

**SPECIAL MEETING
OF THE
CACHUMA OPERATION AND MAINTENANCE BOARD**
at Cachuma Operation and Maintenance Board Office

**3301 Laurel Canyon Road
Santa Barbara, CA 93105**

Monday, August 2, 2010

Start Time
10:00 AM

AGENDA

1. **COMB CALL TO ORDER, ROLL CALL** (COMB Board of Directors.)
2. **PUBLIC COMMENT** (Public may address the Board on any subject matter not on the agenda and within the Board's jurisdiction. See "Notice to the Public" below.)
3. **CONSIDER APPROVAL OF PROJECT INDEMNIFICATION AGREEMENT FOR THE SOUTH COAST CONDUIT UPPER REACH RELIABILITY PROJECT (2ND PIPELINE PROJECT)**
4. **CONSIDER EXTENSION OF CONSTRUCTION BID FROM THE APPARENT LOW BIDDER, BLOIS CONSTRUCTION, INC. FOR THE 2ND PIPELINE PROJECT**
5. **[CLOSED SESSION] CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED LITIGATION, PURSUANT TO GOVERNMENT CODE SECTION 54956.9(c) (one case).**
6. **COMB ADJOURNMENT**

NOTICE TO PUBLIC

Public Comment: Any member of the public may address the Board on any subject within the jurisdiction of the Board that is not scheduled for a public hearing before the Board. The total time for this item will be limited by the President of the Board. If you wish to address the Board under this item, please complete and deliver to the Secretary of the Board before the meeting is convened, a "Request to Speak" forms including a description of the subject you wish to address.

Americans with Disabilities Act: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Cachuma Operation and Maintenance Board office at (805) 687-4011 at least 48 hours prior to the meeting to enable the Board to make reasonable arrangements.

[This Agenda was Posted at 3301 Laurel Canyon Road, Santa Barbara, CA
at Santa Barbara City Hall, Santa Barbara, CA and at Member District Offices and Noticed and Delivered in Accordance with
Section 54954.1 and .2 of the Government Code.]

CACHUMA OPERATION AND MAINTENANCE BOARD

MEMORANDUM

DATE: August 2, 2010
TO: Board of Directors
FROM: Kate Rees, General Manager
RE: **Approval of Project Indemnification Agreement for South Coast Conduit Upper Reach Reliability Project**

RECOMMENDATION:

Approve the South Coast Conduit Upper Reach Reliability Project - Project Indemnification Agreement Between COMB and the Santa Ynez River Water Conservation District, ID No. 1 (ID No. 1) whereby ID No. 1 will not be held responsible or obligated in any way for the project contractual obligations.

DISCUSSION:

On March 22, 1010, the COMB Board approved the following:

1. COMB Resolution No. 501 authorizing COMB to proceed with the issuance of \$11M in bonds to finance the construction of the South Coast Conduit (SCC) Upper Reach Reliability Project (2nd Pipeline Project). All bond proceeds and obligations will be for the benefit of COMB, the City of Santa Barbara (City) and the Goleta Water District (GWD).
2. Montecito Water District (MWD) Contribution Agreement whereby MWD commits to self-funding up to 13.1% of the total costs for the SCC Upper Reach Reliability Project, in substantially the same form.
3. Bond Indemnification Agreement whereby MWD, Carpinteria Valley Water District (CVWD), and Santa Ynez River Water Conservation District, ID No. 1 (ID No. 1) will not be held responsible or obligated in any way for the COMB bond contractual obligations.
4. Sale of the bonds, after construction bids are received and a contractor is selected and approved by COMB and the Member Units.

Two Indemnification Agreements are needed for the Second Pipeline Project. The first is for the COMB bond, to provide indemnification for the non-bonding parties, MWD, ID No.1 and CVWD, from the bonding participants, which are COMB, the City, and GWD, for the issuance of an \$11M COMB Bond; and one for the project. The Bond Indemnification Agreement was approved by the COMB Board on March 22, 2010 after it was approved by MWD, ID No. 1 and CVWD.

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The second is a Project Indemnification Agreement between COMB and ID No.1 to indemnify ID No. 1 from any liability associated with the acceptance of the lowest bid, award of the construction contract, and construction of the Second Pipeline Project.

Attached is the Project Indemnification Agreement for the Board's consideration and approval. There has been one change to the draft agreement, which is shown in the tracked version also attached. It adds the words: "bidding and award" to the first paragraph Allocation of the Agreement section of the Agreement. This language was reviewed by bond counsel, Doug Brown, and was acceptable to him.

Staff recommends approval of the agreement.

Respectfully submitted,



Kate Rees
General Manager

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**CACHUMA OPERATION AND MAINTENANCE BOARD
SOUTH COAST CONDUIT UPPER REACH RELIABILITY PROJECT
INDEMNIFICATION AGREEMENT FOR
SANTA YNEZ RIVER WATER CONSERVATION DISTRICT,
IMPROVEMENT DISTRICT NO. 1**

This Indemnification Agreement (“Agreement”) is entered into this ____ day of _____, 2010, by and between the Cachuma Operation and Maintenance Board, a joint powers agency (“COMB”) and the Santa Ynez River Water Conservation District, Improvement District No. 1 (“ID No.1”), with reference to the following facts:

A. COMB intends to construct, modify and improve the South Coast Conduit, such construction, modifications and improvements being commonly referred to as the South Coast Conduit Upper Reach Reliability Project (the “Second Pipeline Project”), with the project fully defined and shown in the plans, specifications and bid documents titled Technical Specifications for the Upper Reach Reliability Project prepared by AECOM, dated April 2010, and consisting generally of South Coast Conduit pipeline improvements, the replacement or rehabilitation of certain infrastructure facilities, and related work and/or activities for that portion of the South Coast Conduit between the South Portal of the Tecolote Tunnel and the Corona Del Mar Water Treatment Plant.

B. The 1996 Joint Powers Agreement (“COMB Agreement”), as amended, provides that each COMB member agency’s obligation for Cachuma Project operation and maintenance cost is expressly limited to the amount determined by its members.

C. The COMB Board has determined and agreed that ID No. 1 shall not be obligated to pay or otherwise be responsible for all or any part of the Second Pipeline Project.

AGREEMENT

The parties agree as follows:

1. **Allocation.**

The parties agree, notwithstanding the provisions of the COMB Agreement, that COMB shall be solely responsible for all of COMB’s obligations, debts and liabilities related to the Second Pipeline Project, including, but not limited to, planning, design, permitting, bidding and award, construction, operation, maintenance, repair and replacement.

2. **Indemnification for the Second Pipeline Project.**

To the maximum extent allowed by law, COMB hereby covenants and agrees, at its sole and exclusive cost and expense, to indemnify and hold harmless ID No. 1, its officers, trustees, agents and employees, from and against any and all damages, liabilities, claims, demands, actions, causes of action, attorneys’ fees, expert witness fees, and all other costs, expenses of any kind or nature that arise out of or in any way relate to the Second Pipeline Project. In the event of a court challenge to the legality or the applicability of this indemnification provision, the parties agree that this indemnification provision shall be interpreted in favor of ID No. 1 and that ID No. 1 shall be

afforded the maximum degree of indemnification as may be reasonably inferable from the language of this provision as available at law.

ID No. 1 shall notify COMB of the existence of any claim, demand, or other matter that it reasonably becomes aware of to which COMB's indemnification obligations would apply and shall give COMB a reasonable opportunity to defend the same at COMB's expense with counsel of their own selection, subject to ID No. 1's reasonable approval. If COMB, within a reasonable time after written notice, fail to defend, ID No. 1 shall have the right, but not the obligation, to undertake the defense of, and compromise a settlement (exercising reasonable business judgment), any claim or other matter on behalf, for the account, and at the risk of COMB.

3. COMB Obligations.

Notwithstanding that ID No. 1 is a member agency of COMB, ID No. 1 shall not have any liability or responsibility with respect to COMB's obligations pursuant to this Agreement.

4. Notices.

All notices, approvals, acceptances, demands and other communications required or permitted under this Agreement, to be effective, shall be in writing and shall be delivered in person or by U.S. mail (postage prepaid, certified, return receipt requested) or by Federal Express or other similar overnight delivery service to the party to whom the notice is directed at the address of such party as maintained by COMB. Any written communication given by mail shall be deemed delivered two (2) business days after such mailing date and any written communication given by overnight delivery service shall be deemed delivered one (1) business day after the dispatch date. Either party may change its address by giving the other party written notice of its new address as provided above.

5. Other Instruments.

The parties shall, whenever and as often as reasonably requested by the other party, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all documents and instruments as may be necessary, expedient or proper in the reasonable opinion of the requesting party to carry out the intent and purposes of this Agreement, provided that the requesting party shall bear the cost and expense of such further instruments or documents (except that each party shall bear its own attorneys' fees).

6. Construction.

The provisions of this Agreement should be liberally construed to effectuate its purposes. The language of this Agreement shall be construed simply according to its plain meaning. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.

7. Severability.

If any term, provision, covenant or condition of this Agreement shall be or become illegal, null, void or against public policy, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby. The term,

provision, covenant or condition that is so invalidated, voided or held to be unenforceable shall be modified or changed by the parties to the extent possible to carry out the intentions and directives stated in this Agreement.

8. Successors and Assigns.

This Agreement shall be binding on and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

9. Waiver.

No waiver of any provision or consent to any action shall constitute a waiver of any other provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically stated in writing. Any waiver given by a party shall be null and void if the party requesting such waiver has not provided a full and complete disclosure of all material facts relevant to the waiver requested. No waiver shall be binding unless executed in writing by the party making the waiver.

10. Governing Law.

The validity and interpretation of this Agreement shall be governed by the laws of the State of California without giving effect to the principles of conflict of laws, with venue for all purposes proper only in the County of Santa Barbara, State of California.

11. Counterparts.

This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. However, in making proof hereof, it will be necessary to produce only one copy hereof signed by the party to be charged.

12. Attorneys' Fees.

If any action at law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover actual attorneys' fees and costs which may be determined by the court in the same action or in a separate action brought for that purpose. The attorneys' fees and costs to be awarded shall be made to fully reimburse for all attorneys' fees, paralegal fees, costs and expenses actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorneys' fees, paralegal fees, costs and expenses paid or incurred in good faith.

13. Authorizations.

All individuals executing this Agreement and other documents on behalf of the respective parties certify and warrant that they have the capacity and have been duly authorized to so execute the documents on behalf of the entity so indicated.

14. No Third-Party Beneficiaries.

No third party, other than the parties to this Agreement, shall be entitled to claim or enforce any rights under this Agreement.

15. Entire Agreement and Amendment.

This Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature binding except as stated in this Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their right to claim, contest or assert that this Agreement was modified, cancelled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

**SANTA YNEZ RIVER WATER
CONSERVATION DISTRICT
IMPROVEMENT DISTRICT NO. 1:**

**CACHUMA OPERATION AND
MAINTENANCE BOARD:**

President

President

ATTEST:

ATTEST:

Secretary

Secretary

**CACHUMA OPERATION AND MAINTENANCE BOARD
SOUTH COAST CONDUIT UPPER REACH RELIABILITY PROJECT
INDEMNIFICATION AGREEMENT FOR
SANTA YNEZ RIVER WATER CONSERVATION DISTRICT, IMPROVEMENT
DISTRICT NO. 1**

This **Indemnification Agreement** (“Agreement”) is entered into this ____ day of _____, 2010, by and between the Cachuma Operation and Maintenance Board, a joint powers agency (“COMB”) and the Santa Ynez River Water Conservation District, Improvement District No. 1 (“ID No.1”), with reference to the following facts:

A. COMB intends to construct, modify and improve the South Coast Conduit, such construction, modifications and improvements being commonly referred to as the South Coast Conduit Upper Reach Reliability Project (the “Second Pipeline Project”), with the project fully defined and shown in the plans, specifications and bid documents titled Technical Specifications for the Upper Reach Reliability Project prepared by AECOM, dated June 30, 2009 _____ April, 2010, and consisting generally of South Coast Conduit pipeline improvements, the replacement or rehabilitation of certain infrastructure facilities, and related work and/or activities for that portion of the South Coast Conduit between the South Portal of the Tecolote Tunnel and the Corona Del Mar Water Treatment Plant.

B. The 1996 Joint Powers Agreement (“COMB Agreement”), as amended, provides that each COMB member agency’s obligation for Cachuma Project operation and maintenance cost is expressly limited to the amount determined by its members.

C. The COMB Board has determined and agreed that ID No. 1 shall not be obligated to pay or otherwise be responsible for all or any part of the Second Pipeline Project.

AGREEMENT

The parties agree as follows:

1. Allocation.

The parties agree, notwithstanding the provisions of the COMB Agreement, that COMB shall be solely responsible for all of COMB’s obligations, debts and liabilities related to the Second Pipeline Project, including, but not limited to, planning, design, permitting, bidding and award, construction, operation, maintenance, repair and replacement.

2. Indemnification for the Second Pipeline Project.

To the maximum extent allowed by law, COMB hereby covenants and agrees, at its sole and exclusive cost and expense, to indemnify and hold harmless ID No. 1, its officers, trustees, agents and employees, from and against any and all damages, liabilities, claims, demands, actions, causes of action, attorneys’ fees, expert witness fees, and all other costs, expenses of any kind or nature that arise out of or in any way relate to the Second Pipeline Project. In the event of a court challenge to the legality or the applicability of this indemnification provision, the parties agree that this indemnification provision shall be interpreted in favor of ID No. 1 and that ID No. 1 shall be

afforded the maximum degree of indemnification as may be reasonably inferable from the language of this provision as available at law.

ID No. 1 shall notify COMB of the existence of any claim, demand, or other matter that it reasonably becomes aware of to which COMB's indemnification obligations would apply and shall give COMB a reasonable opportunity to defend the same at COMB's expense with counsel of their own selection, subject to ID No. 1's reasonable approval. If COMB, within a reasonable time after written notice, fail to defend, ID No. 1 shall have the right, but not the obligation, to undertake the defense of, and compromise a settlement (exercising reasonable business judgment), any claim or other matter on behalf, for the account, and at the risk of COMB.

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provision, covenant or condition that is so invalidated, voided or held to be unenforceable shall be modified or changed by the parties to the extent possible to carry out the intentions and directives stated in this Agreement.

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No third party, other than the parties to this Agreement, shall be entitled to claim or enforce any rights under this Agreement.

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This Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature binding except as stated in this Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their right to claim, contest or assert that this Agreement was modified, cancelled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

**SANTA YNEZ RIVER WATER
CONSERVATION DISTRICT
IMPROVEMENT DISTRICT NO. 1:**

**CACHUMA OPERATION AND
MAINTENANCE BOARD:**

President

President

ATTEST:

ATTEST:

Secretary

Secretary

COMB OPERATION AND MAINTENANCE BOARD

MEMORANDUM

DATE: August 2, 2010
TO: Board of Directors
FROM: Kate Rees, General Manager
RE: **Extension of Construction Contract for the SCC Upper Reach Reliability Project (2nd Pipeline Project)**

Recommendation:

1. That the Board approve Option 1 listed below regarding an extension of the construction bid from the apparent low bidder, Blois Construction, Inc.
2. That the Board approve the attached agreement between COMB and Blois Construction, to extend the time period for the award of contract by sixty (60) calendar days.

Discussion:

At the July 26, 2010 regular Board meeting, the COMB Board considered the following options regarding award of the construction contract for the 2nd Pipeline Project. The apparent low bidder is Blois Construction, Inc.

1. Request that Blois guarantee his bid amount in 60 day intervals, and revisit at the end of each period.
2. Extend the bid open for approximately 6 months or until all permits are in hand. Request that the contractor guarantee his submitted bid labor costs, and give the Board revised materials and subcontractor costs at the end of the period. The Board could then decide if it wishes to accept or reject Blois' revised bid at that time.
3. Award the contract by August 16, 2010, with the understanding that a notice to proceed could not be issued until COMB receives the construction permit from Reclamation. Blois may not be able to hold the materials cost under this option.
4. Reject all bids.

The bid specification document states:

Supplemental to General Provisions - Award of Contract or Rejection of Bids: Within a period of 90 calendar days after the opening of bids, the Owner will accept or reject the bids, or mutually agree to an extension with the apparent low bidder.

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The 90 day period ends August 16, 2010. Due to the recent delay in getting a NHPA Section 106 permit approved by Reclamation, and the fact that other permits, the EIS Notice of Availability and Record of Decision, and approval of Reclamation's Construction Permit are also contingent on receipt of the Section 106 permit, COMB will not be able to meet the deadline to award the construction contract.

After extensive discussion, the Board indicated a preference for Option 1. Director Bettencourt requested that the COMB-ID No. 1 Project Indemnification Agreement for the 2nd Pipeline Project be approved prior to COMB entering into an agreement with Blois Construction extending the bid by 60 days. If the Project Indemnification Agreement is approved at the August 2nd meeting, staff recommends that the Board approve the attached agreement extending Blois' bid by 60 days, and may mutually agree to further 60 day extensions.

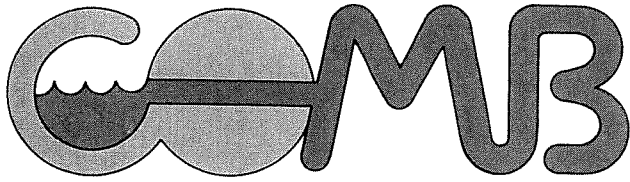
Respectfully submitted,



Kate Rees
General Manager

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CACHUMA OPERATION AND MAINTENANCE BOARD

3301 LAUREL CANYON ROAD
SANTA BARBARA, CALIFORNIA 93105-2017
TELEPHONE (805) 687-4011

Blois Construction, Inc (“Bidder”) as the apparent low bidder for award of the contract to construct the “Upper Reach Reliability Project” and the governing Board of the Cachuma Operation and Maintenance Board (“COMB”) do hereby mutually agree, in accordance with the Contract Documents, Section 007300 F of the Supplement to General Provisions, to extend by sixty (60) calendar days the time period for the award of contract, as such time period is specified in the Contract Documents, or for the Rejection of Bids.

At such time as the sixty (60) calendar day extension period ends, the Bidder and COMB may mutually agree to further sixty (60) calendar day extensions of the date for the award of contract or for the Rejection of Bids.

Lauren Hanson, President of COMB

Jim Blois, Blois Construction, Inc.

*Carpinteria Valley Water District
City of Santa Barbara
Goleta Water District
Montecito Water District
Santa Ynez River Water Conservation District, Improvement District #1
General Manager/Secretary of the Board, Kathleen A. Rees*

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