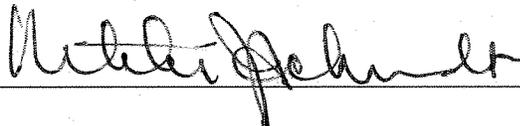


**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE September 21, 2010	(3) CONTACT/PHONE Will Clemens, Department Administrator (805) 781-5299		
(4) SUBJECT Request to Approve a Memorandum of Understanding (MOU), with the Nipomo Community Services District (NCSD), for the Creation of an Assessment District to Fund Capital Improvements for the NCSD's Water Intertie Project with the City of Santa Maria and Authorize a Budget Adjustment, by a 4/5 th 's Vote, in the Amount of \$60,000				
(5) SUMMARY OF REQUEST Staff is requesting approval of an MOU and Budget Adjustment to fund the Creation of an Assessment District to Fund Capital Improvements for the NCSD's Water Intertie Project with the City of Santa Maria. Funding for the budget adjustment will be provided by NCSD pursuant to terms of the MOU.				
(6) RECOMMENDED ACTION It is our recommendation that your Honorable Board: 1. Approve a Memorandum of Understanding with the Nipomo Community Service District; and 2. Authorize a Budget Adjustment, by a 4/5 th 's vote, in the amount of \$60,000 to fund the creation of the Assessment District and associated Prop 218 assessment vote.				
(7) FUNDING SOURCE(S) NCSD	(8) CURRENT YEAR FINANCIAL IMPACT \$60,000	(9) ANNUAL COST N/A	(10) BUDGETED? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> N/A	
(11) OTHER AGENCY INVOLVEMENT/IMPACT (LIST): The Administrative Office, County Counsel, Auditor-Controller's Office, and the Debt Advisory Committee				
(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 type="checkbox"/> 1st, <input type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input checked="" type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input type="checkbox"/> All		(14) LOCATION MAP <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A	(15) Maddy Act Appointments Signed-off by Clerk of the Board <input checked="" type="checkbox"/> 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) <input checked="" type="checkbox"/> Contracts (Orig + 3 Copies) <input type="checkbox"/> Ordinances (Orig) <input type="checkbox"/> N/A <input type="checkbox"/> Email Resolution and Ordinance to CR_Board_Clerk (in Word)		
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ 1 <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A		(19) BUDGET ADJUSTMENT REQUIRED? <input type="checkbox"/> Submitted <input checked="" type="checkbox"/> 4/5 th 's Vote Required <input 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 11/10/09, E-1	
(23) ADMINISTRATIVE OFFICE REVIEW 				

Reference: 10SEP21-C-4

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SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

Paavo Ogren, Director

County Government Center, Room 207 • San Luis Obispo, CA 93408 • (805) 781-5252

Fax (805) 781-1229

email address: pwd@co.slo.ca.us

TO: Board of Supervisors

FROM: Will Clemens, Department Administrator *WC*

VIA: Paavo Ogren, Director of Public Works *PO*

DATE: September 21, 2010

SUBJECT: Request to Approve a Memorandum of Understanding (MOU), with the Nipomo Community Services District (NCSD), for the Creation of an Assessment District to Fund Capital Improvements for the NCSD's Water Intertie Project with the City of Santa Maria and Authorize a Budget Adjustment, by a 4/5th's Vote, in the Amount of \$60,000

Recommendation

It is our recommendation that your Honorable Board:

1. Approve a Memorandum of Understanding with the Nipomo Community Service District; and
2. Authorize a Budget Adjustment, by a 4/5th's vote, in the amount of \$60,000 to fund the creation of the Assessment District and the associated Prop 218 assessment vote.

Discussion

The Nipomo Community Service District (NCSD) desires to construct a waterline intertie project to the City of Santa Maria in cooperation with private water companies including the Woodlands Mutual Water Company, the Golden State Water Company, and the Rural Water Company. While the NCSD has the authority to create an assessment district to finance their portion of the project, other project beneficiaries that exist outside of the District boundaries do not. The County has the power to create an assessment district for the entire area that includes the three private water companies and the NCSD to provide funding for the project. This joint and cooperative approach to solving water and other infrastructure deficiencies is consistent with the San Luis Obispo County Integrated Regional Water Management Plan. The project is also consistent with physical solutions identified in the Santa Maria Groundwater Basin litigation.

On November 10, 2009 your Board approved a reimbursement agreement with the NCSD to fund the development of the MOU before you today. The MOU clearly outlines the responsibilities of the two agencies and ensures that all costs the County incurs as a result of this effort will be covered by the NCSD.

The NCSD Board approved the MOU on August 11, 2010 and the attached NCSD agenda staff report discusses the history of the project in more detail.

Other Agency Involvement/Impact

The Administrative Office and Auditor-Controller's Office support this approach. County Counsel has approved the MOU as to legal form and effect. The Debt Advisory Committee supports this effort and at their November 9, 2009 meeting approved the recommendation that Fulbright & Jaworski serve as bond counsel and Public Financial Management serve as financial advisor should their services be necessary pending a successful assessment vote.

Financial Considerations

Costs for the creation of the Assessment District and associated Prop 218 assessment vote are estimated at \$60,000, which includes both staff time and outside consultants. The MOU does not, however, limit costs to the \$60,000 estimate since this joint approach to assessment district financing is a new local concept and unknown issues may arise during upcoming work efforts. The NCSD is responsible for any and all costs, even if they exceed the \$60,000 estimate. Approval of the MOU and budget adjustment will provide funding from the NCSD for this effort.

If the Prop 218 assessment vote is successful, the County and the NCSD will need to amend the MOU in order to provide funding for the next phase in the process, which would be the sale of assessment bonds.

Results

Approval of the recommended action will result in providing funding to proceed with the creation of the Assessment District and associated Prop 218 assessment vote.

Attachments: Budget Adjustment
8/11/10 NCSD Agenda Item
Memorandum of Understanding

File: CF 310.100.01 (Nipomo Agreements & Amendments)

Reference: 10SEP21-C-4

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TO: BOARD OF DIRECTORS

FROM: DON SPAGNOLO
GENERAL MANAGER 

DATE: AUGUST 5, 2010

**AGENDA ITEM
E-2**

AUGUST 11, 2010

**AGREEMENT WITH SAN LUIS OBISPO COUNTY TO FORM ASSESSMENT
DISTRICT TO FINANCE CONSTRUCTION OF THE WATERLINE INTERTIE
PROJECT**

ITEM

Consideration and approval of Agreement between the District and the County of San Luis Obispo to form an assessment district within the boundaries of the Nipomo Community Services District, the Woodlands Mutual Water Company, Golden State Water Company and Rural Water Company to finance the construction costs for the Santa Maria Waterline Intertie Project. [RECOMMEND APPROVAL]

BACKGROUND

The Nipomo Community Services District (the "District" or "NCSD"). The Woodlands Mutual Water Company ("WMWC"), Golden State Water Company ("GSWC") and Rural Water Company ("RWC") currently rely on groundwater underlying the Nipomo Mesa Management Area (formerly known as the Nipomo Mesa Groundwater Subbasin) of the Santa Maria Groundwater Basin to provide water service to water customers. The Court in the lawsuit summarized, below, designates the Nipomo Mesa Water Conservation Area as the Nipomo Mesa Management Area. For ease of reference this report will use the term Nipomo Mesa Water Conservation Area or NMWCA to describe the geographic area of the groundwater basin that underlies the Nipomo Mesa.

Over the past several years, a number of groundwater studies have been conducted in the Nipomo Mesa area in order to assess the status of groundwater resources. These studies include: 1) Water Resources of the Arroyo Grande – Nipomo Mesa Area in 2002, prepared by the California Department of Water Resources (DWR), dated October 25, 2002; 2) 2004 the Nipomo Mesa Groundwater Resource Capacity Study prepared at the request of the County of San Luis Obispo (the "County") by the firm of S.S. Papadopoulos & Associates, Inc.; 3) "Water Supply in the Nipomo Mesa Area, October, 2004", a Resource Capacity Study prepared by the County of San Luis Obispo, Department of Planning and Building; and 4) Additionally, commencing in June 2008, the Nipomo Mesa Management Area Technical Group files annual reports with the Court pursuant to a 2005 Stipulation and Final Judgment of that Court (see below).

The 2002 Department of Water Resources Report concluded that overdraft of the Santa Maria Groundwater Basin is not likely through the year 2020 but indicates that projected water demands exceed the dependable safe yield of groundwater in the Nipomo Mesa Sub-Area. The March 2004 Papadopoulos Report concluded that the Nipomo Mesa Sub-Basin is currently in overdraft. The County's November 2004 Resource Capacity Study indicated that in order to

maintain sustainability of the Nipomo Mesa groundwater supply, total extractions would have to be stabilized at 6,000 acre-feet per year (as first indicated in the Department of Water Resources Report) and that sustainability can be achieved through a combination of conservation and water supply augmentation.

In recognition of the findings and recommendations contained in the 2002 DWR Report and the 2004 Papadopoulos Report, the District on September 07, 2004, entered into a Memorandum of Understanding with the City of Santa Maria for the purchase of approximately 2,500 acre-feet of water per year to provide supplemental water for the exclusive use of the District (2004 MOU). (see following sections for update).

As recommended in the County's 2004 Resource Capacity Study on June 22, 2007, the County Board of Supervisors certified the Severity Level III for water resources underlying the Nipomo Mesa Water Conservation Area. Table F of the County's Resource Management System provides:

Table F RESOURCE DEFICIENCY CRITERIA FOR LEVELS OF SEVERITY		
Level I	Level II	Level III
Projected consumption estimated to exceed dependable supply within 9 years	7 year lead time to develop supplementary water for delivery to users	Resource is being used at or beyond its estimated dependable supply or will deplete dependable supply before new supplies can be developed

GROUNDWATER ADJUDICATION SUMMARY

In 1997 the Santa Maria Valley Water Conservation District filed a groundwater adjudication lawsuit involving the Santa Maria Groundwater Basin that stretches from Orcutt to the South to Pismo Beach to the North. The greater Santa Maria Groundwater Basin includes waters underlying the Nipomo Mesa area (at the time commonly known as the Nipomo Hydrologic Sub-basin). The parties to the lawsuit include the City of Santa Maria, landowners and other water purveyors that pump groundwater from the Santa Maria Groundwater Basin. The NCSD, WMWC, GSWC, and RWC pump water from the underlying Nipomo Mesa Water Conservation Area and are parties to the groundwater adjudication.

The Court in its Partial Statement Of Decision *Re Trial Phase III* found "No evidence of seawater intrusion, land subsidence, or water quality deterioration that would be evidence of overdraft has been presented. Some wells in the Nipomo Mesa area do show lowering of water levels that may result from the pumping depression or other cause, and there may be some effects in that portion of the Basin that are not shared Basin-wide. But, that is not sufficient in any event to demonstrate Basin-wide overdraft" (totality of the greater Santa Maria Groundwater Basin). Subsequently, many of the parties including NCSD, WMWC, GSWC and RWC that overlay the Nipomo Mesa portion of the Groundwater Basin, along with the City of Santa Maria and the County of San Luis Obispo signed a June 30, 2005, Stipulation (the "Stipulation"), that was approved by the Court. The Final Judgment after trial provides "the

Court approves the Stipulation, orders the stipulating parties only to comply with each and every term thereof, and incorporates the same herein as though set forth at length".

The Stipulation divides the Santa Maria Groundwater Basin into three management areas known as the Santa Maria Valley Management Area (Southern portion of the Groundwater Basin) the Nipomo Mesa Management Area (the NMMA) (the center portion of the Groundwater Basin) and the Northern Cities Management Area (the northern portion of the Groundwater Basin).

Pursuant to the Stipulation the Woodlands Mutual Water Company, Golden State Water Company and Rural Water Company agreed to participate in the Santa Maria Intertie Project that is the subject of the 2004 MOU. As outlined in the Stipulation the 2,500 AF is to be divided up as follows:

NCS D – 66.68% or 1,669 AFY
WMWC – 16.66% or 415 AFY
GSWC – 8.33% or 208 AFY
RWC – 8.33% or 208 AFY

Additionally, pursuant to the Stipulation the NCS D, Woodlands Mutual Water Company, Golden State Water Company and an Ag representative formed the Nipomo Mesa Management Area Technical Group to monitor the groundwater underlying the Nipomo Mesa Management Area, to file reports with the Court and to make recommendations to the Court. The 2009 Annual Report makes the following recommendations related to the Supplemental Water Project:

"Supplemental Water Supply – An alternative water supply that would allow reduced pumping within the NMMA is likely to be the most effective method of reducing the stress on the aquifer and allow groundwater elevations to recover. The Nipomo Supplemental Water project is likely to be the fastest method of obtaining alternative water supplies. Given the Potentially Severe Water Shortage Conditions within the NMMA and the other risk factors discussed in this Report, the TG recommends that this project be implemented as soon as possible".

The 2009 Northern Cities Management Annual Report indicates that during the reporting period the interface/mixing zones between seawater and fresh water shifted inland in the Oceano area that borders the NMMA's northern boundary. Subsequent reports from the Northern Cities Management Area indicate that this mixing zone has moved offshore.

SUPPLEMENTAL WATER PROJECT SUMMARY

After entering into the 2005 Stipulation, several additional studies have been prepared by NCS D in order to further evaluate alternatives to the Santa Maria Intertie Project, including: (1). the Preliminary Engineering Memorandum, prepared by Boyle Engineering, dated November, 2006; (2). Evaluation of Supplemental Water Alternatives – Technical Memorandum No. 1, prepared by Boyle Engineering dated June 2007; (3). Evaluation of Desalinization as a Source of Supplemental Water - Technical Memorandum No. 2, prepared by Boyle Engineering dated September 28, 2007; and (4). Evaluation of Supplemental Water Alternatives - Technical Memorandum No. 3, prepared by Boyle Engineering dated November 30, 2007. These memorandums have confirmed that the Santa Maria Intertie Project is the most feasible project to provide alternative water sources within the Nipomo Mesa Water Conservation Area.

The Waterline Intertie Project involves the construction of approximately five miles of new waterlines, pump stations and water storage facilities to transport up to 3,000 AF of new water from the City of Santa Maria. The Project final EIR has been certified by the District as lead agency and the City of Santa Maria as a responsible agency. The final Supplemental Water Agreement has been approved by the District and the City of Santa Maria.

The Project is nearing 90% design completion. In the first ten (10) years of operation the minimum delivery requirement is 2,000 AFY.

The objectives of the Waterline Intertie Project include:

1. Slow the depletion of the above-sea-level groundwater in storage beneath the Nipomo Mesa Groundwater Management Area (NMMA) of the Santa Maria Groundwater Basin to reduce the potential for sea water intrusion by using supplemental water consistent with the settlement agreement and the judgment related to the groundwater adjudication.
2. Assist in stabilizing the groundwater levels in the NMMA by reducing pumping in the NMMA.
3. Augment current water supplies available to the Woodlands and other water purveyors on the Mesa by 831 acre-feet per year as follows: Woodlands (415 AFY), Golden State Water Company (208 AFY) and Rural Water Company (208 AFY).
4. Increase the reliability of District water supply by providing a diversity of water sources.

ASSESSMENT DISTRICT SUMMARY

The District previously explored various alternatives for financing the construction of the Waterline Intertie Project, namely increasing bi-monthly water rates or the creation of an assessment district. Water rates, if approved, can only be imposed on District customers (developed properties receiving water service) while assessments, if approved, can be imposed on both developed and vacant properties. In September 2008, the Board approved the formation of an assessment district as the best alternative to finance the District's portion of the construction costs of the Waterline Intertie Project. The District, thereon, retained the Wallace Group to prepare assessment data reports for assessing the developed and undeveloped properties within the District.

Subsequently, the District, Woodlands, Golden State Water Company and Rural Water Company began exploring the formation of an assessment district to finance all participating water companies construction costs. Because the District cannot form assessment districts outside its boundaries, the District requested the County to participate in the formation of an assessment district that would include properties within the NCSD, WMWC, GSWC and RWC to finance all construction costs of the Waterline Intertie Project.

An assessment district that includes the participation of all water companies makes sense for several reasons including the following:

1. Both developed and undeveloped properties will participate in paying for the construction of the Waterline Intertie Project, thus spreading costs beyond the existing water

customer base. Undeveloped properties benefit, because property owners will have a source of water to support development within existing water company boundaries consistent with development authorized by the existing County General Plan.

2. Rather than financing the Project with a variety of mechanisms i.e., rates and charges from some participating water companies (that require CPUC approval) and the District's formation of an assessment district, a single assessment district provides a uniform financing mechanism that includes timely payment of costs and does not require CPUC approval.
3. Assessment District bonds are sold with lower interest rates thereby, reducing total project costs.

NATURE OF THE CONTRACT WITH THE COUNTY

The Agreement is solely between the District and the County related to the formation of the assessment district to finance the Santa Maria Intertie Project. The County's obligations are outlined in Sections 3(A & B) and the District's obligations and duties are outlined in Section 2 of the attached Agreement.

The County will commence formation of the assessment district upon receipt of the NCSD's Notice to Proceed. The NCSD's Notice to Proceed will not occur until it has formal commitments from the other water companies for payment of their proportional share of the formation costs.

FISCAL IMPACT

The assessment district formation costs are currently estimated as follows:

- County's costs, Section 3(A) equals \$60,000;
- The District's Section 2 costs are estimated at \$91,000 covering the cost of the Financial Adviser and Public Outreach..

The estimated total formation costs are \$150,000 excluding Assessment Engineering, to be apportioned as follows:

1. NCSD - 4, 551 parcels or 57.53% of Formation Costs or \$ 86,295.
2. Golden State Water Company – 1,482 parcels or 18.73% of Formation Costs or \$28,095.
3. Rural Water Company – 1,068 parcels or 13.5% of Formation Costs or \$20,250.
4. Woodlands Mutual Water Company – 810 parcels or 10.24% of Formation Costs or \$15,360.

The District's Assessment Engineering costs are estimated at \$105,000 of which \$61,000 has been spent on preliminary engineering.

Upon the successful formation of the assessment district, the lion's share of the above costs can be reimbursed from assessment bond proceeds.

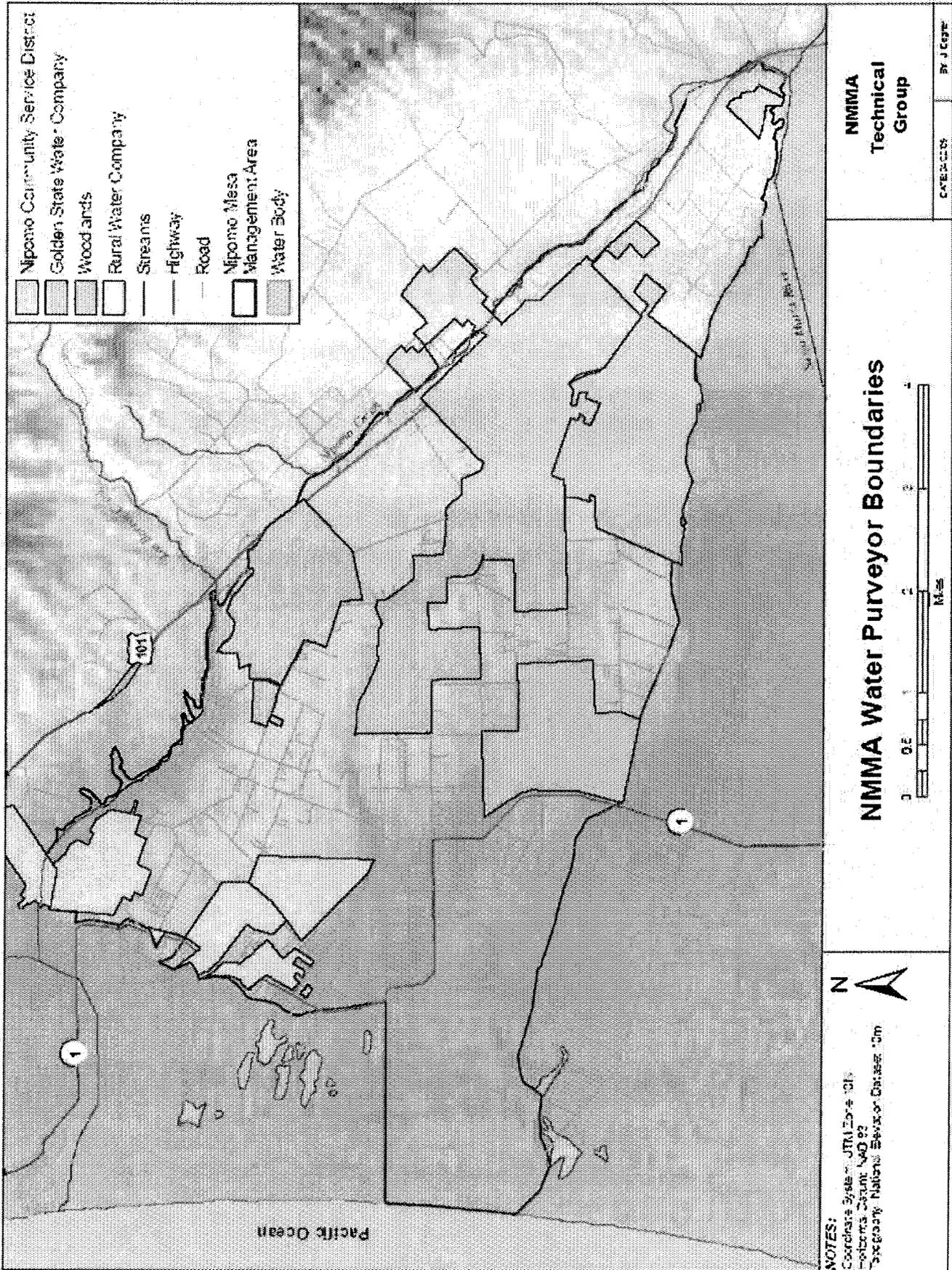
RECOMMENDATION

Staff recommends that the Board receive this staff report, staff presentation and public comment and:

1. Approve the Agreement; or
2. Provide other instructions to staff.

ATTACHMENTS

- Map showing boundaries of NCSD, WMWC, GSWC and RWC; and
- Agreement.



MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU"), dated as of August 11, 2010, by and between the County of San Luis Obispo, California (the "County"), a political subdivision duly organized and existing under the laws of the State of California (the "State"), and the Nipomo Community Services District (the "CSD"), a public instrumentality duly organized and existing under the laws of said State, is undertaken with regard to the following facts:

RECITALS:

WHEREAS, the CSD has a present need to arrange financing for the construction of a waterline intertie project (the "Project") described in that certain Environmental Impact Report ("EIR") approved and adopted by the CSD on May 13, 2009; and

WHEREAS, the Project calls for the design and construction of pipelines and other facilities by the CSD for the conveyance of water from the City of Santa Maria, California ("City") to properties within the CSD; and

WHEREAS, the Project is CSD's effort to implement a physical solution to groundwater conditions within the Nipomo Mesa Management Area ("NMMA") identified in the June 2005 Stipulation (as identified herein) partially settling the Santa Maria Groundwater Basin Litigation. Said Stipulation was duly signed by, inter alia, the CSD, the City of Santa Maria, and the County of San Luis Obispo; and

WHEREAS, the Project is also consistent with the need to address groundwater conditions within the Nipomo Mesa Water Conservation Area (NMWCA) as identified in the County's Resource Capacity Study, Water Supply in the Nipomo Mesa Area, dated November 2004; and

WHEREAS, the CSD represents that water companies pumping groundwater in the NMMA, specifically Golden State Water Company, Rural Water Company, and Woodlands Mutual Water Company (collectively the "Water Companies") are signatories to the Stipulation; and

WHEREAS, the CSD represents that while it has the authority to create an assessment district that includes any properties benefiting from the Project that lie within the CSD's boundaries, the CSD does not have the power to create an assessment district that includes any properties benefiting from the Project that lie outside the CSD's boundaries; and

WHEREAS, the CSD has requested that the County undertake the necessary processes for the possible establishment of an assessment district (the "Assessment District") that would include properties specially benefiting from the Project, including properties that lie both within and outside the CSD's boundaries that specially benefit from the Project and properties within the boundaries of the Water Companies that specially benefit from the Project; and

WHEREAS, the Project is and will be located within or proximate to the boundaries of the County; and

WHEREAS, the parties hereto wish to provide the terms and conditions upon which the possible formation of such an Assessment District would be processed by the County;

NOW, THEREFORE, be it agreed and understood by the parties hereto, as follows:

Section 1. Recitals; Defined Terms. The foregoing recitals are true and correct. Capitalized terms used but not defined herein shall have the meanings set forth in the Recitals hereof or as follows:.

“1913 Act” shall mean Sections 10000 *et seq.* of the Health & Safety Code of the State, comprising the Municipal Improvement Act of 1913.

“Assessment District” shall mean the assessment district, if any, formed at the conclusion of the Assessment Proceedings.

“Assessment Proceedings” shall mean the formal proceedings aimed at the formation of an assessment district for the Project undertaken by the County pursuant to the 1913 Act or any other applicable law relating to procedures for the formation of an assessment district for the Project.

“Auditor-Controller” shall mean the Auditor-Controller of the County.

“Bond Issuance Phase” shall mean the period of time following the Conclusion Date through and including the Closing Date.

“Bond Law” shall mean the Improvement Bond Act of 1915, being Sections 8500 *et seq.* of the Health & Safety Code of the State.

“Cash Contribution” shall mean the cash payments made by the CSD to or on behalf of the County in order to provide for the costs of services associated with the satisfaction of the conditions of this MOU, as it may from time to time be amended. The initial Cash Contribution of the CSD is set forth on Exhibit A to this MOU.

“Claims” shall mean all claims, demands, litigation, losses, judgments, damages, liabilities, costs and expenses, regardless of whether the claim is formally commenced in a court or not. As used herein, “Claims” shall refer to any Claim by any person or entity, including, but not limited to, any Claim by the CSD.

“Closing Date” shall mean the date upon which the CSD Bonds are issued by the County on behalf of the Assessment District, and the proceeds thereof made available to the CSD for the Project.

“Commencement Date” shall be the date the County receives the first “Notice to Proceed – Formation Phase” from the CSD pursuant to Section 4(A) of this MOU.

“CSD Bonds” shall mean any assessment bonds issued by the County under the Bond Law after the Conclusion Date for the initial financing of the Project after an assessment district is created.

“Effective Date” shall mean the date of execution of this MOU by the CSD or by the County, whichever is later, as shown on the signature page hereof. Once each party’s governing body approves this MOU, it shall be promptly signed by its authorized representative.

“Formation Costs” shall mean the costs of any party relating to the Assessment Proceedings and/or any preliminary activities relating to the County’s possible formation of the Assessment District, including, without limitation, the Cash Contribution, legal costs and expenses of the parties hereto, the costs of published and mailed notices, engineering expenses, testing, environmental and soils testing and reporting and fees of financial advisors and consultants.

“Conclusion Date” shall mean the date upon which the Assessment Proceedings are concluded, regardless of whether an Assessment District is formed on such date.

“Formation Phase” shall mean the period of time from the Effective Date through and including the Conclusion Date.

“Project Costs” shall mean the sums paid or to be paid for the acquisition, construction or improvement of any portion or segment of the Project, in accordance with a purchase order or contract therefor, together with all related administrative, engineering, legal, financial and other costs incurred by the CSD in connection with such acquisition, construction or improvement, including all applicable sales taxes and other charges.

“Stipulation” shall mean that certain Stipulation of June 30, 2005, approved by the Superior Court of the State of California, County of Santa Clara, in that certain groundwater adjudication commonly referred to as the *Santa Maria Valley Water Conservation District vs. the City of Santa Maria, et al.* (lead case number CV770214, later incorporated into a final judgment in said litigation, issued January 25, 2008).

Section 2. Duties of CSD. The CSD shall, at its own expense and with due diligence, during the term of this MOU, in addition to its obligation to pay costs and expenses as provided in Section 5 below, (a) hire a registered professional engineer to prepare a detailed engineer’s report; (b) deliver to the County a detailed engineer’s report consistent with article XIID, section 4 of the California Constitution and other applicable law that would, *inter alia*, identify all properties receiving special benefits from the Project; (c) retain a financial advisor to serve the CSD; (d) provide adequate information to property owners regarding the Project and the proposed formation of the Assessment District; (e) construct the Project in accordance with engineering plans and specifications provided to the County and in compliance with the Stipulation and the applicable provisions of the EIR; and (f) provide annual disclosure respecting the CSD Bonds as required pursuant to Rule 15c2-12, promulgated by the Securities and Exchange Commission. At the County’s request, the CSD shall, at its own expense, provide the County with any requested information relating to the Project, including, but not limited to, any and all updated engineering or design information, and any and all agreements signed or approved by the CSD.

Section 3. Duties of County. During the term of this MOU, and in conjunction with the timeframes set forth below, the County shall have the following duties:

(A) During the Formation Phase, the County shall: (1) retain special counsel to assist in the Formation Phase; (2) coordinate the process for the formation of the Assessment District,

including publication and/or mailing of notices required under the 1913 Act and adoption of appropriate resolutions; (3) collect and tabulate the results of balloting; and (4) canvass the final tabulation of ballots.

(B) Following the creation of an Assessment District, if any, the County shall: (1) retain Bond Counsel to assist in the issuance of the CSD Bonds; (2) administer the Assessment District after formation, including the annual delivery of assessment rolls to the Auditor-Controller of the County and the transmission of collected assessments to the fiscal agent to be used as debt service for the CSD Bonds; (3) retain its own financial advisor and underwriter or underwriters in connection with the authorization, issuance and sale of the CSD Bonds; (4) coordinate the issuance of the CSD Bonds through the preparation of appropriate resolutions, fiscal agent agreements, a preliminary and a final official statement and related legal documents; (5) administer the sale of the CSD Bonds; (6) provide for payment of the costs of issuance of the CSD Bonds from proceeds thereof; (7) make the proceeds of the CSD Bonds available to the CSD for the construction of the Project; and (8) require the fiscal agent to maintain appropriate books and records respecting the CSD Bonds, collection and payment of debt service thereon, and investment earnings on unexpended proceeds; provided, however, that the CSD shall be responsible for the payment of all costs and expenses associated with the County's performance under this Section.

Section 4. Notice to Proceed.

(A) Formation Phase. The County shall commence performance of County duties under Section 3(A) above within five (5) days of CSD's "Notice to Proceed – Formation Phase" and unless otherwise directed in writing by the CSD shall proceed with said duties with due diligence.

(B) Bond Issuance Phase. Following the creation of an Assessment District, and after the parties have amended Exhibit A, and the CSD has paid the amended deposit amount to the County, the County shall commence performance of County duties under Section 3(B) above within five (5) days of CSD's "Notice to Proceed – Bond Issuance Phase," and unless otherwise directed in writing by the CSD, shall proceed with said duties with due diligence.

Section 5. Costs and Expenses. The CSD covenants and agrees that it shall pay all Formation Costs and any other costs and expenses of the County relating to the duties described in Sections 3(A) and/or 3(B) above, including reasonable and necessary County staff time and the costs and expenses of consultants retained for said purposes by the County within twenty days of receipt of invoices for such costs and expenses. County invoices shall be itemized and shall identify the person providing the service, the service performed, the amount of time spent on performing the service, the amount charged for each item of service and a description by item for cost and expenses. Within five business days of the Effective Date of this MOU, the CSD shall deposit with the County the sum specified on Exhibit A attached hereto.

Following the creation of an Assessment District, the County and the CSD shall agree upon such additional deposits, costs and expenses as may be necessary for the issuance of the CSD Bonds pursuant to the Bond Law and shall amend Exhibit A to reflect such additional deposits, costs and expenses. In no event shall the County be liable to pay any of the costs and expenses incurred in connection with the execution of this MOU, the processing of the proposed

Assessment District or the issuance of the CSD Bonds, which shall all be the responsibility of the CSD.

Section 6. Reimbursement of Cash Contributions, Expenses. To the extent permitted by law, the CSD shall be entitled to be reimbursed for amounts advanced under Section 2 and 5 hereof from the proceeds of the CSD Bonds, as and when issued. Notwithstanding the foregoing, the County makes no representations and can provide no assurances to the CSD that the CSD Bonds will in fact be issued, that the CSD will be reimbursed therefrom, or that the CSD Bonds will be issued upon terms sufficient to generate enough proceeds to pay both Project Costs and the Formation Costs.

Section 7. Notices and Hearings. In connection with the Formation Phase and the issuance of the CSD Bonds, the County will be required, pursuant to pertinent provisions of the 1913 Act and the Bond Law, to provide notices, including published notices, and to conduct public hearings; the CSD covenants and agrees to post notices (and, as to parties which have previously so requested of the CSD, to mail notices) of each related agenda item being considered and of each related public hearing to be conducted by the County.

Section 8. Assessments Based on Special Benefits. In providing the engineering and related support during the Formation Phase, the CSD understands and agrees that the assessments to be imposed upon properties within the Assessment District, when formed, shall be made strictly upon the basis of special benefit to such properties as required by law.

Section 9. Maintenance and Operation of Project.

(A) CSD Ownership of the Project. Except as to connectors and pumping facilities associated with the Project to be owned and/or operated by the City, the Project and all of its pumps, machinery, conduits, apparatus, fixtures, fittings and equipment of any kind, real property (including rights-of-way) and capacity (except as provided in subparagraph E below) are and shall be, owned and/or operated by the CSD and shall be held and operated and maintained by the CSD as provided for herein.

(B) CSD's Objectives and Covenants. The CSD covenants and agrees that it will operate and maintain the Project in accordance with all relevant and valid governmental laws, ordinances, approvals, rules, regulations and requirements, including, without limitation, such zoning, sanitary, pollution, environmental and safety ordinances and laws and such rules and regulations thereunder as may be binding upon the CSD. The CSD further covenants and agrees that it will maintain and operate the Project in good repair, working order and condition, and that it will from time to time inspect and test all of the Project against then-current water supply industry standards, and that the CSD will pursue all necessary and proper replacement, repairs, renewals and improvements thereto. The CSD's operation of the Project, shall be consistent with the provisions of the "Stipulation" and "Final Judgment." The CSD agrees further that all revenues received from the Project shall be used for the sole benefit of the Project.

(C) CSD's Capital Reserves; Annual Budgets to Be Prepared by the CSD. In order to satisfy its covenants set forth in this MOU, the CSD shall determine the amount of capital reserves necessary for the Project for each upcoming fiscal year and its annual budget shall reflect such capital reserves. The CSD shall provide copies of the draft budget to the County for review and comment prior to final approval by the CSD's governing board.

(D) No Sale, Lease or Disposing of Project. The CSD covenants and agrees not to sell, lease or otherwise dispose of the Project or any part thereof essential to the proper operation thereof or to the earning or collection of the gross revenues of the Project, nor to enter into any MOU or lease which would impair the operation of the Project, or any part thereof necessary in order to secure adequate revenues for the payment of amounts due under this MOU, other than as necessary to secure the CSD Bonds; *provided, however*, that any real or personal property which has become nonfunctional or obsolete or which is not needed for the efficient operation of the Project may be sold or disposed of if such disposition will not have the effect of reducing revenues of the Project below the levels required under this MOU.

(E) Assignment of Capacity. Nothing in this MOU prohibits the CSD from assigning capacity interests in the Project's pipelines and related facilities to any of the Water Companies so long as such assignment is consistent with the final engineer's report and all applicable laws. Copies of any such assignments made by the CSD shall be immediately provided to the County and its Bond Counsel. If the CSD desires CSD Bonds to be issued on a tax-exempt basis, such assignments, if desired by the CSD, should not be undertaken without consultation with and the prior written approval of Bond Counsel to the County. Following the issuance of any CSD Bonds for the Project on a tax-exempt basis, such assignments, if desired by the CSD, shall not be undertaken without consultation with and the prior written approval of Bond Counsel to the County.

(F) CSD to Maintain Project. The CSD covenants and agrees to maintain and preserve the Project in good repair and working order at all times, to operate the same in an efficient and economical manner and to pay all operation and maintenance costs of the Project as they become due, all in accordance with the best business judgment of the CSD.

(G) No Superior Liens or Payments. The CSD covenants and agrees not to create or allow any lien on or payment from the revenues of the Project or any part thereof prior to, or superior to, the CSD's obligations to provide for debt service on the CSD Bonds.

(H) CSD to Insure Project. The CSD covenants and agrees to procure and maintain insurance, that is reasonable, relating to the Project which the CSD shall deem advisable or necessary to protect its interests and/or which may be required for the issuance of CSD Bonds. Such insurance shall afford protection in such amounts and against such risks as are usually covered in connection with similar water enterprises in the State of California; provided, that any such insurance may be maintained under a self-insurance program, so long as such self-insurance program is maintained in accordance with standards and in such amounts as are then usually maintained for similar water delivery projects in the State.

(I) CSD to Pay Obligations; Observe Laws. The CSD covenants and agrees to pay and discharge all valid taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Project or any part thereof when the same shall become due and to duly observe and conform to all valid regulations and requirements of any governmental authority relative to the operation of the Project that are not being contested by the CSD in good faith.

(J) Eminent Domain. CSD covenants and agrees that if all or any material part of the Project shall be taken by eminent domain proceedings, or if the CSD receives any insurance proceeds resulting from a casualty loss to any material portion of the Project, the proceeds

thereof shall be used by the CSD to construct or install replacements for the condemned or destroyed components of the Project or to redeem the CSD Bonds.

Section 10. Indemnification. The County is willing to enter into this MOU only if all of the County's expenses, costs, and possible exposure to liability relating to this MOU are assumed by the CSD to the fullest extent allowed by law. Accordingly, the CSD agrees to indemnify, defend and hold harmless the County, including its officers, employees and each person, if any, who controls (as such term is defined in Section 15 of the Securities Act of 1933, as amended) the County, against any and all Claims by any person relating to this MOU, the engineer's report, the Assessment Proceedings, the issuance of the CSD Bonds (including but not limited to, any Claims relating to the exclusion from gross income of interest on the CSD Bonds or the failure to satisfy the requirements of Rule 15c2-12 (Continuing Disclosure), promulgated by the Securities and Exchange Commission), and/or the design, construction, operation or maintenance of the Project, regardless of whether or not the Claim arises from any omission of the County, the CSD, or some other person or entity. The CSD's duty to defend the County extends to all of the aforementioned Claims even if the Claim arises from the active or passive negligence by the County. The CSD's duty to indemnify the County extends to all of the aforementioned Claims even if the Claims arise from any active or passive negligence by the County (but not from any willful acts by the County).

In case any Claim shall be made or action brought against the County or any controlling person as provided above, the County shall promptly notify the CSD in writing setting forth the particulars of such Claim or action and the CSD shall assume the defense thereof, including the retaining of counsel reasonably acceptable to the County and the payment of all expenses. Notwithstanding the CSD's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the CSD shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the CSD to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the CSD and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties which are materially different from or additional to those available to the CSD; (iii) the CSD shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action; or (iv) the CSD shall authorize the indemnified party to employ separate counsel at the expense of the CSD. The CSD will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened Claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such Claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding.

Nothing contained in the foregoing indemnity provisions shall be construed to require the CSD to:

- A. Indemnify, defend and hold harmless the County from claims by its own employees, contractors and consultants that are unrelated to any act or omission by the CSD, its employees, agents, representatives or contractors; or

B. Indemnify, defend and hold harmless the contractors and consultants retained by County pursuant to this MOU.

Section 11. CSD's Assumption of Risk. The CSD acknowledges that the County is entering into this MOU at the request of the CSD, and that the County has never before (1) created an assessment district, nor issued bonds, for a project that is being constructed, owned and operated by a community services district, or (2) created an assessment district for such a project that included properties outside the boundaries of the community services district. The CSD enters into this MOU with full appreciation of the risks associated with such a venture and assumes all risks associated with a unilateral or mutual mistake of law or fact, frustration of purpose, or impossibility of performance. Under no circumstances shall any obligations or duties of the CSD under this MOU be excused, voided or relieved by any unilateral or mutual mistake of law or fact, frustration of purpose, or impossibility of performance. Under no circumstances shall the County be out of pocket for any costs associated with this MOU.

Section 12. Notices. The County covenants and agrees to provide notice to the CSD, at the address shown on Exhibit B hereto, of all hearings and other proceedings related to the formation of the Assessment District, the approval or issuance of the CSD Bonds and the Project which the County may conduct during the term of this MOU. The CSD covenants and agrees to provide notice to the County, at the address shown on Exhibit B hereto, of all hearings and other proceedings related to the formation of the Assessment District, the approval or issuance of the CSD Bonds and the Project which the CSD may conduct during the term of this MOU. Either party may provide a different notice address to the other party, in which case, an amended Exhibit B will be provided to each party.

Section 13. Cooperation of Parties. The parties hereto recognize that it is essential to cooperate fully concerning the handling of data and information contemplated by this MOU. In connection herewith, the parties therefore agree to provide any data, information and documentation reasonably necessary in order to accomplish the goals of this MOU.

Section 14. Opinions and Determination: Good Faith. Where terms of this MOU provide for an action to be based upon opinion, judgment, approval, review or determination of either the CSD or the County hereto such terms are not intended to and shall never be construed to permit such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable. The County and the CSD shall each act in good faith in performing their respective obligations as set forth in this MOU.

Section 15. Term of Agreement; Survival of Obligations. This MOU shall automatically terminate (A) on the day which is 365 days following the Effective Date, (i) if no Assessment District is formed, or (ii) if no CSD Bonds have then been issued; or (B) the day the final CSD Bonds are retired and paid in full. The CSD's obligations under Sections 5 (Costs and Expenses), 9 (Indemnification) and 10 (County's Access to Information) shall survive the termination of this MOU, and shall remain in full force and effect until fully satisfied.

Section 16. No Guarantee of Assessment District Formation. The County and the CSD understand that there is no guarantee that an Assessment District will be formed by virtue of execution and delivery of this MOU or the efforts of either party during the Formation Phase. If a proposed assessment district is not approved by a sufficient number of property owner

ballots as required by applicable law, the County shall be under no obligation to conduct any further Assessment Proceedings under this MOU.

Section 17. Modification. No amendment to or variation of the terms of this MOU, excepting notice addresses, as described in Section 11, shall be valid unless made in writing and signed by the affected parties; no oral understanding or agreement not incorporated herein shall be binding upon any of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding unless authorized by the parties in writing.

Section 18. Successors and Assigns. The terms, covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

Section 19. Review for Legal Adequacy. Each party to this MOU acknowledges and agrees that this MOU has been reviewed by legal counsel to such party for legal adequacy.

Section 20. No Waiver. No waiver of the breach of any of the covenants, agreements, restrictions or conditions of this MOU by any party shall be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this MOU. No delay or omission of any party in exercising any right, power or remedy herein provided in the event of default shall be construed as a waiver thereof, or acquiescence therein, or be construed as a waiver of a variation of any of the terms of this MOU.

Section 21. Severability. If any term or portion of this MOU is held to be invalid, illegal, void or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this MOU shall continue in full force and effect.

Section 22. Governing Law. This MOU shall be governed by the provisions of the laws of the State of California applicable to contracts made and performed in such State.

Section 23. Counterparts. This MOU may be executed in counterparts, each of which shall, together, constitute an entire document.

IN WITNESS WHEREOF, the parties have each executed this MOU by their duly authorized representatives as set forth below:

COUNTY OF SAN LUIS OBISPO

By _____
Chairperson, Board of Supervisors

Dated: _____

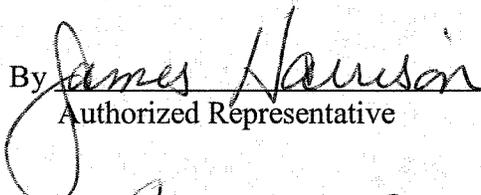
**APPROVED AS TO FORM:
WARREN R. JENSEN,
COUNTY COUNSEL:**

By 
Deputy County Counsel

**ATTEST:
JULIE L. RODEWALD, COUNTY CLERK**

By _____
Deputy County Clerk

NIPOMO COMMUNITY SERVICES DISTRICT

By 
Authorized Representative

Dated: Aug 12 2010

EXHIBIT A

ESTIMATED COSTS AND CASH CONTRIBUTIONS
(as of _____, 2010)

The Formation Phase costs to be paid or reimbursed by the CSD are estimated at \$60,000; upon execution of the MOU, the CSD shall deposit the sum of \$25,000 with the County as a credit towards the total Formation Phase costs.

This schedule will be amended following the successful conclusion of the Formation Phase and the further authorization of the parties.

EXHIBIT B

NOTICE ADDRESSES

If to the County :

The County of San Luis Obispo
c/o Public Works Director
County Government Center Room 207
San Luis Obispo, CA 93408

Copy to: County Counsel, County Government Center Room D320, San Luis Obispo,
CA 93408

If to the CSD:

General Manager
Nipomo Community Services District
148 South Wilson Street
Nipomo, CA 93444-0326

Copy to:

Jon S. Seitz
Shipsey & Seitz, Inc
1066 Palm Street
San Luis Obispo, CA 93401
Phone: (805) 543-7272
Email: Jon@shipseyandseitz.com