

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Public Works

BOARD AGENDA # *C-6

Urgent

Routine

AGENDA DATE July 2, 2013

CEO Concur with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of a Memorandum of Understanding between Stanislaus County, the City of Ceres, and the Monterey Park Tract Community Services District for Water Service Improvements for the District

STAFF RECOMMENDATIONS:

Authorize the Chairman of the Board to execute the Memorandum of Understanding between Monterey Park Tract Community Services District, the City of Ceres and Stanislaus County.

FISCAL IMPACT:

The proposed Memorandum of Understanding (MOU) has no direct fiscal impact to the County, however, if for any reason the District is unable to meet the obligations in the Water Service Agreement, the County, per the MOU, agrees to take formal action to assume all obligations of the District in order to provide continued water service to the residents of Monterey Park Tract. The estimated annual cost of water service for the District is \$31,000. Absent formal action to assume all obligations of the District, the County will request that the water service will be turned off and the Water Service Agreement terminated. As of June 28, 2013 the cash balance for the Monterey Park Tract District is \$25,147.

BOARD ACTION AS FOLLOWS:

No. 2013-337

On motion of Supervisor De Martini, Seconded by Supervisor Withrow, and approved by the following vote,

Ayes: Supervisors: O'Brien, Withrow, Monteith, De Martini and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION: This Item was removed from the consent calendar for discussion and consideration.

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

Approval of a Memorandum of Understanding between Stanislaus County, the City of Ceres, and the Monterey Park Tract Community Services District for Water Service Improvements for the District

DISCUSSION:

Monterey Park Tract (MPT) is located just off of Monte Vista Ave, between Crows Landing Road and Carpenter Road. The MPT subdivision was created in 1941 with 89 parcels. Currently the assessor records show 74 assessed parcels. This is due to lot mergers and common ownership of adjacent parcels. Monterey Park Tract Community Services District (MPTCSD) was formed as an independent district in May 1984. In the early 1980's Stanislaus County received \$432,000 Community Development Block Grant (CDBG) funds to build a new water system, repair septic systems and abandon contaminated individual domestic water wells. In October 1984 Stanislaus County agreed to administer the installation of the water system. In October 1987 with the construction completed, MPTCSD became a public water system. The MPTCSD owns and operates the community's water system which currently serves approximately 47 households, a church and a community center for a total of 49 water service connections. The estimated population of the community is approximately 200 residents.

Today water quality issues include high nitrates, arsenic, manganese, and total dissolved solids (TDS). On April 27, 2012, MPTCSD secured a \$2.2 million Prop 84 grant to address water quality issues. The preferred alternative is connecting to the City of Ceres Domestic Water Supply. To support the City of Ceres rate structure today and in the near future, MPTCSD conducted a prop 218 ballot procedure to increase water rates. The vote to institute a change to the water rate structure passed and approval was received on May 14, 2012. New rates were implemented on July 1, 2012. With the implementation of the new rate, average water usage was reduced from 40,000 gallons per parcel per month to 15,000 gallons per parcel per month, a 62.5% reduction. Additionally, this new rate structure is aligned with anticipated rate increases as projected by the City of Ceres for the next five years.

A provision of Prop 84 Grant funding, requires that MPTCSD have a water service agreement executed with the City of Ceres. The MOU agreement will serve as this water service agreement until a California Environmental Quality Act (CEQA) review and design can be completed. Stanislaus County Chief Executive Office staff and Public Works staff have worked jointly with MPTCSD and the City of Ceres to draft this MOU.

Study sessions were held on July 25, 2011, July 9, 2012, March 25, 2013 and June 10, 2013 with Ceres City Council to discuss the possibility of the City of Ceres providing water to Monterey Park Tract. During the June 10, 2013 study session the Ceres City Council unanimously supported the draft MOU. It is anticipated that after Board of Supervisor action the Ceres City Council will consider approval.

The County has not typically been a party to an agreement with other special districts that puts the County as a cosigner. Key components of the Memorandum of Understanding between Stanislaus County, the City of Ceres and the Monterey Park Tract Community Services District include, in general terms, the following:

1. City of Ceres will supply water to the Monterey Park Tract Community Services District;

Approval of a Memorandum of Understanding between Stanislaus County, the City of Ceres, and the Monterey Park Tract Community Services District for Water Service Improvements for the District

2. Monterey Park Tract Community Services District will construct at its expense all improvements necessary to deliver the water from the City of Ceres water system;
3. Monterey Park Tract Community Services District will own and be responsible for the operation and maintenance of the improvements;
4. Stanislaus County will provide the Monterey Park Tract Community Services District funding of up to \$30,000, from Community Development Funds, to allow it to secure the Proposition 84 grant funding from the State of California for design and construction of the Water Connection Project (as approved January 29, 2013 by the Board of Supervisors). The allocation will allow the District to obtain gap financing from a local lender to secure the State funding;
5. Upon execution of the Water Service Agreement and the completion of the construction of facilities MPTCSD will deposit the sum of \$75,000 into a reserve account for the purpose of ensuring the City has sufficient funds to cover MPTCSD water service billings on a monthly basis. If for any reason MPTCSD is unable to meet the financial requirements for water service payments as contemplated in the MOU and executed in the Water Service Agreement, the water service will be turned off and the Water Service Agreement terminated unless the County formally agrees to assume responsibility for those payments as the services continue to be delivered to the MPTCSD area; and
6. If for any reason, MPTCSD is unable to meet the obligations as delineated in the Water Service Agreement, the County agrees to take formal action to assume all obligations of MPTCSD in order to provide continued water service to the residents of Monterey Park Tract. Absent formal action to assume all obligations of MPTCSD the County will request that the water service will be turned off and the Water Service Agreement terminated. At least 120 days prior to the beginning of year 15 of the Agreement, the City and the County agree to meet and evaluate the ongoing fiscal obligations of each party associated with the Water Service Agreement. The County and the City will consider those findings and make a recommendation on how to structure the fiscal obligations for the remaining term of the Water Services Agreement.

It is intended that if MPTCSD can show fiscal solvency at the 15 year term then the obligation of the County, as defined in the MOU, may be reduced. Based upon current water usage in MPT, the proposed reserve account of \$75,000 will provide approximately 3.5 years of reserve utility billing.

The MPTCSD is in the process of selecting an auditor to perform a financial audit of the District. The proposed audit shall conform to generally accepted auditing procedures. It is anticipated that the audit period would encompass one to two fiscal years. The last audit was completed in 1995. A copy of the completed audit and findings will be provided to the Stanislaus County Auditor-Controller.

Approval of a Memorandum of Understanding between Stanislaus County, the City of Ceres, and the Monterey Park Tract Community Services District for Water Service Improvements for the District

POLICY ISSUES:

This action is consistent with the Board's priorities of striving for A Healthy Community, Well-Planned Infrastructure System and Effective Partnerships by assisting the Monterey Park Tract Community Services District in their effort to improve infrastructure to enhance water delivery and quality to their service area.

STAFFING IMPACT:

Staff from Public Works and the Chief Executive Office were involved in the preparation of the MOU.

CONTACT PERSONS:

Matt Machado, Public Works Director. Telephone: (209) 525-4130
Keith Boggs, Assistant Executive Officer. Telephone: (209) 525-6333

MM:lc

H:\MATT MACHADO\BOS\Board Agenda Items\Monterey Park Tract\Monterey Park Tract Water MOU_BOS 7.2.13

**MEMORANDUM OF UNDERSTANDING BETWEEN
MONTEREY PARK TRACT COMMUNITY SERVICES DISTRICT, THE CITY
OF CERES AND STANISLAUS COUNTY**

PARTIES: Monterey Park Tract Community Services District (“DISTRICT”),
City of Ceres (“CITY”), and Stanislaus County (“COUNTY”)

RECITALS:

1. The formation of the DISTRICT was approved by COUNTY and Stanislaus Local Agency Formation Commission (“LAFCO”) on May 29, 1984. The purpose of the district is the provision of domestic water service.
2. DISTRICT exists to provide its residents with safe drinking water, but is currently unable to do so because of contaminants occurring in the underground sources from which DISTRICT draws its water, creating a dire need for a source of safe drinking water for the residents of DISTRICT;
3. DISTRICT has completed a Water Supply Study (Study) conducted by Fremming, Parson & Pecchenino dated September 2011 delineating the options for providing safe drinking water. The study provides for two primary alternatives, Well Head Treatment and CITY connection. The DISTRICT’s preferred alternative is connection to the CITY municipal water delivery system which must be approved by the Ceres City Council and Stanislaus Local Agency Formation Commission (LAFCO).
4. DISTRICT has received a Letter of Commitment (LOC) from the California Department of Public Health (CDPH) regarding funding for the recommended alternative solution under Proposition 84, Section 75022 and contingent upon compliance with terms and conditions of the LOC;
5. CITY has the capacity within its municipal water delivery system to serve existing CITY customers and future CITY development and to serve DISTRICT with potable water;
6. On July 9, 2012, the City Council directed CITY staff to work with the DISTRICT to prepare a formal Memorandum of Understanding (MOU) with the DISTRICT and to ensure that the COUNTY be a party to said MOU;
7. COUNTY staff has been approached by the DISTRICT to assist with the financing plan for the water line improvement project to draw down the Proposition 84 funding from the California Department of Public Health and development of a plan for ongoing maintenance and operations of the said improvements;

8. COUNTY recognizes that the project as proposed would serve a public benefit and address long-standing water quality issues at the Monterey Park Tract—an unincorporated community of the COUNTY;
9. CITY is required to be the Lead Agency for an Out of Boundary Service application to LAFCO.
10. The water line construction, application for an Out of Boundary Service to LAFCO and the execution of a Water Service Agreement is considered a project under the California Environmental Quality Act (CEQA). Therefore, an analysis of the project is required under CEQA.
11. DISTRICT agrees and acknowledges that if CITY is not successful in obtaining approval of an Out of Boundary Service application from Stanislaus LAFCO that CITY cannot and will not supply water to the DISTRICT.
12. This MOU is intended to provide the framework for the Water Service Agreement that will replace this MOU if all of the proposed terms delineated below are accomplished.

PROPOSED TERMS OF AGREEMENT:

1. CITY agrees to be the Lead Agency for the Out of Boundary Service application to LAFCO.
2. DISTRICT agrees to prepare the necessary studies and environmental analysis for compliance with all applicable CEQA requirements. CITY agrees to review and provide assistance in the preparation of the CEQA documents consistent with the provisions of this MOU.
3. CEQA documentation for the project will be routed to LAFCO and other applicable agencies for consideration.
4. If approved by LAFCO, or determined by LAFCO that an Out of Boundary Service request is not required per Government Code Section 56133 (e), the DISTRICT, CITY and COUNTY shall work together to create a Water Service Agreement which includes the items in this MOU, plus other items as deemed necessary, and specifically including the matters listed in paragraph 5 a and b.
5. The DISTRICT has submitted an application for grant funds and received a Letter of Commitment from the California Department of Public Health (CDPH) in the amount of \$2,220,269 through the Proposition 84, Section 75022 grant program for the proposed Connection Project. One of the requirements of CDPH Proposition 84 funding is the submittal of a draft water service agreement which includes at least the following items:

- a. A clear description of the project components for connection to CITY municipal water delivery system, if approved by Stanislaus LAFCO, including necessary easements, estimated project completion schedule, and a list of the project components and identification of the party responsible for the construction of each; and
 - b. Terms of service regarding operation and maintenance of all facilities, clearly delineating areas of responsibility and facility ownership for each party
6. DISTRICT will secure a gap loan from a lending institution to provide necessary financing to draw down the CDPH Proposition 84 funding for the design and construction phases of the improvement project. The COUNTY agrees to grant funding up to \$30,000 for interest associated with the gap loan financing over an anticipated 18-month period.
7. DISTRICT agrees to reimburse CITY for all costs incurred by CITY in processing this Project, including but not limited to the following:
 - a. All costs necessary or funds required for the submission and processing of an Out of Boundary Service application to LAFCO, including the applicable time associated with the CEQA documentation. The amount of said costs shall be determined by the CITY and shall be paid by the DISTRICT to the CITY prior to any work being performed by CITY to complete any such application.
 - b. The cost of all CITY staff time spent on behalf of DISTRICT to complete all aspects of the Project, including a reasonable allocation for overhead expense.
 - c. All such costs will be determined by the CITY and presented to the DISTRICT, and DISTRICT shall pay the sum due within forty-five (45) days of presentation.
8. If approval of an Out of Boundary Service application is obtained from Stanislaus LAFCO, CITY will supply DISTRICT a maximum of 60,000 gallons per day of water, upon final approval of the Ceres City Council of the water service agreement contemplated by this MOU.
9. DISTRICT will construct all improvements necessary to deliver the water from the end of the CITY'S water main located on Crows Landing Road approximately one-half (1/2) mile south of Service Road to the DISTRICT's water distribution system. The construction of that portion of the improvements involving the connection to CITY improvements shall be subject to the following conditions:

- a. DISTRICT shall prepare plans and specifications for the connection to the CITY water system. No work shall be initiated until plans and specifications are approved by the CITY and COUNTY.
 - b. All construction costs shall be at the DISTRICT'S expense.
 - c. Connection to the CITY water system and materials used shall be installed by the DISTRICT to CITY Standards, including pressure and bacteria testing.
 - d. DISTRICT shall design and install a Reduced Pressure Principle device and a flow control valve to insure no more than 41 gallons per minute will flow downstream through the meter.
 - e. DISTRICT shall contract with a licensed contractor or operator to perform the construction work. The contract shall include requirements for insurance and bonding to CITY requirements.
 - f. DISTRICT shall obtain an encroachment permit from the CITY for work involving connection to CITY improvements prior to the start of construction activities. The CITY encroachment permit will include provisions for CITY inspection and the payment of connection and inspection fees.
 - g. The DISTRICT shall hire a project manager to inspect and review all work that is to be done to insure that it is in conformance with City Standards.
 - h. The DISTRICT shall reimburse the CITY for the cost of all repairs to the improvements constructed at the connection site as provided in this paragraph 7.
10. DISTRICT will design, construct, own and be solely responsible for the construction, operation and maintenance of the improvements which are downstream of the CITY water meter at the water service connection to the CITY'S water main. The CITY and its customers shall have no responsibility for operation and maintenance of the facilities owned by the DISTRICT.
11. DISTRICT is solely responsible for the sufficiency of the facilities and the adequacy of the design necessary to deliver sufficient water volume and pressure to meet the requirements from the connection point with the CITY facilities. These improvements may include a booster pump, tanks or other facilities necessary to ensure adequate system operating and fire flow pressures and volumes for the DISTRICT facilities.
12. Upon CITY approval of the execution of the Water Service Agreement and the completion of the construction of facilities, CITY agrees to serve DISTRICT with potable water in exchange for payment by DISTRICT of the CITY's water charges as established by the CITY. DISTRICT acknowledges that in accordance with section 13.04.100 and 13.04.070 of the CITY municipal code, the DISTRICT is required to pay one and one-half (1.5) the adopted water connection and water usage fees as established by the CITY. DISTRICT agrees that it will be subject to any changes in the CITY'S water ordinances, regulations and rates. The Water Service Agreement will include the following provisions:

- a. The water connection fee shall be paid on the basis of 55 total units per the Study. The City will allocate the difference in the connection fee between the existing 44 units and the ultimate 55 units to establish a reserve account of at least \$75,000 for the purposes of ensuring the CITY has sufficient funds to cover DISTRICT water service billings on a monthly basis. If the District is late or misses a monthly payment, the CITY will draw from the reserve account. The balance of the reserve account will be provided to the District after each draw and notice given to the COUNTY.
 - b. If the reserve account balance drops below \$50,000, the parties agree to meet and confer within 30 days of notice.
 - c. If the reserve account balance is extinguished, DISTRICT will be subject to all provisions of the CITY municipal code regarding penalties, fines, shut-off provisions, and collections of outstanding bills.
 - d. If for any reason, DISTRICT is unable to meet the financial requirements for water service payments as contemplated in this MOU and executed in the Water Service Agreement, the water service will be turned off and the Water Service Agreement terminated unless the COUNTY formally agrees to assume responsibility for those payments as the services continue to be delivered to the DISTRICT area.
13. DISTRICT acknowledges CITY has completed a Water Master Plan and Rate Study. New fees are effective July 1, 2013 for water usage fees. Increases of the connection fees are also expected to be increased in 2013. Furthermore, the CITY is a member of the Stanislaus Regional Water Project (SRWP) pursuing the installation of surface water improvements. The SRWP will also lead to increased connection and water usage fees in the future. DISTRICT agrees to pay CITY the fees as adopted by the Ceres CITY Council.
14. The DISTRICT shall be solely responsible to conduct the necessary Proposition 218 or other legal processes necessary to ensure the adequacy of funds to pay the fees as assessed by CITY.
15. This MOU is by and between the CITY, DISTRICT and the COUNTY. DISTRICT agrees that all communication regarding the terms, conditions, and requirements contained herein, shall be by and through the DISTRICT's authorized representative. The DISTRICT Board of Director's shall provide written documentation of the Board's appointment of the individual authorized to act on the DISTRICT's behalf.
16. In the spirit of partnership and collaboration, the DISTRICT, CITY and COUNTY agree to meet and confer on an annual basis (at the beginning of each fiscal year) to ensure that the terms of the Water Service Agreement are adequately met and to address issues and concerns as they may arise.
17. The DISTRICT, COUNTY and the CITY are separate legal entities created under the laws of the State of California, and nothing contained in this MOU or the

Water Service Agreement contemplated by this MOU shall in any way be construed to imply that the CITY has any responsibility or liability for the construction, operation, maintenance or proper design or functioning of the water system improvements to be constructed by the DISTRICT. The Water Service Agreement prepared by the parties shall include this or similar language and shall further include a provision requiring the DISTRICT to indemnify and hold harmless the CITY from all claims arising out of the CITY'S participation in this project, which provision shall include a duty to defend and to pay all reasonable attorney fees and costs.

18. If for any reason, the DISTRICT is unable to meet the obligations as delineated in the Water Service Agreement, the COUNTY agrees to take formal action to assume all obligations of the DISTRICT in order to provide continued water service to the residents of Monterey Park Tract. Absent formal action to assume all obligations of the DISTRICT the COUNTY will request that the water service will be turned off and the Water Service Agreement terminated. At least 120 days prior to the beginning of year 15 of the Water Service Agreement, the City and the County agree to meet and evaluate the ongoing fiscal obligations of each party associated with the Water Service Agreement. The County and the City will consider those findings and make a recommendation on how to structure the fiscal obligations for the remaining term of the Water Services Agreement.

Dated:

MONTEREY PARK TRACT
COMMUNITY SERVICES DISTRICT

By: _____

Francisco Diaz, President

Dated:

CITY OF CERES

By: Art Dewerk

Name and Title: ART DEWERK
ACTING CITY MANAGER

Dated:

COUNTY OF STANISLAUS

By: Vito Chiesa

Name and Title: Vito Chiesa

Chairman, Board of Supervisors

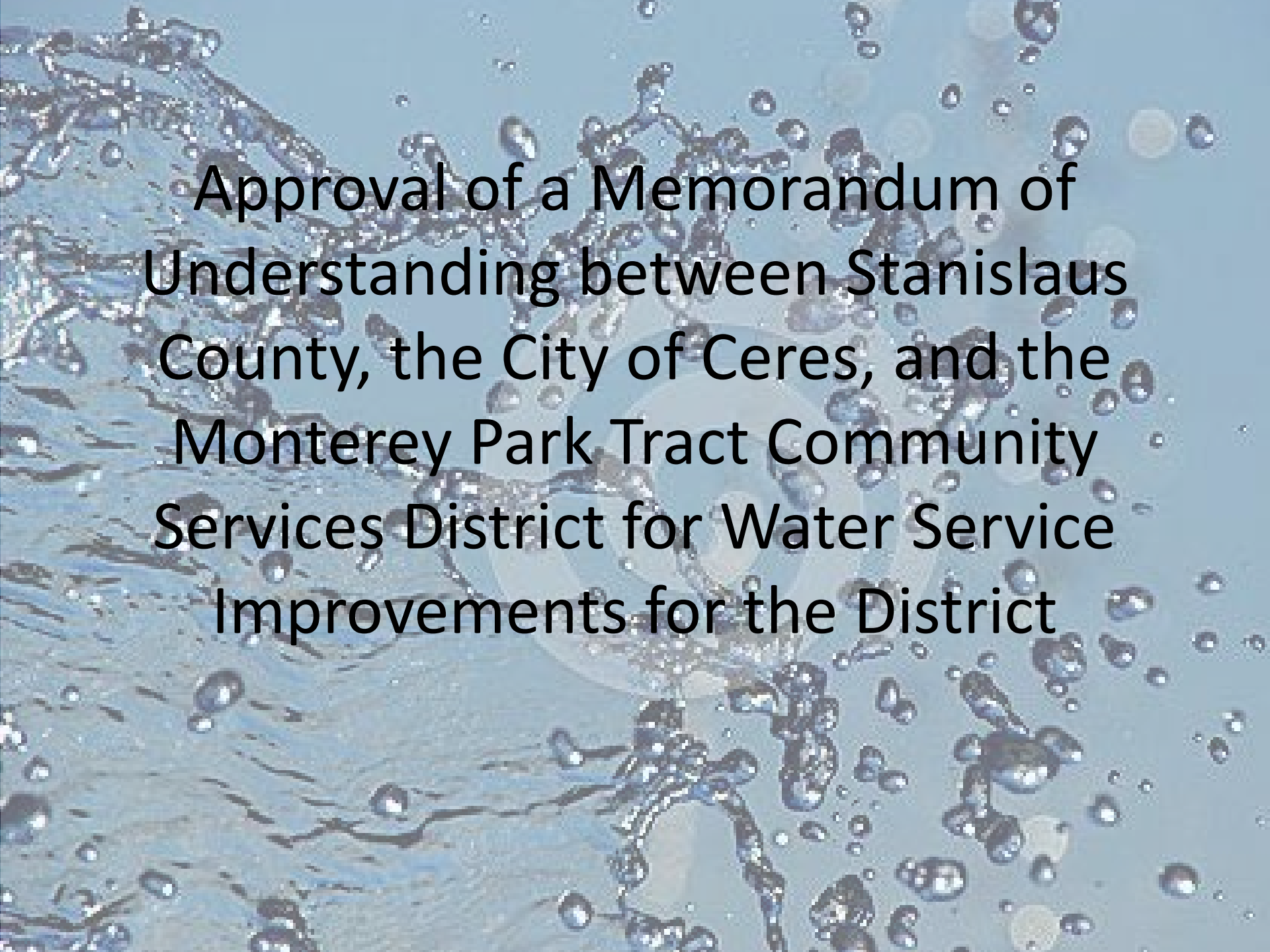
APPROVED AS TO FORM

Michael L. Lyons
Michael L. Lyons
City Attorney

APPROVED AS TO FORM:
STANISLAUS COUNTY COUNSEL

BY: Stomil Dg

DATE: 6-21-2013

A background image showing a dynamic splash of water with numerous bubbles and droplets against a light blue background. The water is captured in mid-air, creating a sense of movement and freshness.

Approval of a Memorandum of Understanding between Stanislaus County, the City of Ceres, and the Monterey Park Tract Community Services District for Water Service Improvements for the District

Background

- MPT Subdivision created in 1941
- MPTCSD formed as an independent district in May 1984
- In early 1980's Stanislaus County received \$432,000 of CDBG funds to build a new water system and repair the septic systems.
- October 1987, with the new system constructed, MPTCSD became a public water system.

Monterey Park Tract Today

- MPT consists of approximately 47 households, a church, and a community center
- Estimated population is 200

Water Quality Issues

- High Nitrates
- High Arsenic
- High Manganese
- High Total Dissolved Solids

Proposed Solution

- MPT completed a water supply study in September 2011
- Preferred solution was to connect to City of Ceres Domestic Water Supply
- MPT has secured a \$2.2 M Prop 84 grant to build a connection to Ceres water supply

Connecting to City of Ceres Water System

- Water Service Agreement (WSA) is required
- Proposed MOU is the template for this WSA

Key elements of Proposed MOU

- City of Ceres will supply water to the Monterey Park Tract Community Services District;
- Monterey Park Tract Community Services District will construct at its expense all improvements necessary to deliver the water from the City of Ceres water system;
- Monterey Park Tract Community Services District will own and be responsible for the operation and maintenance of the improvements;
- Stanislaus County will provide the Monterey Park Tract Community Services District funding of up to \$30,000 to allow it to secure the Proposition 84 grant funding from the State of California for design and construction of the Water Connection Project (as approved January 29, 2013 by the Board of Supervisors);
- Upon execution of the Water Service Agreement and the completion of the construction of facilities MPTCSD will deposit the sum of \$75,000 into a reserve account for the purpose of ensuring the City has sufficient funds to cover MPTCSD water service billings on a monthly basis. If for any reason MPTCSD is unable to meet the financial requirements for water service payments as contemplated in the MOU and executed in the Water Service Agreement, the water service will be turned off and the Water Service Agreement terminated unless the County formally agrees to assume responsibility for those payments as the services continue to be delivered to the MPTCSD area; and
- If for any reason, MPTCSD is unable to meet the obligations as delineated in the Water Service Agreement, the County agrees to take formal action to assume all obligations of MPTCSD in order to provide continued water service to the residents of Monterey Park Tract. Absent formal action to assume all obligations of MPTCSD the County will request that the water service will be turned off and the Water Service Agreement terminated. At least 120 days prior to the beginning of year 15 of the Agreement, the City and the County agree to meet and evaluate the ongoing fiscal obligations of each party associated with the Water Service Agreement. The County and the City will consider those findings and make a recommendation on how to structure the fiscal obligations for the remaining term of the Water Services Agreement.

Fiscal Impact

- The proposed MOU has no direct fiscal impact to the County, however, if for any reason the District is unable to meet the obligations in the agreement, the County agrees to take formal action to assume all obligations of the District in order to provide continued water service to the residents of MPT. Absent formal action to assume all obligations of the District, the County will request that the water service will be turned off and the WSA terminated.

Recommendation

- Authorize the Chairman of the Board to execute the MOU between MPTCSD, the City of Ceres and Stanislaus County.