

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works		(2) MEETING DATE July 18, 2006		(3) CONTACT/PHONE Sherri Weiss, Administrative Services Manager (805) 781-5296	
(4) SUBJECT Request to Approve Contract Amendments to Extend the Term of the Feasibility Study for the Sale of 15 Acre-Feet of County Service Area No. 16 (Shandon's) State Project Water to County Service Area No.12 (Avila Valley) on Behalf of Dr. John DeVincenzo					
(5) SUMMARY OF REQUEST Approval of Amendment No. 3 of the Assumption of Obligations and Water Supply Contract and Amendment No. 3 to the Agreement for Feasibility Study regarding the sale of 15 acre-feet of Shandon's State Project Water to County Service Area No. 12 on behalf of Dr. DeVincenzo					
(6) RECOMMENDED ACTION It is recommended that your Honorable Board <ol style="list-style-type: none"> 1. Approve and sign the attached amendment to the Assumption of Obligations and Water Supply Contract (County); and 2. Approve and sign the attached amendment to the Agreement for Feasibility Study (County and SLOCFC&WCD). 					
(7) FUNDING SOURCE(S) Contractor		(8) CURRENT YEAR COST \$12,250		(9) ANNUAL COST \$12,250	
(10) BUDGETED? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A					
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): County Counsel					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____					
(13) SUPERVISOR DISTRICT(S) <input checked="" type="checkbox"/> 1st, <input checked="" type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input type="checkbox"/> All			(14) LOCATION MAP <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board N/A
(16) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(17) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig + 4 copies) <input checked="" type="checkbox"/> Contract Amendments (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> N/A		
(18) NEED EXTRA EXECUTED COPIES? <input checked="" type="checkbox"/> Number: <u>1</u> <input type="checkbox"/> Attached OF WATER SUPPLY CONTRACT			(19) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A			(21) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		(22) Agenda Item History <input type="checkbox"/> N/A Date: 12-14-04
(23) ADMINISTRATIVE OFFICE REVIEW <p align="center"><i>Ok Leslie Brown</i></p>					

Reference: 06JUL18-C-7

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SAN LUIS OBISPO COUNTY DEPARTMENT OF PUBLIC WORKS

Noel King, Director

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TO: Board of Supervisors of San Luis Obispo County and the San Luis Obispo County Flood Control and Water Conservation District

FROM: Sherri Weiss, Administrative Services Manager *SW*

VIA: Paavo A. Ogren, Deputy Director of Public Works *PAO/ogren*

DATE: July 18, 2006

SUBJECT: Request to Approve Contract Amendments to Extend the Term of the Feasibility Study for the Sale of 15 Acre-Feet of County Service Area No. 16 (Shandon's) State Project Water to County Service Area No.12 (Avila Valley) on Behalf of Dr. John DeVincenzo

Recommendation

It is recommended that your Honorable Board:

1. Approve and sign the attached amendment to the Assumption of Obligations and Water Supply Contract (County); and
2. Approve and sign the attached amendment to the Agreement for Feasibility Study (County and SLOCFC&WCD).

Discussion

On November 21, 1995 your Board directed the sale of Shandon's 100 acre-feet of State Water allocation in response to an advisory election in the community with an 83.5% response in favor of the sale. On January 8, 2002 your Board approved an Agreement for Feasibility Study between the San Luis Obispo County Flood Control and Water Conservation District (District), CSA 16 (Shandon), and CSA 12 (Avila Valley); and an Assumption of Obligations and Water Supply Contract between CSA 12 and Dr. John DeVincenzo. Both of these agreements pertain to the potential sale of 15 acre-feet of Shandon's State water to CSA 12 for a use proposed by Dr. John DeVincenzo and at his expense.

The original Agreement for Feasibility Study expired on December 31, 2002. Amendment No. 1 approved on May 6, 2003 extended the study period through December 31, 2004. Amendment No. 2 approved on December 14, 2004 extended the study period through December 31, 2005.

This Amendment No. 3 will extend the term through December 31, 2007 provided that specific conditions are satisfied.

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The need for the water results from Dr. John DeVincenzo's proposed 125 room hotel and conference center, which is currently in a land-use process under the Department of Planning and Building. On December 7, 2004, your Board certified the EIR and approved a General Plan Amendment and a Development Plan for the project. The application is presently being processed by the Coastal Commission. The associated land use permit application will be acted on when and if the Coastal Commission approves the Local Coastal Plan amendment. With these approvals the District will be able to pursue the required transfer approvals from the State Department of Water Resources (DWR) and the Central Coast Water Authority (CCWA).

Staff recommends this extension for the following reasons:

- 1) The required transfer approvals from DWR and CCWA can not be obtained by December 31, 2006; and
- 2) Significant progress has been accomplished to indicate a continued interest in executing the Assignment Agreement for the sale of said water; and
- 3) The additional time required for the project approvals is not due to any fault of the developer.

Other Agency Involvement/Impact

County Counsel has reviewed and approved the contract agreements for legal form and effect.

Financial Considerations

CSA 12 is responsible for all costs associated with the Agreement for Feasibility Study as well as the proportionate share of the cost for Shandon's current State Project Water. In turn, Dr. DeVincenzo has a contractual obligation to reimburse those costs, and has done so through December 2005.

Result

The proposed action supports a healthy and livable community by addressing water supply issues concurrently with land-use issues.

Attachment: Vicinity Map
Amendment No. 3 to Assumption of Obligations and Water Supply Contract
Amendment No. 3 to Agreement for Feasibility Study

File: CF 970.15.01 W/SWP/Local Contractors

Reference: 06JUL-C-7

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**AMENDMENT NO. 3
TO**

**ASSUMPTION OF OBLIGATIONS
AND WATER SUPPLY CONTRACT**

WHEREAS, an Assumption of Obligations and Water Supply Contract, hereinafter "Assumption Contract" was entered into on January 8, 2002, amended May 6, 2003, and December 14, 2004, by, and between the County of San Luis Obispo acting on behalf of the County Service Area No. 12, hereinafter "CSA 12," and John DeVincenzo, hereinafter "DeVincenzo;" and

WHEREAS, an Agreement for Feasibility Study, hereinafter "Feasibility Agreement," was entered into on January 8, 2002, amended May 6, 2003, and December 14, 2004, by, among and between the San Luis Obispo County Flood Control and Water Conservation District, hereinafter "District;" the County of San Luis Obispo acting on behalf of San Luis Obispo County Service Area No. 16, Improvement District No. 1, hereinafter "CSA 16-1;" and "CSA 12;" and

WHEREAS, the term of the "Feasibility Agreement" expires on December 31, 2005; and

WHEREAS, at the request of the parties, an "Amendment No. 3 to Agreement for Feasibility Study" has been drafted to extend the terms of said Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. DeVincenzo assumes all costs, expenses, obligations and payments described, or referred to, in the Amendment No. 3 to Agreement for Feasibility Study.
2. All terms and conditions of the original "Assumption Contract" and Amendment Nos. 1 and 2 remain in effect.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 3 to Assumption of Obligation and Water Supply Contract on the date first above written.

Attest By: _____

JOHN DEVINCENZO

Dated: _____, 20__

By: *John Devincenzo* 6/16/06

COUNTY OF SAN LUIS OBISPO
ACTING ON BEHALF OF COUNTY
SERVICE AREA NO. 12

Dated: _____, 20__

By: _____

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: *Patricia J. Foren*
Deputy County Counsel

Dated: 5/22/06

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**AMENDMENT NO. 3 TO
AGREEMENT FOR FEASIBILITY STUDY**

WHEREAS, an Agreement For Feasibility Study (hereinafter "Feasibility Agreement"), was entered into on January 8, 2002, amended on May 6, 2003 and December 14, 2004, by, among and between the San Luis Obispo County Flood Control and Water Conservation District, hereinafter referred to as "District;" the County of San Luis Obispo acting on behalf of San Luis Obispo County Service Area No. 16, Improvement District No. 1, hereinafter referred to as "CSA 16-1;" and the County of San Luis Obispo acting on behalf of San Luis Obispo County Service Area No. 12, hereinafter referred to as "Contractor."

WITNESSETH

WHEREAS, the term of said "Feasibility Agreement" has been previously extended through December 31, 2005, pursuant to subparagraphs "b", "c", "d", and "e", of paragraph 4 of said agreement; and

WHEREAS, the parties desire to extend the Feasibility Agreement for an additional period pursuant to terms of this amendment.

NOW, THEREFORE, IT IS HEREBY AGREED that paragraph 4 of the Feasibility Agreement shall be amended to read as follows:

- f. In addition to the extensions referenced in subparagraph "b", "c", "d", and "e" a twelve month extension of the term of this Agreement (to December 31, 2006) may be requested by the Contractor and approved by the Public Works Director provided that an extra payment of \$816.82 for each acre foot of the Contractor's Water Assignment Amount for the requested extension is deposited with CSA 16-1 within 10 days of approval of this amendment by the Board of Supervisors.
- g. In addition to the 12 month extension referenced in subparagraph "f" an additional 12 month extension of the term of this Agreement (to December 31, 2007) may be requested by the Contractor and approved by the Public Works Director if the Public Works Director, in his sole judgement and discretion, finds that the following conditions have been satisfied:
 - i. An additional payment of \$816.82 for each acre foot of the contractor's Water assignment Amount for the requested extension is deposited with CSA 16-1 within 10 days of approval of extension.
 - ii. It is determined that the Local Coastal Plan amendment cannot be approved by December 31, 2006.

- iii. Significant progress has been accomplished by Contractor to indicate a continued interest in executing the Assignment Agreement.
- iv. Contractor is not in default of any payment or obligation under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

Attest By: _____

SAN LUIS OBISPO COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT

Dated: _____, 20__

By: _____

COUNTY OF SAN LUIS OBISPO
ACTING ON BEHALF OF COUNTY
SERVICE AREA NO. 16,
IMPROVEMENT DISTRICT NO. 1

Dated: _____, 20__

By: _____

COUNTY OF SAN LUIS OBISPO
ACTING ON BEHALF OF COUNTY
SERVICE AREA NO. 12

Dated: _____, 20__

By: _____

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: *Patricia J. Foran*
Deputy County Counsel

Dated: 5/22/06

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