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(RETIRED)

MEMORANDUM

TO: GENERAL MANAGER, & BOARD OF DIRECTORS
FROM: JON S. SEITZ, DISTRICT LEGAL COUNSEL
DATE: OCTOBER 26, 2009
RE: ITEM E-8 – Consider Amending Reimbursement Agreement With SLO
County Re Willow Road Waterline
• Proposed Amendment Attached

The District has been contacted by the County of San Luis Obispo regarding a proposed amendment to the Willow Road Waterline Reimbursement Agreement. Under the existing Reimbursement Agreement, if the lowest responsive-responsible bidder on the base bid (Willow Road Construction) lists an additive bid price within 120% of the engineer's estimate for the District's waterline work, the District is deemed to have approved the additive bid.

The current County bid package requires the bidders to keep their bids open for 120-days (the County's normal practice is to hold bids for 60 to 90 days). This extended period allows sufficient time for the District to make a decision on whether it wants the County to accept an additive bid item within 120% of the engineer's estimate.

The attached draft amendment provides the District with the flexibility to accept or reject the additive bid for the waterline work regardless of whether or not the "additive bid" is within the 120% of the engineer's estimate. However, the District must provide its decision to the County within 30-days (negotiated) of receipt of the "Bid Report" otherwise the County will have deemed the District to have rejected the additive bid.

Staff recommends approval of the attached amendment.

END MEMORANDUM

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

THIS AMENDMENT TO REIMBURSEMENT AGREEMENT ("Amendment") is made and effective this _____ day of _____, 2009, 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 and the District are parties to that certain Reimbursement Agreement ("Agreement") approved by the County's Board of Supervisors ("Board") on March 3, 2009; and

WHEREAS, pursuant to article B.3. of the Agreement, the County has provided the District with electronic files of the final design for the County's Willow Road Improvements; and

WHEREAS, pursuant to article B.4. of the Agreement, the District has submitted its final construction plans and specifications for the Water Line Work to the County, and its engineer's final cost estimate for the Water Line Work; and

WHEREAS, the County has incorporated the District's final construction plans and specifications for the Water Line Work into the County's bid package for the County's Willow Road Improvements, and the County has provided the District a copy of said bid package; and

WHEREAS, now that the County's bid package is in final form (subject to addendums), the County staff and District agree to hereby amend the Agreement pursuant to the terms of this Amendment.

I. Recitals

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

II. Amendment to Articles B.6. and B.7. of the Agreement.

Articles B.6. and B.7. of the Agreement are hereby deleted and replaced with the following paragraphs 6, 7, 8 and 9:

6. The Water Line Work shall be listed in the County's bid proposal form as an additive bid item in a manner similar to the "Bid Proposal Form" attached hereto as

Exhibit A. The award of the contract, if it be awarded, will be to the responsible bidder with the lowest responsive bid price on the base bid without any consideration of any prices on the additive bid item for the Water Line Work.

7. Within ten business days after the bids are opened, the County's Department of Public Works and Transportation ("Public Works") shall provide the District with a "Bid Report" that lists the identity of the bidder which Public Works will be recommending that the County's Board award the contract to as the responsible bidder that submitted the lowest responsive bid on the base bid (the "Recommended Low Bidder"), The Bid Report shall also identify the "second lowest bidder" and the "third lowest bidder." The Bid Report may be sent to the District by e-mail and/or facsimile.

8. The District shall have 30 calendar days from receipt of said Bid Report to notify the County in writing of the District's decision as to whether or not the County should accept the additive bid item for the Water Line Work for the Recommended Low Bidder and for each other bidder listed in the Bid Report. (The purpose of including the second and third lowest bidders in the Bid Report is to require the District to decide on the acceptability of the additive bid price of such other bidders in the event the County's Board does not agree with Public Work's recommendation and decides to award the contract to another bidder that the Board finds to be the responsible bidder with the lowest responsive bid on the base bid.) If the County does not receive such written notification within 30 calendar days, the District will have been deemed to reject the additive bid item for each bidder identified in the Bid Report. If the District rejects the bid for the Water Line Work of the bidder awarded the Willow Road Improvements contract by the County, the County will not select the additive bid item, the Water Line Work will not be included as part of the Willow Road Improvements, the District will not be allowed to construct any water line within the Willow Road Improvements pavement area for ten (10) years, and all District deposits shall be promptly returned (less any unpaid costs incurred by the County relating to including the Water Line Work in the bid process). The District's General Manger (or his designee) is authorized to provide the County the District's decision by e-mail and/or facsimile.

9. The County reserves the right to reject all bids, and nothing in the Agreement or this Amendment shall affect the County's right to reject all bids. In the event there are any discrepancies, irregularities, informalities, or any other errors in the bid or bidding, the County shall have the sole discretion to waive any such errors that it deems to be immaterial error. The County shall have the sole discretion to determine the validity of any bid protests.

III. All provisions of the agreement not affected by this amendment shall remain unchanged and in full force and effect.

IV. The parties acknowledge that each party and its attorneys have reviewed, negotiated and revised this Amendment; 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 Amendment or any document executed and delivered by any party in connection with the transactions contemplated by this Amendment.

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

COUNTY

DISTRICT

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

BY: _____
President

ATTEST:

ATTEST:

Clerk of the Board of Supervisors

Secretary to the Board

APPROVED AS TO FORM

WARREN R. JENSEN
County Counsel

BY: _____
Deputy County Counsel

Dated: _____

DISTRICT COUNSEL

BY: _____
JON SEITZ
District Counsel

Dated: _____

**WILLOW ROAD EXTENSION
NIPOMO, CALIFORNIA
CONTRACT NO. 300129
FEDERAL CONTRACT NO. ESPL-5949(117)
BID PROPOSAL**

BASE BID

ITEM NO.	SECTION NO.	DESCRIPTION OF ITEM	APPROX. QUANTITY	UNIT OF MEASURE	UNIT PRICE (IN FIGURES) DOLLARS. CENTS	TOTAL AMOUNT DOLLARS. CENTS
1	10-1.04 pg. 10-6	MOBILIZATION	LUMP SUM	LS		
2	10-1.05 pg. 10-6	FURNISH CONSTRUCTION TRAILER/JOBSITE OFFICE	LUMP SUM	LS		
3	10-1.06 pg. 10-7	TRAFFIC CONTROL	LUMP SUM	LS		
4	10-1.07 pg. 10-8	TEMPORARY RAILING TYPE K	485	LF		
5	10-1.08 pg. 10-9	CRASH CUSHIONS	11	EA		
6	10-1.12 pg. 10-17	TEMPORARY ACCESS PATH	26300	SF		
7	10-1.13 pg.10-18	WATER POLLUTION CONTROL	LUMP SUM	LS		
8	10-1.14 pg 10-37	CLEARING AND GRUBBING	LUMP SUM	LS		
9	10-1.18 pg 10-40	DEMOLITION (F)	LUMP SUM	LS		
10	10-1.19 pg. 10-41	COLD PLANE ASPHALT	773	SY		
11	10-1.20 pg 10-41	RESET/RELOCATE MAILBOXES	7	EA		
12	10-1.21 pg. 10-41	RELOCATE EXISTING ROADSIDE/PRIVATE SIGNS	23	EA		
13	10-1.22 pg 10-42	ROADWAY EXCAVATION	55039	CY		
14	10-1.23 pg. 10-43	HIGH DENSITY POLYETHYLENE PIPE (HDPE)	3114	LF		
15	10-1.24 pg. 10-44	REINFORCED CONCRETE PIPE (RCP)	2823	LF		
16	10-1.25 pg. 10-45	PERFORATED (CMP) CORRUGATED METAL PIPE	1315	LF		
17	10-1.26 pg. 10-46	CMP MANHOLE AND INLETS	20	EA		
18	10-1.27 pg 10-46	STORM DRAIN INLETS	44	EA		
19	10-1.28 pg. 10-48	MANHOLES	5	EA		
20	10-1.29 pg. 10-49	ROCK SLOPE PROTECTION	49	CY		
21	10-1.30 pg. 10-49	CONCRETE FLARED END SECTION	30	EA		

RA-9(a)

22	10-1.31 pg. 10-49	CRUSHED ROCK	1406	CY		
23	10-1.32 pg. 10-50	CONCRETE SPILLWAY	2370	SF		
24	10-1.33 pg. 10-50	REPLACE/RELOCATE FENCING AND GATES (IN-KIND) (F)	7400	LF		
25	10-1.34 pg. 10-51	MONUMENTS	21	EA		
26	10-1.36 pg. 10-52	EROSION CONTROL TYPE D	33783	SY		
27	10-1.37 pg. 10-54	FIBER ROLLS	18280	LF		
28	10-1.38 pg. 10-56	AGGREGATE BASE	15527	CY		
29	10-1.39 pg. 10-56	HOT MIX ASPHALT TYPE A	9386	TON		
30	10-1.40 pg. 10-59	HOT MIX ASPHALT DIKE	5179	LF		
31	10-1.41 pg. 10-60	RUBBERIZED HOT MIX ASPHALT GAP GRADED (RHMA-G)	7055	TON		
32	10-1.43 pg. 10-64	ROADSIDE SIGNS	50	EA		
33	10-1.45 pg. 10-69	THERMOPLASTIC PAVEMENT MARKINGS	2068	SF		
34	10-1.46 pg. 10-70	PAVEMENT MARKERS	800	EA		
35	10-1.47 pg. 10-70	PAINTED TRAFFIC STRIPING	41830	LF		
36	10-1.48 pg. 10-71	GAS LINE/SERVICES	LUMP SUM	LS		
37	10-1.49 pg. 10-72	STEEL SLEEVES	434	LF		
38	10-1.50 pg 10-72	BARRICADE	80	LF		
39	10-1.42 pg. 10-62	HMA OVERSIDE DRAIN	178	SF		
40	10-1.42 pg. 10-62	HMA LINED DITCH	2008	SF		
41	10-3 pg. 10-72	LIGHTING	LUMP SUM	LS		

TOTAL BID FOR BASE BID

**ADDITIVE BID ITEM - NIPOMO COMMUNITY SERVICES DISTRICT WATERLINE
EXTENSION**

ITEM NO.	SECTION NO.	DESCRIPTION OF ITEM	APPROX. QUANTITY	UNIT OF MEASURE	UNIT PRICE (IN FIGURES) DOLLARS. CENTS	TOTAL AMOUNT DOLLARS. CENTS
42	10-4.11 pg. 10-89	14-IN DIP WATER MAIN	1260	LF		
43	10-4.12 pg. 10-91	12-IN PVC WATER MAIN	6280	LF		
44	10-4.12 pg. 10-91	8-IN PVC WATER MAIN	8	LF		
45	10-4.13 pg. 10-94	12-IN RESILIENT WEDGE GATE VALVE ASSEMBLY	14	EA		

RA-9(b)

46	10-4.13 pg. 10-94	8-IN RESILIENT WEDGE GATE VALVE ASSEMBLY	1	EA		
47	10-4.15 pg. 10-96	1-IN SERVICE LATERAL AND METER ASSEMBLY	2	EA		
48	10-4.16 pg. 10-98	FIRE HYDRANT ASSEMBLY	4	EA		
49	10-4.16 pg. 10-98	STUBBED FIRE HYDRANT LATERALS	15	EA		
50	10-4.17 pg. 10-98	2-IN AIR RELEASE/VACUUM RELEASE VALVE ASSEMBLY	7	EA		
51	10-4.18 pg. 10-99	4-IN BLOW-OFF VALVE ASSEMBLY	4	EA		
52	10-4.19 pg. 10-99	ADJUST WATER VALVE COVER TO GRADE	45	EA		
TOTAL BID FOR ADDITIVE ITEM						
TOTAL BID FOR BASE BID						
TOTAL BID FOR ADDITIVE ITEM						
TOTAL BID FOR BASE PLUS ADDITIVE ITEM						

(F) is the designation for "Final Pay Quantities" as defined in Section 9-1.015 of the Standard Specifications.

Bidder's Name: _____