

STAFF REPORT

DATE: December 20, 2011

TO: City Council

FROM: Paul Navazio, Assistant City Manager
Robert A. Clarke, Interim Public Works Director

SUBJECT: First Amendments to the Water Agreement between the Woodland-Davis Clean Water Agency, City of Davis, City of Woodland and the Conway Preservation Group, LLC and Related Installment Purchase Agreement between the City of Davis and the Woodland-Davis Clean Water Agency

Recommendations

Approve Resolution Authorizing the Mayor to execute the First Amendment to the Water Agreement between the Woodland Davis Clean Water Agency, City of Davis, City of Woodland and the Conway Preservation Group, LLC and Related First Amendment to the Installment Purchase Agreement between the City of Davis and the Woodland-Davis Clean Water Agency.

Fiscal Impact

There is no direct fiscal impact resulting from approval of the proposed amendments. However, by amending and clarifying the definitions within the prepayment provisions of the Installment Purchase Agreement, there could be positive fiscal impacts for the City, under certain circumstances. Otherwise, the proposed amendments are primarily technical and non-substantive.

Background and Discussion

On December 21, 2010 the City approved a package of agreements among the Woodland-Davis Clean Water Agency (WDCWA), the City of Woodland, Tri-City Water and Farm, LLC, Conaway Preservation Group, LLC (“CPG”), Reclamation District 2035, relating to the purchase and acquisition of water rights, land and easements and the joint development of a river intake/diversion facility for the Davis-Woodland Water Supply Project.

The agreements included a Water Agreement concerning the purchase of some of CPG’s water rights and an Installment Purchase Agreement with the WDCWA to provide security to CPG regarding the Agency payments to be made under the Water Agreement. Following approval of the Water Agreement and Installment Purchase Agreements, staffs for the Agency, Cities and CPG have proposed clarifications of the definitions and prepayment provisions in the Installment Purchase Agreements and related promissory notes.

Regarding the definitions, the proposed changes clarify certain definitions relating to the water revenue pledged. The definitions proposed to be amended and added are “Gross Revenues,” “Net Revenues,” “Maintenance and Operation Expenses” and “Monetize.” The proposed amendments

clarify that certain income of each City representing refundable deposits is not included as revenue pledged to the payment of debt service.

Regarding the prepayment provisions, the Cities, the Agency, and CPG have determined that the Installment Purchase Agreement benefits from additional modification. The proposed changes would permit the Cities to prepay the remaining installment payments at a price which is calculated pursuant to a proposed formula under the Installment Purchase Agreement. The proposed formula finds the present value of *all remaining installments of principal and interest* and then discounts them to the date set for prepayment using the current Bond Buyer Index (or its equivalent). Previously, the Installment Purchase Agreement left the prepayment price to be determined at some later date if the Cities wanted to prepay the Installments upon notice from CPG that it was attempting to sell its interest in the Installment Payments. The ability to determine the prepayment price allows the Cities flexibility with respect to the management of this payment obligation.

Because the Installment Purchase Agreement forms are exhibits to the Water Agreement, the changes to the Installment Purchase Agreements also necessitate a corresponding amendment of the Water Agreement. The proposed First Amendment to Installment Purchase Agreement with the WDCWA, and the First Amendment to Water Agreement with the Conaway Preservation Group, LLC are included as attachments to this staff report.

The proposed resolution would supersede Resolution No. 11-036, adopted March 15, 2011 which contemplated technical amendments to the underlying agreements. Those amendments were never executed, pending clarification and on additional items.

All parties to the relevant agreements have reviewed the proposed agreements. The WDCWA Board took action at its meeting of November 22, 2011 to approve the amendments, and the Woodland City Council took actions to approve the proposed amendments at their meeting of December 6, 2011.

Attachments

1. Resolution Authorizing the City to Execute the First Amendment Installment Purchase Agreement between the City of Davis and the Woodland-Davis Clean Water Agency and the Water Agreement between the Woodland Davis Clean Water Agency, City of Davis, City of Woodland and the Conway Preservation Group, LLC and Related First Amendment to the
2. First Amendment to the Water Agreement between the City of Davis, City of Woodland, the Woodland Davis Clean Water Agency, and Conway Preservation Group, LLC.
3. First Amendment to the Installment Purchase Agreement between the City of Davis and the Woodland-Davis Clean Water Agency

RESOLUTION NO. 11-XXX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS
APPROVING THE FIRST AMENDMENT TO THE INSTALLMENT PURCHASE
AGREEMENT AND WATER AGREEMENT AND AUTHORIZING THE MAYOR TO
EXECUTE THE AGREEMENT ON BEHALF OF THE CITY**

WHEREAS, the Cities of Davis and Woodland and the Agency entered into a series of agreements relating to the purchase and acquisition of water rights, land and easements and the joint development of a river intake, diversion and fish screen facility for the Project with Tri-City Water and Farm, LLC, Conaway Preservation Group, LLC, and Reclamation District 2035; and

WHEREAS, the parties desire to make technical amendments to the Installment Purchase Agreements to clarify certain definitions within the Agreements; and

WHEREAS, the amendment would also clarify the formula under the Installment Purchase Agreement for calculating the value of any prepayment of the remaining installment payments.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Davis that the City Council hereby approves the First Amendment to the Installment Purchase Agreements and Water Agreement attached hereto and incorporated herein as Exhibit A.

BE IT FURTHER RESOLVED that the Mayor is hereby authorized and directed to sign the Agreement for and on behalf of the City, together with any minor corrections or clarifications deemed necessary or advisable by the City Manager upon consultation with and concurrence by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Davis this 20th day of December, 2011 by the following vote:

AYES:

NOES:

Joseph F. Krovoza
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

FIRST AMENDMENT TO WATER AGREEMENT

THIS FIRST AMENDMENT TO WATER AGREEMENT ("First Amendment") is made as of November 22, 2011, by and between the Woodland-Davis Clean Water Agency, a joint powers authority ("Agency"), City of Davis, a general law city ("Davis"), City of Woodland, a general law city ("Woodland"), and Conaway Preservation Group, a California limited liability company ("CPG"), who agree as follows:

1. Recitals. This First Amendment is made with reference to the following background recitals:

1.1. Davis and Agency have entered into the Installment Purchase Agreement dated December 21, 2010 (the "Davis Agreement"), which is on file in the Agency office. Woodland and Agency have entered into the Installment Purchase Agreement dated December 21, 2010 (the "Woodland Agreement"), which is on file in the Agency office. CPG and Agency have entered into the Water Agreement dated December 21, 2010 (the "Water Agreement"), which is on file in the Agency office. Agency has also entered into the Promissory Note (Conaway Ranch Water Purchase – City of Davis) and the Promissory Note (Conaway Ranch Water Purchase – City of Woodland), as Maker, for the benefit of CPG, as Holder (collectively, "Promissory Notes").

1.2. Tri-City Water and Farm, LLC ("Tri-City") was a party to the initial Water Agreement. CPG and Agency acknowledge and agree that, pursuant to Section 9.1 of the Water Agreement: Tri-City has closed escrow under the Membership Purchase Agreement and has caused CPG to approve and execute the Water Agreement; CPG therefore is substituted for Tri-City for all purposes under the Water Agreement; Tri-City is no longer a party to the Water Agreement; and, Tri-City no longer has any rights or liabilities under the Water Agreement.

1.3. The parties desire to amend the Water Agreement to provide for the clarification and revision of certain provisions in the Davis Agreement, Woodland Agreement and the Promissory Notes, which are all exhibits to the Water Agreement. The form of each of those amendments is attached hereto as Exhibits 1, 2, 3 and 4 (collectively, the "**Amendment Forms**").

2. Amendment to Water Agreement. The parties hereby amend the Water Agreement to provided that Exhibits B, C, D-1 and E-1 (the forms of Promissory Notes, Davis Agreement and Woodland Agreement forms) to the Water Agreement are hereby amended to include each of Amendment Forms applicable to the Davis Agreement, Woodland Agreement and the Promissory Notes, respectively. The Davis Agreement, Woodland Agreement, and Promissory Notes delivered at the Closing under the Agreement to Convey Real Property shall be the Davis Agreement, Woodland Agreement, and Promissory Notes and each of the Amendment Forms.

3. No Effect on Other Provisions. Except for the amendments in Section 2, the remaining provisions of the Water Agreement shall be unaffected and remain in full force and effect.

4. Counterparts. This First Amendment may be executed in counterparts, each of which shall constitute an original, but which together, shall constitute a single document.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Attachment 2

CITY OF WOODLAND

Dated: _____, 2011

Mayor

Attest:

City Clerk

**WOODLAND-DAVIS CLEAN
WATER AGENCY**

Dated: _____, 2011

General Manager

Attest:

Secretary

CITY OF DAVIS

Dated: _____, 2011

Mayor

Attest:

City Clerk

**CONAWAY PRESERVATION GROUP, LLC
a California limited liability company**

BY: Tri-City Water and Farm, LLC
a Delaware limited liability company
Member

BY: AKT Investors, Inc.
a California corporation
Manager

By: _____
Kyriakos Tsakopoulos
President and CEO

Dated: _____, 2011

**FIRST AMENDMENT TO INSTALLMENT PURCHASE AGREEMENT
(DAVIS)**

THIS FIRST AMENDMENT TO INSTALLMENT PURCHASE AGREEMENT (DAVIS) (this "**First Amendment**") is made as of _____, 2011, by and between WOODLAND-DAVIS CLEAN WATER AGENCY, a joint powers authority ("**Agency**"), and CITY OF DAVIS, a general law city ("**Davis**"), who agree as follows:

1. Background.

1.1. Davis Agreement. Davis and Agency have entered into the Installment Purchase Agreement dated December 21, 2010 (the "**Davis Agreement**"), which is on file in the Agency office.

1.2. Purpose. The parties now desire to amend the Davis Agreement to clarify and revise some of the definitions.

2. Amendments. Agency and Davis hereby amend the Davis Agreement as follows:

2.1. In Section 201, the following definitions are amended and restated in their entirety as follows:

“Gross Revenues” means all gross Charges received for, and all other gross income and receipts derived by Davis from, the ownership and operation of the Enterprise or otherwise arising from the Enterprise, excluding refundable deposits, and including but not limited to (a) all charges received by Davis for use of the Enterprise, (b) all receipts, derived from the investment funds held by Davis with respect to the Enterprise, (c) transfers from (but exclusive of any transfers to) any stabilization reserve accounts, and (d) all moneys received by Davis from other public entities whose inhabitants are served pursuant to contracts with Davis.

“Maintenance and Operation Expenses” means the reasonable and necessary costs spent or incurred by Davis for maintaining and operating the Enterprise, calculated in accordance with sound accounting principles, including the cost of supply of water, gas and electric energy under contracts or otherwise, the funding of reasonable reserves, and all reasonable and necessary expenses of management and repair and other expenses to maintain and preserve the Enterprise in good repair and working order, and including all reasonable and necessary administrative costs of Davis attributable to the Enterprise, such as salaries and wages and the necessary contribution to retirement of employees, overhead, insurance, taxes (if any), expenses, compensation and indemnification of the Trustee, and fees of auditors, accountants, attorneys or engineers, and including all other reasonable and necessary costs of Davis or charges required to be paid by it to comply with the terms of Senior Obligations of Davis, but excluding debt service on all obligations,

depreciation, replacement and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature.

“Net Revenues” means for any period, the Gross Revenues for such period less the Maintenance and Operation Expenses and less debt service on Senior Obligations for such period. For purposes of Section 307 hereof, “Net Revenues” means Gross Revenues less Maintenance and Operation Expenses for such period.

2.2. In Section 201, the following definition is added:

“Monetize” and “Monetization” shall mean the sale, assignment, pledge or transfer by the CPG to any other entity or person of all or any portion of the payments to be received pursuant to the Water Agreement, and the Promissory Note for the Davis Share, as part of a sale, transfer, exchange or financing transaction.

2.3. In Section 309(a), the following provisions are amended and restated in their entirety as follows:

(a) CPG shall provide written notice to Agency and Davis of its intent to Monetize payments to be received pursuant to the Water Agreement and the Promissory Note for Davis Share.

If after receipt of the notice of CPG’s intent to effect a Monetization, Davis has an interest in issuing bonds, notes, certificates of participation or other obligations in order to prepay and defease payments hereunder, then Davis shall provide written notice to CPG within 30 days of its receipt of notice from CPG and shall negotiate the terms and timing of such prepayment with Holder within 90-days of CPG’s original notice. CPG shall have the right to either accept or reject the terms of Davis’s prepayment proposal in CPG’s sole and absolute discretion. If CPG and Davis do not agree to terms of prepayment, or Davis shall fail to provide notice of its interest to prepay within 30 days of the receipt of its notice from CPG, then CPG shall be free to proceed to effect any Monetization in its sole discretion without need of further review or approval by Davis.

Notwithstanding any Monetization of the Promissory Note for the Davis Share, should Davis not prepay and defease its obligations through the process described above, Davis may still prepay its obligations in the future, in full and not in part, at a price equal to the Prepayment Price (as defined below) on any business day not less than 30 days from the date Davis delivers notice of such prepayment to CPG.

A. The “Prepayment Price” shall mean a price equal to the sum of:

(1) An amount calculated by CPG equal to the present value (as calculated by paragraph (B) below) of each remaining payment listed in Exhibit A to the Installment Purchase Agreement

plus

(2) accrued interest as of the date of prepayment.

B. For purposes of calculating the Prepayment Price, the present value of the remaining interest and principal payments referred to in (1) above as shown in Exhibit A of the Installment Purchase Agreement shall be determined by discounting the amount of each such interest and principal payment from the date that each such payment would have been payable but for the prepayment to the date fixed for prepayment on a semiannual basis (assuming a 360-day year consisting of twelve (12) 30-day months) at a discount rate equal to the Revenue Index most recently published in The Bond Buyer (or, in the case of an Alternative Revenue Index, most recently published by its source of publication) preceding the date of prepayment; provided however that if the CPG notifies Davis or Agency that CPG has effected a Monetization prior to prepayment, and the Revenue Index most recently published prior to the date of such Monetization is lower than the Revenue Index most recently published prior to the time of prepayment, the discount rate used to calculate the Prepayment Price shall be equal to the Revenue Index most recently published prior to the date of such Monetization.

C. The “Revenue Index” shall mean the Bond Buyer Revenue Bond Index published by The Bond Buyer; provided, that if the Bond Buyer Revenue Bond Index shall no longer be published, then the “Revenue Index” shall mean a comparable index reasonably selected by CPG that uses a representative sample of revenue bonds most closely approximating the Bond Buyer Revenue Bond Index (such other index being referred to herein as the “Alternative Revenue Index”).

3. No Effect on Other Provisions. Except for the amendments in Section 2, the remaining provisions of the Davis Agreement shall be unaffected and remain in full force and effect.

4. Counterparts. This First Amendment may be executed in counterparts, each of which shall constitute an original, but which together, shall constitute a single document.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

**WOODLAND-DAVIS CLEAN
WATER AGENCY**

CITY OF DAVIS

Dated: _____, 2011

Dated: _____, 2011

General Manager

Mayor

Attest:

Attest:

Secretary

City Clerk