispo County is planning to extend Willow Road from Pomeroy Road to Hetrick Road early next year. The District's 2007 Water and Sewer Master Plan Update recommended the construction of a 12 inch diameter waterline in this segment of roadway. Installation of the District's waterline concurrent with the County's roadway project is more cost-effective than installing the line in the future since the water line can be installed before the roadway is paved. The County is finalizing the design for the roadway and the District is developing a design for the waterline so that the projects can be bid concurrently.

Staff has developed the attached agreement to incorporate the construction of the District's proposed waterline into the County's project. Under the terms of the proposed agreement, the District will be responsible for design of the waterline, inspection of the waterline, direct construction cost of the waterline and reimbursing the County for all reasonable administrative costs incurred by the County for the preparation of contract documents, bidding and/or construction phase related to the waterline work. In exchange, the County will bid and construct the District's waterline work as part of the County's project. Staff anticipates this approach to the project will result in a total overall project cost that will be significantly less than if the District was to construct the project separate from the County's roadway project.

The FY08-09 Budget includes \$150,000 in the Town Water Capacity Charge Fund (Fund #700) for the design of the Willow Road Waterline Extension Project Phase 1. The engineer's cost estimate based on the 50% complete design submittal is approximately \$900,000 and will be updated once the design is finalized. If the District Board approves the reimbursement agreement with the County, a budget adjustment will be required in the FY08-09 budget on January 14, 2009 based on 120% of the final engineer's construction estimate so that the District can deposit the necessary funds with the County in accordance with the proposed reimbursement agreement.

**RECOMMENDATION**

Staff recommends that your Honorable Board adopt Resolution 2008 – XXXX Reimbursement Agreement with San Luis Obispo County for Construction of Willow Road Phase 1 Waterline Extension.

**ATTACHMENTS**

- Reimbursement Agreement for Willow Road Waterline Extension
- Resolution 2008-XXXX Reimbursement Agreement with San Luis Obispo County For Construction of Willow Road Phase 1 Waterline Extension

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**REIMBURSEMENT AGREEMENT  
For Construction of a Water Transmission Pipeline  
within Willow Road - Nipomo, California**

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the **NIPOMO COMMUNITY SERVICES DISTRICT**, a community services district, hereinafter referred to as "District," and the **COUNTY OF SAN LUIS OBISPO**, a political subdivision of the State of California, hereinafter referred to as "County."

**WITNESSETH:**

WHEREAS, the County is preparing to construct Phase 1 of the Willow Road Extension Project in Nipomo, California (hereinafter referred to as "Willow Road Project" or "Project"); and

WHEREAS, the District desires to have certain District water transmission pipelines and appurtenances (hereinafter collectively referred to as "District Facilities") constructed within the physical boundaries of the Project; and

WHEREAS, the District desires to have the construction of said District Facilities (hereinafter referred to as the "Water Line Work") incorporated into the County's Project according to the terms of this Agreement; and

WHEREAS, the District agrees to reimburse the County for all reasonable costs incurred by the County relating to the Water Line Work, including, but not limited to, costs related to the preparation of contract documents, bidding, and/or construction phases; and

WHEREAS, the parties agree to coordinate the Water Line Work with the Project pursuant to the terms of the Agreement.

NOW, THEREFORE, the parties hereto agree as follows:



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A. Recitals

The above recitals are incorporated herein by reference as though fully set forth herein.

B. Design and Award of Water Line Work

1. District agrees that it will satisfy all requirements of the California Environmental Quality Act and Public Contract Codes with respect to the Water Line Work.

2. District is solely responsible for the design of the Water Line Work and all District Facilities related thereto. District is responsible for the accuracy and completeness of all documents and information submitted to the County relating to the design, construction or requirements of the Water Line Work. The County assumes no responsibility for the accuracy or completeness of any documents or information submitted by the District relating to the design, construction or requirements of the Water Line Work.

3. The District shall prepare its plans and specifications for the Water Line Work in a manner that is compatible with the County's bid package for the Project so that said plans and specifications can be easily incorporated into the said bid package. The District has verified that the electronic files it has received from the County for the Phase 1 Willow Road Extension are adequate to allow the District to so prepare its plans and specifications.

4. District will submit 30%, 50% and 95% construction plans for the Water Line Work to County. Any special conditions the District desires to be included in the Project's bid package shall be included with the 50%, 95%, and Final submittals. Each submittal subsequent to the 30% submittal shall contain four (4) plan sets, specifications and cost estimates. Final plans will be submitted by January 16, 2009, along with the District's specifications and cost estimate for the Water Line Work. If the final plans, specifications, and cost estimate for the Water Line Work are not received by the County by January 16, 2009, the County is not obliged to include the Water Line Work in the Project's bid package, and the Water Line Work will not be part of the Project.

5. The District and the County shall agree on the reasonableness of the engineer's cost estimate for the Bid Alternative before the Project is advertised for bidding. The District shall deposit a sum equal to 120% of the engineer's cost estimate with the County by January 16, 2009.

6. If said deposit and the final plans, specifications, and cost estimate for the Water Line Work are received by the County by January 16, 2009, the County will add the final Water Line Work plans and specifications to the Project as a Bid Alternative.



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The parties agree that the County shall accept the bid amount of the Water Line Work submitted by the responsible contractor selected by the County as long as the Water Line Work bid is no more than twenty percent (20%) over the District's engineer's reasonable cost estimate.

7. In the event the bid alternative is more than 20% over the District's engineer's cost estimate, the District shall have 10 calendar days to notify the County of the District's desire to still proceed with the Water Line Work and have the County accept the bid alternative. If the County does not receive such written notification within 10 calendar days of bid opening, the District will have been deemed to reject the bid alternative exceeding 20% of the District's engineer's estimate. If the District so refuses said bid for the Water Line Work, the County will not select the alternate bid, the Water Line Work will not be included in the Project, and the District will not be allowed to construct the water line within the Project's pavement area for ten (10) years.

C. Construction of Water Line Work

1. The parties acknowledge that the County shall not be responsible for inspecting the Water Line Work, including but not limited to, any testing of District Facilities pursuant to the Water Line Work. As between the District and the County, the District shall be solely responsible for any and all such inspections of the Water Line Work. On the other hand, the parties acknowledge that the District shall not be responsible for inspecting the road work portion of the Project. As between the District and the County, the County shall be solely responsible for any and all such inspections of the road construction work.

2. County will forward any Request for Information ("RFI") it receives from the construction contractor pertaining to the Water Line Work to the District and the District shall be obliged to provide a timely response to the County regarding the RFI. Any change orders for the Water Line Work will be subject to the District engineer's approval, which shall not be unreasonable, withheld.

3. District shall provide, in a timely manner, all inspections necessary to verify that the Water Line Work is constructed in conformance with the Construction Contract. The District shall coordinate any such inspections with the construction contractor, and shall have access to the job site to inspect the construction and testing of the Water Line Work. The District acknowledges that the construction contractor is responsible for the safety of the job site, and the District shall hold the County harmless of any claim arising from any injury to District property or personnel which may occur on the job site. Similarly, if an independent consultant or contractor of the District suffers any injury to person or property while on the job site, the District shall defend and indemnify the County from any and all such claims related thereto unless a direct act of negligence of a County employee at the job site caused the injury.



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4. The District shall immediately report to the County any substandard work or materials discovered by the District related to the Water Line Work that is not in compliance with the construction contract. If the County receives such a timely report from the District, the County shall direct the construction contractor to repair or replace any such materials or work which the County agrees is substandard or defective. The parties acknowledge that no inspection performed by the District under this Agreement shall relieve the construction contractor of its obligation to perform the Water Line Work in accordance with the Construction Contract. The District acknowledges that any claim by the construction contractor resulting from an act or omission by the District, including, but not limited to, a District caused delay, will be passed through to the District for payment.

5. The County shall pay the construction contractor pursuant to Section 9 of the Caltrans Standard Specifications (dated May 2006), as modified by the County's construction contract. The County shall consult with the District's designated representative regarding Water Line Work eligible for payment to the construction contractor. The County shall provide the District with a copy of all partial payment estimates prepared by the County regarding the Water Line Work. The District will notify the County of any improper payment items in the partial payment estimate regarding the Water Line Work within 5 days of receipt of the partial pay estimate.

6. Upon completion of the Project (as defined by the earliest "Completion" date under Public Contract Code Section 7107(c)), the District shall automatically assume full, complete and sole ownership and control over the District Facilities installed as part of the Water Line Work and shall be solely responsible for the maintenance of said facilities. The District shall provide the County with as-built drawings of the completed Water Line Work, together with a copy of the specifications, records of tests and inspections and any contract documents used for the construction of the Water Line Work. These documents shall be delivered to the County within 60 days of completion of the Water Line Work.

7. The County's Construction Contract shall require that the District, its directors, officers and employees be named as additional insureds for the Water Line Work under the general liability and automobile insurance policies of the construction contractor. If these additional insurance provisions increase the cost of the Construction Contract, the District will reimburse the County for these costs.

8. The Construction Contract shall require the construction contractor to defend, indemnify, and save harmless the District, its directors, officers and employees in the same manner as the County under the Construction Contract. The District will reimburse the County for any additional costs added to the Construction Contract by such provisions.

9. The Construction Contract shall require the construction contractor to provide a warranty or maintenance bond to the District. The requirements and form of



this bond will provided by the District. The District shall reimburse the County for any additional costs incurred by the County relating to the provision of said bond.

10. District shall own, operate, and maintain all potable water facilities constructed as a part of the Project. District will apply for an encroachment permit from County to construct, operate and be responsible for District facilities within the County right of way. District will be responsible for all general provisions of the encroachment permit. County agrees to sign off on District encroachment permit requirements upon completion of the Project.

11. Notwithstanding the provisions of paragraph C(10) above or conditions in the County Encroachment Permit, the parties agree that, if the Water Line Work is not included in the County's project as a bid alternative, and thereafter the District constructs the Water Line Work in an alternative alignment, the parties agree that the District is allowed to cut into the County roadway at the intersections of Willow Road at Misty Glenn, Willow Road at Pomeroy Road, and Willow Road at Hetrick Road for the limited purposes of connecting the Water Line Work to District existing facilities. Trenching in Willow Road will occur no sooner than five (5) years from the completion of the Project and the District shall pay all applicable Trench Cut Fees that are in place at that time. In the event the District cuts the pavement at the intersections, the District will grind the intersection to a depth of 0.2' and repave the entire intersection.

D. District Reimbursement of County Costs

1. District shall reimburse the County for 100% of all costs incurred by the County relating to the construction of the Water Line Work. General Project administration costs including, but not limited to costs relating to reviewing and assembling the bid package, advertising and evaluating bids, award of contract, environmental compliance and mitigation, processing payments to the construction contractor, construction support, and contract administration shall be shared between the District and the County on a pro rata basis based upon the actual bid amount for the Water Line Work and the other work of the Project. (For example, if the bid amount of the Water Line Work is 20% of the entire Project bid, the District shall pay 20% of the general Project administrative costs.)

2. In the event any reimbursable costs of the County exceeding the District's deposit, the County shall provide to the District an invoice for said costs relating to the Water Line Work. The District shall remit payment to the County for each such invoice so that payment is received by the County within 20 days of the District's receipt of the invoice. The District shall owe the County interest on late payments in accordance with Public Contract Code section 20104.50 (just as if the District was the "local agency" and the County was the "Contractor" under that statute) and also in the event the County properly pays the construction contractor for Water Line Work before the District pays the County for said Water Line Work.



E. General Provisions

1. Time is of the essence. If the District fails to act in a timely manner, and said failure cause the County to incur additional cost under the Construction Contract, the District shall reimburse the County for any and all such costs.

2. The County reserves the right to not proceed with the Project for any reason. In the event the County exercises such right in writing, no Water Line Work shall be required by the County or independent contractor hired by the County, and the District shall be obliged to reimburse the County for all costs incurred by the County relating to the Water Line Work up to the date of termination.

3. The District shall defend, indemnify and save harmless the County, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, judgments or liability arising from any act or omission of the District that is negligent or otherwise in breach of this Agreement. The County shall defend, indemnify and save harmless the District, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, judgments or liability arising from any act or omission of the County that is negligent or otherwise in breach of this Agreement.

4. This Agreement shall not be change or modified except upon written consent of the parties hereto.

5. Non-enforcement of any term, covenant or provision of the Agreement by either party shall not be considered a waiver by that party of rights under that Agreement or a waiver of any breach of the Agreement. To the extent any conduct of a party is construed as a waiver, the party's waiver of the breach of any one term, covenant, or provision of this Agreement shall not be a waiver of a subsequent breach of the same term, covenant, or provision of this Agreement or of the breach of any other term, covenant, or provision of this Agreement.

6. This Agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the County of San Luis Obispo, and such County shall be that venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement. If any action or other proceeding is filed to enforce or interpret this Agreement or any provision herein, the prevailing party shall be entitled to recover from the non-prevailing party, in addition to all other relief, its reasonable attorneys' and expert witnesses' fees, expenses and costs incurred in preparation for such action or proceeding, in pursuing such action or proceeding, on appeal from any such action or proceeding, and in collecting any monetary award resulting from such action or proceeding.

7. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of

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the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

8. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to County shall be addressed as follows:

Department of Public Works  
Room 207 County Government Center  
San Luis Obispo, CA 93408  
Attn: Dave Flynn, Deputy Director

Notices required to be given to District shall be addressed as follows:

Nipomo Community Service District  
148 South Wilson Street  
Nipomo, CA 93444  
Attn: Bruce Buel, General Manager

9. This Agreement is intended by the parties as a final expression of their understanding with respect to the matters contained herein and is a complete and exclusive statement of the terms and conditions thereof.

10. The time for the parties to commence and/or complete their obligations required by this Agreement shall be extended for such period reasonably necessary to take into account any delays caused by riots, insurrections, martial law, civil commotion, war, flood, earthquakes or other acts of God.

11. Each party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

12. The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.



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

**COUNTY**

BY: \_\_\_\_\_  
Chairperson of the Board of Supervisors  
County of San Luis Obispo  
State of California

**ATTEST:**

\_\_\_\_\_  
Clerk of the Board of Supervisors

**APPROVED AS TO FORM**

Warren R. Jensen  
County Counsel

BY: \_\_\_\_\_  
Deputy County Counsel

Dated: \_\_\_\_\_

**DISTRICT COUNSEL**

BY: \_\_\_\_\_  
Jon Seitz  
District Counsel

Dated: \_\_\_\_\_

**DISTRICT**

BY: \_\_\_\_\_  
President

**ATTEST:**

\_\_\_\_\_  
Secretary to the Board



**NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2008-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF  
THE NIPOMO COMMUNITY SERVICES DISTRICT  
APPROVING A REIMBURSEMENT AGREEMENT WITH SAN LUIS OBISPO COUNTY  
FOR CONSTRUCTION OF WILLOW ROAD PHASE 1 WATERLINE EXTENSION**

**WHEREAS**, the County of San Luis Obispo is preparing to construct Phase 1 of the Willow Road Extension Project in Nipomo; and

**WHEREAS**, the District desires to have certain District waterlines and appurtenances constructed within the physical boundaries of the County's project; and

**WHEREAS**, the District desires to have the construction of said District waterline work incorporated into the County's project; and

**WHEREAS**, the District agrees to reimburse the County for all reasonable costs incurred by the County relating to the District's waterline work.

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AS FOLLOWS:**

The President of the Board is authorized to sign the attached Reimbursement Agreement for Construction of a Water Transmission Pipeline with Willow Road.

Upon motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, and on the following roll call vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAINING:

the foregoing Resolution is hereby adopted this 26<sup>th</sup> day of November, 2008.

\_\_\_\_\_  
Michael Winn, President  
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Donna K. Johnson  
Secretary to the Board

\_\_\_\_\_  
Jon S. Seitz  
General Counsel

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