MEMORANDUM OF UNDERSTANDING OF THE FIBER OPTIC COMMUNICATION ELEMENT FOR THE NACIMIENTO WATER PROJECT

BETWEEN THE
SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AND
SAN LUIS OBISPO COUNTY

This Memorandum of Understanding (MOU) is entered into this 25th day of September, 2012 by and between the San Luis Obispo County Flood Control and Water Conservation District (District) and San Luis Obispo County (County) regarding the joint-use of the Fiber Optic Communications Element associated with the District's Nacimiento Water Project (Project), installed via Construction Contract Numbers 300187.08.02 – Facilities, 300187.08.03 – Pipeline North, 300187.08.04 – Pipeline Central, and 300187.08.05 – Pipeline South (herein known in aggregate as the "Project's Construction Contracts".)

RECITALS

WHEREAS, the Nacimiento Water Project (Project) consists of 45 miles of pipeline, with storage tanks, pump stations, fiber optic communication element, and appurtenant facilities intended to convey 15,750 acre feet of water from Lake Nacimiento to local water agencies within the District's boundaries; and

WHEREAS, on January 6, 2004, the County's Board of Supervisors (County's Board) certified the Environmental Impact Report on the Project, adopted the Notice of Determination, and directed staff to conduct those actions needed to implement the "raw water" alternative; and

WHEREAS, the County's Board executed agreements with local water agencies which include the City of Paso Robles, Templeton Community Services District, Atascadero Mutual Water Company, and the City of San Luis Obispo on August 17, 2004, and the County Service Area No. 10, benefit Zone A on October 24, 2006 (Project Participants); and

WHEREAS, during the design phase of the Project, alternatives for system controls were evaluated including radio control systems, telephone control systems, and fiber optic control systems; and

WHEREAS, after evaluating the control system alternatives, the initial Project design included a 24-strand fiber optic communication cable in one conduit; and

WHEREAS, the County of San Luis Obispo General Services Agency – Information Technology (GSA-IT) is responsible for countywide public communications systems, especially those used in support of emergency and other vital governmental services; and

WHEREAS, the GSA-IT expressed an interest in having a dedicated fiber optic network installed in conjunction with the Project control system; and

WHEREAS, in response to GSA-IT, the final Project design added an additional 72-strand fiber optic communication cable in one conduit plus one spare conduit at no additional cost to the Project; and

WHEREAS, in order to reasonably assure that the GSA-IT request resulted in no additional costs to the Project, at their regularly scheduled meeting on October 26, 2006 the Nacimiento Water Commission determined that the County should pay the following for their request:

1. Incremental fiber optic cable cost for the additional fiber optic cable strands and 50% of the spare conduit cost;
2. 0.5% of the incremental cost for design coordination;
3. 7.0% of the incremental cost for contract administration; and
4. 10% of the incremental cost for administration.

WHEREAS, pursuant to the Nacimiento Water Commission determination, the total costs paid by the County to the District towards the fiber optic communication element was $632,000; and

WHEREAS, the construction costs (not including design, right of way, and easement costs) paid by the Project for the fiber optic communication element was approximately $3,654,000; and

WHEREAS, in summary, the Project installed a 96-strand fiber optic communication cable in one conduit plus one spare conduit with 24 strands dedicated to the Project, 72 strands dedicated to GSA-IT, and a spare conduit available for the needs of either the Project or GSA-IT; and

WHEREAS, since the work and services of GSA-IT are rendered through the authority of County while the Project was constructed and is operated under the authority of the District, a Memorandum of Understanding that clarifies the rights and responsibilities of the County and the District is desirable; and

WHEREAS, numerous terms and provisions have been developed and incorporated into this MOU based on mutual understandings developed between the County and the District and previously approved by the Nacimiento Commission on October 26, 2006; and

WHEREAS, subsequent to the development of those mutual understanding and during the development of the project, an additional issue was identified that is of interest to the County, the District and the Nacimiento Commission, which is the question of how revenues might be shared if any are realized as the result of the use of the fiber optics by other third parties; and

WHEREAS, several issues have been identified that weigh on how revenue sharing might be incorporated into this MOU including the cost of the fiber optics, the County's

share of those costs, the cost of the Project, the District's annual allocation of Countywide tax revenues to help pay for the cost of the Project, the beneficiaries of the Project including not only the Project Participants but also future possible Project participants, the County's future management of efforts that will be needed if any third party revenues are to be realized, and the conceptual terms approved on October 26, 2006; and

WHEREAS, after much deliberation, no consensus was reached on how to share revenues from 3rd parties if any are developed in the future; and

WHEREAS, in recognition that all parties, including the Project Participants, the District and County have worked cooperatively to develop funding for the Project but that the development of 3rd party revenues from the use of fiber optics was not anticipated nor provided for in the Nacimiento Project Water Delivery Contract, it is appropriate that all parties work collaboratively to determine how any net revenues from 3rd parties, are to be shared at such time that agreements with 3rd parties are being developed.

NOW, THEREFORE, IT IS AGREED by the parties hereto as follows:

1. Definitions

The following terms, whether used in the singular or plural, when used in this MOU and initially capitalized, shall have the meaning specified below.

1.1. Fiber Optic Communication Element – the fiber optic system which includes a Cable Component and a Conduit Component.

1.2. Cable Component - Fiber optic cables, hardware, and accessories which includes a multi-strand single mode fiber optic cable, all splices, terminations, patch panels, splice drawers, and any and all other items associated with the connectivity of the fiber optic cable system. In general, the Cable Component is the single mode fiber optic cable and the fiber optic splice cases. The fiber optic patch panels, the fiber optic splice drawers, and the fiber optic jumper cables (patch cords) are not included in this agreement; as these items are not shared between the District and the County.

1.3. Conduit Component - Fiber optic conduit system which includes two fiber optic conduits consisting of 1.25-inch diameter high-density polyethylene conduits installed in open trenches and 1.5-inch diameter hot-dipped galvanized steel conduit installed at tunnel crossings of roads and streams, and incorporated with the conduits are both buried and at-grade pull boxes, marker posts, control panel boxes, junction boxes, mule tape, buried warning tape, tracer wire, and EMS locator balls. The two fiber optic conduits that constitute the Conduit Component are currently configured as follows:

1.3.1. One conduit installed with the Cable Component described above.

1.3.2. One spare conduit (currently containing a mule tape with tracer wire).

1.4. SCADA – Supervisory Control and Data Acquisition; the Project control and monitoring system.

1.5. Upgrade – shall mean modifications, changes, enhancements, or any other such alterations to any portion of the Fiber Optic Communication Element.

1.6. Lateral or Lateral Segment – shall mean a single conduit or conduits, as the case may be, and associated fiber optic cabling connections that are constructed or created for the purpose of extending the Fiber Optic Communications Element from an agree-to access point. Unless otherwise agreed in writing, the Lateral Segment shall be owned and operated by the creating party and are not part of this agreement.

2. Beneficial Purpose of Joint-Use Fiber Optic Communication Element

Both the District and the County recognize a benefit to the public whereby the District can communicate with all Project facilities along the pipeline and the County can communicate with various County and local community facilities near where the Project's pipeline is routed. Coordinated fiber optic communication system installation and operation in conjunction with the Project will strengthen the County's emergency and vital service communications systems. This enhancement will be implemented by the GSA-IT. A subsequent benefit of this joint endeavor is the avoidance of a future full-length disruption of the public right-of-way that would be involved if an independent County fiber optic system were installed at a future time. Further, both parties agree that the work to be performed under this MOU is in the best interest of the public, the Project, the District, and the County.

3. Terms

Upon agreeing to this MOU, both the District and the County agree to adhere to the terms as follows.

3.1. Ownership and Fiber Optic Strand Quantity. The District owns all of the Fiber Optic Communication Element installed during the construction of the Project. Initially, the Cable Component was installed containing 96 fiber strands of which 24 (Strands No. 1 through 24) are for use by the Project and 72 (Strands No. 25 through 96) are for use by the GSA-IT.

3.2. Revenue Sharing.

3.2.1. To the extent that any 3rd party revenues are generated from the use of strands 1-24 of the Cable Component, the net of those revenues shall be paid to the District and used to offset Project costs incurred by Project Participants.

3.2.2. To the extent that any 3rd party revenues are generated from the use of the Fiber Optic Communication Element, the District, the County, and the Nacimiento Commission, on behalf of the Project Participants, shall work cooperatively to determine appropriate sharing of those revenues at such time that agreements with 3rd parties are being developed.

3.3. District's Granting of Rights and Authority. The District grants certain rights to the County herein described. The District, delegated by the District's Board to the Public Works Director, will work to meet the needs of the County to the maximum degree possible. The Public Works Director reserves the final decision on all matters relating to the utilization of the Fiber Optic Communication Element, including but not limited to, the operation, maintenance and/or replacement, and upgrades. The Public Works Director will coordinate, when necessary, with the Project Participants and the GSA-IT on all matters associated with the Fiber Optic Communication Element. The County may appeal any final decision made by the District to the District's Board.

3.4. County's Use. Subject to the provisions of this MOU and any other applicable state law, federal law, local law, and any rights-of-way restrictions associated with the Project, the County may use Strands No. 25 through 96 of the Fiber Optic Communication Element and the associated splice trays, splice cases, and pull boxes.

3.5. Third Party Use. Subject to the provisions of this MOU and any other applicable state law, federal law, local law, and any rights-of-way restrictions associated with the Project, any and all third party use of the Fiber Optic Communication Element shall be by a third party user Agreement approved by the District's Board.

3.6. Cost Sharing for Future Operation and Maintenance and/or Replacement. The District and the County will each bear a share of future cost for the Fiber Optic Communication Element's operation and maintenance and/or replacement, as described herein.

Future Cost Items	**District's Share of Future Costs**	**County's Share of Future Costs**
Cable Component		
Operation and Maintenance (Note 1)	24/96th	72/96th
Replacement (Note 1)	24/96th	72/96th
Conduit Component		
Operation and Maintenance	50%	50%
Replacement	50%	50%

Note 1: Share of future costs for Cable Components equals the prorate share based on the total number of fiber optic strands, and in the future, this quantity may change and if it does, then the values in this table shall be modified to reflect that changed quantity.

3.7. Cost Sharing for Cable Component Upgrades. The District shall bear any and all costs of Upgrades to the Cable Component that only benefits the District. The County shall bear any and all costs of Upgrades to the Cable Component that only benefits the County. The District and the County and shall bear their pro rata share of any and all costs of Upgrades to the Cable Component that positively effects the connectivity to both parties and/or jointly benefits both parties.

Neither the District nor the County shall initiate an Upgrade to any portion of the Cable Component without prior written agreement from the other party, which shall not be unreasonably withheld.

3.8. Cost Sharing for Conduit Component Upgrades. The District and the County shall equally share in any and all costs to Upgrade the Conduit Component as the Conduit Component is understood to benefit both parties equally.

Neither the District nor the County shall initiate an Upgrade to any portion of the Conduit Component without prior written agreement from the other party, which shall not be unreasonably withheld.

3.9. Annual Budget Obligations. The District shall budget for and pay for the full cost of operation, maintenance and/or replacement costs of the Fiber Optic Communication Element.

3.9.1. Operations, Maintenance and/or Replacement - The District shall provide the County with an estimate of the County's share of operation, maintenance and/or replacement costs for the subsequent fiscal year. The County shall be obligated to reimburse the District with payment for its share of the operation, maintenance and/or replacement costs actually realized by the District which are the responsibility of the County.

3.9.2. Upgrades – The District and County will work cooperatively to include any upgrades developed pursuant to the MOU within the District and County budgets, as may be applicable.

3.10. County's Source of Funding. The County will provide its own funding source for all costs reimbursable to the District.

3.11. Spare Fiber Optic Conduit. Both the District and County agree to coordinate with each other before the parties utilize any part of the spare conduit of the Conduit Component. The use of the spare fiber optic conduit shall be documented within a joint memorandum signed by both parties identified under the paragraph titled "Notices", said document to include the reason for the uses of the spare conduit, the expected length of time for that use, any and all expectations and limitations associated with that use, and any other important matters of business that will provide clear understanding.

3.12. County's Access to Cable Component. The County's access to the Cable Component is limited to areas along the public right-of-way, unless agreed to in writing with the District. The locations agreed upon to be the County's access point to the County's 72 fiber strands are at or near the following locations:

Location	Pipeline Station No.	GPS Coordinates
Hwy 46 Underpass – Paso	1001+00	35°38'40.55"N, 120°40'56.51"W
13th St. Bridge – Paso	1058+81	35°37'41.73"N, 120°41' 1.15"W
Templeton Rd. - Templeton	1402+75	35°32'23.10"N, 120°42' 4.72"W
Hwy 41 – Atascadero	1625+20	35°30'17.36"N, 120°39'10.33"W
Stenner Creek – SLO	T11 - CP 2	35°19'10.50"N, 120°40'54.79"W

The District has provided cable slack and complete splice of the fiber optic cable at these locations; except at Hwy 46 Underpass – Paso (1001+00). At Hwy 46 Underpass – Paso, the District allows the County to move all of the cable slack from pull boxes located at pipeline stations 994+00 and 1007+98 into the pull box at station 1001+00, and allows the County to add a cable splice for all 96 strands. The County's access point at Stenner Creek is not a pull box but Control Panel 2 located within the turnout to the City of San Luis Obispo. The County will bear any and all costs to access and terminate the County's 72 fiber optic strands at these access points.

The District or the County may, with prior written notice and agreement from the other party and at its own cost, extend their portion of the Cable Component through the creation of Lateral Segments. The District may add, remove, or modify Lateral Segments to strands 1-24 of the Cable Component provided it does not affect the County. The County may add, remove, or modify Lateral Segments to strands 25-96 of the Cable Component provided it does not affect the District.

3.13. District's Connectivity to County Network System. The District's Fiber Optic Communication Element may connect into the County's computer network system and be given access to County information technology assets (e.g., e-mail, timesheet, accounting, network storage, internet, etc.) GSA-IT and District staff will coordinate the technical support necessary for these connections. Compensation to the County by the District will be in accordance with the budget that is annually adopted by both the County's and District's Board.

3.14. Modification. Modifications to this MOU shall be by written amendments between the District and the County. The District's Board and the County's Board hereby delegates to the Public Works Director and the General Services Agency Director, respectively, or their designee, the authority to sign amendments to this MOU that make reasonable modifications so long as said amendments are approved as to form by the Office of County Counsel.

3.15. Effective Date The effective date of this MOU is the date first above written.

3.16. Termination Date The termination of this MOU shall require the mutual consent of the District and the County.

3.17. Assignment The provisions of this MOU shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this MOU, or any part hereof or interest herein, shall be valid until and unless approved by the District and the County. The District's Board delegates to the Director of Public Works, or his/her designee and the County's Board delegates to the Director of the General Services Agency or his/her designee, the authority to approve any assignment of this MOU so long as said assignment documents are approved as to form by the Office of the County Counsel.

3.18. Notices Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and sent as follows:

To the District:	To the County:
Director	Director
Department of Public Works	General Services Agency
Nacimiento Water Project	Nacimiento Water Project
San Luis Obispo County	San Luis Obispo County
County Government Center, Room 207	County Government Center, Room 400
San Luis Obispo, CA 93408	San Luis Obispo, CA 93408

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed as of the day and year first hereinabove written.

SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: James R. Patterson
Chairperson of the Board
San Luis Obispo County Flood
Control and Water Conservation District,
State of California

Date: SEP 25 2012

SAN LUIS OBISPO COUNTY

By: James R. Patterson
Chairperson of the Board
San Luis Obispo County,
State of California

Date: SEP 25 2012

ATTEST:

JULIE L. RODEWALD
County Clerk and Ex-Officio Clerk of the
Board of Supervisors, San Luis Obispo County Flood
Control and Water Conservation District,
State of California

By: Annette Ramirez
Deputy Clerk

Date: SEP 25 2012

ATTEST:

JULIE L. RODEWALD
County Clerk and Ex-Officio Clerk of the
Board of Supervisors, San Luis Obispo County,
State of California

By: Annette Ramirez
Deputy Clerk

Date: SEP 25 2012

APPROVED AS TO FORM AND LEGAL EFFECT:
WARREN JENSEN
District Counsel

By: [illegible]
Deputy District Counsel

Date: 9/6/12

APPROVED AS TO FORM AND LEGAL EFFECT:
WARREN JENSEN
County Counsel

By: [illegible]
~~Deputy~~ Assistant County Counsel

Date: 9/5/12

The undersigned Deputy Clerk of the Board of Supervisors certifies that, pursuant to Section 25103 of the Government code, delivery of this document has been made on SEP 25 2012

JULIE L. RODEWALD
County Clerk and Ex-Officio Clerk
of the Board of Supervisors

By Annette Ramirez
Deputy Clerk

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