

TO: MICHAEL S. LEBRUN
GENERAL MANAGER

MSL

FROM: PETER V. SEVCIK, P.E.
DIRECTOR OF ENGINEERING
AND OPERATIONS

PVS

DATE: FEBRUARY 6, 2015

**AGENDA ITEM
E-1
FEBRUARY 11, 2015**

**SERVICE REQUEST – 875 THEODORA STREET
4 LOT RESIDENTIAL DEVELOPMENT**

ITEM

Consider request for water, sewer and solid waste service (Intent-to-Serve Letter) for a 4 lot residential development on APN 092-573-021, 875 Theodora Street [RECOMMEND CONSIDER INTENT TO SERVE LETTER AND APPROVE WITH CONDITIONS].

BACKGROUND

The District received an application for water, sewer and solid waste service for 875 Theodora Street, APN 092-573-021. The Applicant, Christopher Hurdle, is requesting water, sewer and solid waste service for a 4 unit single-family subdivision (based on the District's definition).

The existing 0.88 acre parcel is zoned Residential Single Family and the District currently provides water service, but not sewer service, for the existing residence on the parcel. The project will result in the creation of 3 new residential lots. A Water Demand Certification for the new residential units of the project was included with the application.

Total water demand for the project is estimated to be 1.2 acre-feet per year (AFY). Water demand for the project will be tracked against the 500 AFY supplemental water project capacity reservation that is assigned to new development within the District's existing boundary.

All parcels, existing and planned, will be required to obtain water, sewer and solid waste service in compliance with current District standards.

FISCAL IMPACT

Water and sewer capacity fees will be based on the domestic meter size and irrigation meter size requested for the final County approved project as well as CAL FIRE's fire service requirements. Assuming 3 new 1-inch water services and 4 new sewer connections, the estimated fee deposit for the project is \$66,432 based on the current District fee schedule.

RECOMMENDATION

Staff recommends that the Board approve the Applicant's request for an Intent-to-Serve letter for the project with the following conditions:

Project-Specific Conditions

- Project shall obtain solid waste, sewer and water service for all parcels.
- Each new parcel shall be served by a single one (1) inch meter and backflow assembly for indoor use and fire sprinkler service, if approved by CAL FIRE of SLO County.
- Applicant shall install a water main, in accordance with District standards, in Frank Court to serve the project.
- Applicant shall install a gravity sewer system, in accordance with District standards, in Frank Court to serve the project that connects to the District's existing sewer system in Chata Street. If a gravity sewer system is not viable, the applicant shall construct a sewer pump station and force main, in accordance with District standards, to serve the project that connects to the District's existing sewer system in Chata Street.

Standard Conditions

- CAL FIRE of SLO County must approve the development plans prior to District approval. Fire capacity charges are applicable if dedicated fire service laterals are required.
- Record a restriction, subject to District approval, on the property prohibiting the use of well(s) to provide water service to any parcel within the Project.
- Properly abandon any existing groundwater wells and provide documentation to District.
- Record a restriction, subject to District approval, on all parcels prohibiting use of self-regenerating water softeners.
- Comply with District water conservation program.
- Pay all appropriate District fees associated with this development.
- Applicant shall provide the District with a copy of County application approval and County project conditions of approval.
- Enter into a Plan Check and Inspection Agreement and provide a deposit.
- Submit improvement plans in accordance with the District Standards and Specifications for review and approval. Applicant shall provide plans consistent with current District Standards and based on the proposed lot configuration.
- Any easements required for water and sewer improvements that will be dedicated to the District shall be offered to the District prior to final improvement plan approval.
- Any easements required for private water and sewer laterals shall be recorded prior to final improvement plan approval and shall be subject to District approval.
- All water and sewer improvements to be dedicated to the District shall be bonded for or otherwise secured in the District's name.
- A Will-Serve letter for the Project will be issued after improvement plans are approved and signed by the District.
- Applicant shall make a non-refundable deposit ("Deposit") at the time the District issues a Will Serve Letter in an amount equal to the then calculated Fees for Connection.
- Fees for Connection shall be calculated and owing as of the date the District sets the water meter(s) to serve the affected property from which the amount of the Deposit shall be deducted.
- Construct the improvements required and submit the following:
 - Reproducible "As Builts" - A mylar copy and digital format disk (PDF) which includes engineer, developer, tract number and water and sewer improvements
 - Offer of Dedication
 - Engineer's Certification
 - Summary of all water and sewer improvement costs

- Solid waste collection services are mandatory. Applicant shall provide proof that the Project is provided with solid waste removal services in accordance with District regulations.
- The District will set water meter(s) upon proof of a building permit from the County of San Luis Obispo, the District's acceptance of improvements to be dedicated to the District, if applicable, and the final payment of all charges and fees owed to the District.
- This letter is void if land use is other than residential use as defined by the District.
- Intent-to-Serve letters shall automatically terminate on the first to occur:
 - Failure of the Applicant to provide District with written verification that County application for the Project has been deemed complete within two hundred forty (240) calendar days of the date the Intent-to-Serve Letter is issued; or
 - Three (3) years, from date of issuance. However, Applicant shall be entitled to a one-year extension upon the following conditions:
 - Applicant makes written application for the extension prior to the expiration of the Intent-to-Serve Letter.
 - Applicant provides proof of reasonable due diligence in processing the Project.
 - Applicant agrees to revisions of the conditions contained in the Intent-to-Serve letter consistent with then existing District policies.
- This Intent-to-Serve letter shall be subject to the current and future rules, agreements, regulations, fees, resolutions and ordinances of the District.
- This Intent-to-Serve letter may be revoked, or amended, as a result of conditions imposed upon the District by a court or availability of resources, or by a change in ordinance, resolution, rules, fees or regulations adopted by the Board of Directors.
- The District reserves the right to revoke this "Intent-to-Serve letter at any time.
- The Applicant shall provide a signed copy of the Intent-to-Serve letter within thirty (30) days of issuance.

ATTACHMENTS

- A. Application
- B. Proposed Site Plan

February 11, 2015

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ATTACHMENT A



NIPOMO COMMUNITY SERVICES DISTRICT

148 SOUTH WILSON STREET
POST OFFICE BOX 326 NIPOMO, CA 93444 - 0326
(805) 929-1133 FAX (805) 929-1932
Website: ncsd.ca.gov

Office use only:
Date and Time
Complete
Application and
fees received:

RECEIVED

NOV 19 2014

NIPOMO COMMUNITY SERVICES DISTRICT

INTENT-TO-SERVE APPLICATION

1. This is an application for: Sewer and Water Service Water Service Only
2. SLO County Planning Department/Tract or Development No.: _____
3. Attach a copy of SLO County application.

Note: District Intent-to-Serve letters expire eight (8) months from date of issue, unless the project's County application is deemed complete.

4. Project location: 875 Theodora Street
5. Assessor's Parcel Number (APN) of lot(s) to be served: 092-573-021
6. Owner Name: Christopher Hurdle
7. Mailing Address: PO Box 2113 Nipomo, CA 93444
8. Email: Chrishurdle.Aud@me.com
9. Phone: 805-720-7007 FAX: Ø
10. Agent's Information (Architect or Engineer):
Name: Morton & Pitalo, Inc., Gregory J. Bardini, P.E.
Address: 75 Iron Point Circle, Suite 120, Folsom, CA 95630
Email: gbardini@mpengr.com
Phone: 916-496-8763 FAX: 916-984-7617

11. Type of Project: (check box) (see Page 3 for definitions)

<input checked="" type="checkbox"/> Single-family dwelling units	<input type="checkbox"/> Multi-family dwelling units
<input type="checkbox"/> Commercial	<input type="checkbox"/> Mixed Use (Commercial and Residential)

12. Total Number of Dwelling Units 4 Number of Low Income Units 0

13. Does this project require a sub-division? Yes No
If yes, number of new lots created 4 parcels

14. Site Plan:

For projects requiring Board approval, submit six (6) standard size (24" x 36") copies and one reduced copy (8½" x 11"). Board approval is needed for the following:

- more than four dwelling units
- property requiring sub-divisions
- higher than currently permitted housing density
- commercial developments

All other projects, submit three (3) standard size (24" x 36") and one reduced copy (8½" x 11").

Show parcel layout, water and sewer laterals, and general off-site improvements, as applicable.

15. Water Demand Certification:

A completed Water Demand Certification, signed by project engineer/architect, must be included for all residential and the residential portion of mixed-use projects.

16. Commercial Projects Service Demand Estimates:

Provide an estimate of yearly water (AFY) and sewer (gallons) demand for the project prepared by a licensed Engineer/Architect. **Please note:** All commercial projects are required to use low water use irrigation systems and water conservation best management practices.

17. Agreement:

The Applicant agrees that in accordance with generally accepted construction practices, Applicant shall assume sole and complete responsibility for the condition of the job site during the course of the project, including the safety of persons and property; that this requirement shall apply continuously and not be limited to normal working hours; and the Applicant shall defend, indemnify, and hold the District and District's agents, employees and consultants harmless from any and all claims, demands, damages, costs, expenses (including attorney's fees) judgments or liabilities arising out of the performance or attempted performance of the work on this project; except those claims, demands, damages, costs, expenses (including attorney's fees) judgments or liabilities resulting from the negligence or willful misconduct of the District.

Nothing in the foregoing indemnity provision shall be construed to require Applicant to indemnify District against any responsibility or liability or contravention of Civil Code §2782

Application Processing Fee.....See Attached Fee Schedule

The District will only accept cashier's check or bank wire for the payment of Water Capacity, Sewer Capacity and other related development fees.

Date 11-17-14

Signed

Christopher Hurdle
(Must be signed by owner or owner's agent)

Print Name

Christopher Hurdle

WATER DEMAND CERTIFICATION

Supplement to Intent-to-Serve/Will Serve Application

Definitions

(Please note – these definitions do NOT reconcile with standard SLO County Planning department definitions)

Multi-family dwelling unit – means a building or portion thereof designed and used as a residence for three or more families living independently of each other under a common roof, including apartment houses, apartment hotels and flats, but not including automobile courts, or boardinghouses.

Two-family dwelling units (duplex) – means a building with a common roof containing not more than two kitchens, designed and/or used to house not more than two families living independently of each other.

Single-family dwelling unit – means a building designed for or used to house not more than one family.

Secondary dwelling units – means an attached or detached secondary residential dwelling unit on the same parcel as an existing single-family (primary) dwelling. A secondary unit provides for complete independent living facilities for one or more persons.

Commercial Projects

Commercial projects are exempt from Water Demand Certification; however, low water-use irrigation systems and water conservation best management practices are required. The dwelling component of Mixed-Use projects (e.g. commercial and residential), are required to provide Water Demand Certification for the dwelling unit portion of the project.

Non-Commercial Projects

Water Demand Certification is required for all non-commercial projects and for the dwelling units of Mixed-Use. Certification must be signed by a licensed Engineer/Architect.

- - - Go to next page for demand calculation and certification - - -

Demand Calculation (for new dwelling units only)

Total project water demand (dwelling units including irrigation), by District standard, is as follows:

Number of Multi-family Units	_____	X	0.28	=	_____
Number of Duplexes/Secondary Units	_____	X	0.28	=	_____
Number of Single Family Units with:					
Parcel less than 12,768 sq. ft.	3	X	0.40	=	1.20
Parcel between 12,769 and 25,536 sq. ft.	_____	X	0.68	=	_____
Parcel greater than 25,536 sq. ft.	_____	X	0.82	=	_____
Total demand all dwelling units including irrigation					= <u>1.20</u> <i>New Services</i>

Certification

I the undersigned do here by certify:

Project design incorporates low water use landscape and landscape irrigation systems.

The design maximum total water demand, including landscaping does not exceed the following:

- 0.28 AFY per Multi-Family Dwelling Unit;
- 0.28 AFY per Dwelling Unit for duplexes and Secondary Dwellings;
- 0.40 AFY per Single Family Dwelling Unit located on a parcel size of twelve thousand seven hundred sixty-eight (12,768) square feet or less;
- 0.68 AFY per Single Family Dwelling Unit located on a parcel size between twelve thousand seven hundred sixty-nine (12,769) and twenty-five thousand five hundred thirty-six (25,536) square feet.
- 0.82 AFY per Single Family Dwelling Unit located on a parcel size that exceeds twenty-five thousand five hundred thirty-six (25,536) square feet.
- Secondary Units – Total water demand for primary and secondary unit shall not exceed 110% of the limitations established for the primary unit.

Note: "AFY" = acre-foot per year
 Parcel size is net area

Gregory J. Bardini

Signed  Date 11-17-14

Must be signed by project engineer/architect

Title President License Number C50725

Project 092-573-021 (e.g. Tract Number, Parcel Map #, APN)

February 11, 2015

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ATTACHMENT B

VESTING TENTATIVE PARCEL MAP TRACT NO. _____
A SINGLE FAMILY RESIDENTIAL SUBDIVISION
IN THE COMMUNITY OF NIPOMO
SAN LUIS OBISPO COUNTY, CALIFORNIA

LEGAL DESCRIPTION

LOT 'C' TRACT MAP 1015, BK 11, PG. 7 TOTAL NUMBER OF LOTS: 4 NUMBERED
 GROSS ACREAGE: 0.9014
 NET ACREAGE: 0.9014

OWNER/SUBDIVIDER

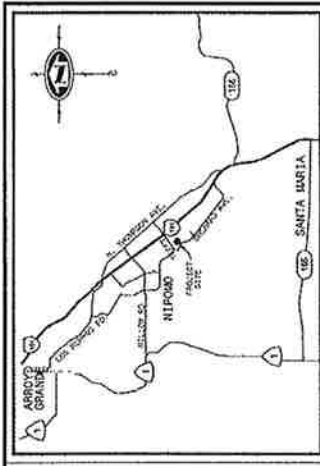
CHRIS HAZLE
 875 THEODORA STREET
 NIPOMO, CA 93444
 (805) 780-7007

GENERAL NOTES

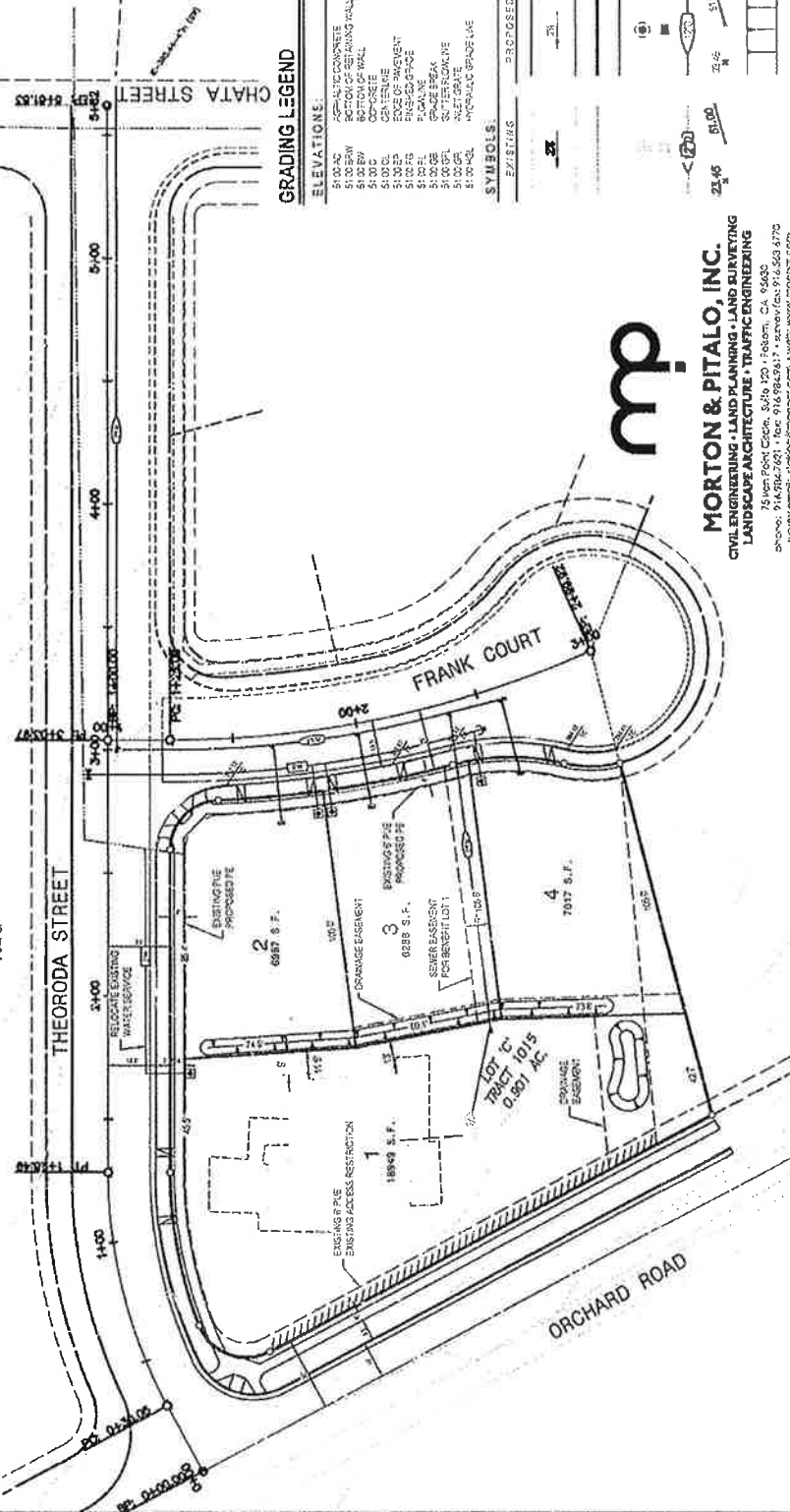
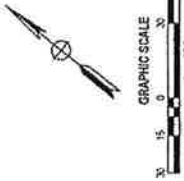
1. THE PARCEL HAS ONE EXISTING HOME ON SITE.
2. EXISTING ZONING IS RSF (RESIDENTIAL SINGLE FAMILY).
3. THE PARCEL IS WITHIN THE NIPOMO SOUTH COMMUNITY PLAN AREA.
4. SOURCE OF WATER SUPPLY SHALL BE NIPOMO MESA.
5. ABANDON LEACH FIELD TO COUNTY STANDARDS.
6. ALL PUBLIC UTILITIES (GAS & ELECTRIC - POLE, TELEPHONE - AT&T, CABLE TELEVISION - COMCAST, AND NIPOMO MESA WATER & SEWER) SHALL BE INSTALLED.
7. ALL IMPROVEMENTS PROPOSED (STORM DRAIN, CURB, GUTTER, STREETLIGHTS, SIDEWALK, AND PERMANENT PAVEMENT) SHALL BE CONSTRUCTED TO SAN LUIS OBISPO COUNTY STANDARDS.
8. SEWER SERVICES TO BE PROVIDED BY SEPTIC TANK AND ELECTOR PUMPS.

LAND USE STATISTICS:

EXISTING LAND USE DESIGNATION: RSF
 PROPOSED LAND USE DESIGNATION: RSF
 RESIDENTIAL SINGLE FAMILY
 RESIDENTIAL SINGLE FAMILY



VICINITY MAP
KIT'S



GRADING LEGEND

EXISTING	PROPOSED	DESCRIPTION
ASPHALTIC COMPLETE	ASPHALTIC COMPLETE	ASPHALTIC COMPLETE
CONCRETE	CONCRETE	CONCRETE
GRAVEL	GRAVEL	GRAVEL
DIRT	DIRT	DIRT
ROCK	ROCK	ROCK
WOOD	WOOD	WOOD
...



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 LANDSCAPE ARCHITECTURE • TRAFFIC ENGINEERING
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 Phone: 916.924.7261 • Fax: 916.924.5917 • Email: info@mpeng.com • Web: www.mpeng.com

TO: BOARD OF DIRECTORS

FROM: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER

DATE: FEBRUARY 6, 2015

**AGENDA ITEM
E-2
FEBRUARY 11, 2015**

**CONSIDER GRANT REQUEST FROM NIPOMO CHAMBER OF
COMMERCE IN AMOUNT OF \$30,000 FOR SOLID WASTE REMOVAL
IN NIPOMO COMMUNITY COMMON AREAS**

ITEM

Nipomo Chamber of Commerce is requesting grant funds in the amount of \$30,000 to provide clean up of solid waste in the Nipomo area [RECOMMEND CONSIDER REQUEST FOR GRANT FUNDS IN AMOUNT OF \$30,000].

BACKGROUND

The Nipomo Chamber of Commerce is requesting grant funds to continue a successful program for cleaning up litter within the Nipomo Community.

The clean-up program was pilot tested in late 2012. Since that time your Board has approved four grant requests for progressively longer duration. In March 2014, your Board approved a grant of \$24,500 which was intended to fund the program through April 2015, however increased program demand has exhausted the current grant monies.

The Chamber is requesting twelve months of program funding at a cost of \$30,000 (\$2,500 per month). Chamber President Mr. Richard Malvarose has provided the attached proposal and will present the proposal and answer questions from your Board.

FISCAL IMPACT

Grant funds are paid against Achievement House Invoices for services provided in Nipomo plus 10% for Chamber administration. Funds to support solid waste services may be allocated from the District solid waste fund. The solid waste franchise income is approximately \$11,000 monthly. The balance of the solid waste fund is approximately \$300,000.

STRATEGIC PLAN

Strategic Plan Goal 7.A.2 – Provide additional solid waste services
Strategic Plan Goal 7.A.3 – Communicate with customers

RECOMMENDATION

Receive presentation, consider grant request. If desired, approve grant request by motion and roll call vote. Should your Board desire to approve grant request, direct staff to execute a Grant Agreement with Nipomo Chamber of Commerce for the approved grant amount and duration.

ATTACHMENT

- A. January 20, 2015, Nipomo Chamber of Commerce Grant Request

February 11, 2015

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ATTACHMENT A



January 20, 2015

To: Nipomo Community Services District

Re: Solid Waste Grant Program

Dear NCSD Board & Staff,

We are closing the second year of the NCSD granting funds to the Nipomo Chamber of Commerce to facilitate the removal of solid waste from the streets of our town. The feedback has been overwhelmingly positive as our residents are noticing a significant change in the cleanliness of our community. We are pleased to see the noticeable decrease of litter in the streets and vacant lots, weeds growing in the gutters and sidewalks and parts of the town looking neglected.

Your generous grant of Solid Waste Funds has allowed the Nipomo Chamber of Commerce Staff to hire Achievement House to carry out the much needed work of keeping our great community clean. Achievement House works with developmentally disabled adults providing training and jobs, offering a higher quality of life and a chance to contribute to the community. The workers on these crews have an enormous feeling of pride for what they have accomplished and they have truly transformed our town.

We are continuing to improve our efforts to gain more recognition of what can be accomplished in a community when public and private entities collaborate to solve a problem. As our residents become more aware of this program we are receiving additional requests for various projects around Nipomo; thus resulting in an increase in monthly clean-up costs billed through Achievement House. Over the last year our monthly grant funding requests have averaged \$2,463; therefore, we are requesting a grant for \$30,000 to cover the next 12 month period from December, 2014 – November, 2015. This will include our previously submitted grant request dated January 12, 2014 for December invoices in the amount of \$3,396.25. Overall this results in an 8% increase from the previous funding cycle and we are confident the increased costs will ensure the continued beautification of our town. Thank you for your consideration we look forward to continuing this excellent example of community partnership.

A handwritten signature in black ink, appearing to read "Amber Wilson".

Amber Wilson, Executive Director

A handwritten signature in black ink, appearing to read "Richard Malvarose".

Richard Malvarose, President

TO: BOARD OF DIRECTORS

FROM: MICHAEL LEBRUN
GENERAL MANAGER

DATE: FEBRUARY 6, 2015

AGENDA ITEM

E-3

FEBRUARY 11, 2015

DISCUSS PROPOSED JIM O. MILLER PARK

ITEM

Discuss the proposed park and direct staff [RECOMMEND DIRECT STAFF]

BACKGROUND

Jim Miller Park is a proposed park that the Olde Towne Nipomo Association (OTNA), the Nipomo Community Services District (District), and the County of San Luis Obispo (County) have been coordinating on for a number of years.

In January 2009, the County and the District entered into a Memorandum of Understanding (MOU) that envisioned transfer of County property to the District for the purposes of the park. The 2009 MOU is provided as Attachment A. In late 2009, an assessment district formation intended to provide necessary funding for the park failed. With no funding plan, the District did not meet LAFCO's conditions for activation of park powers and the District's application to LAFCO subsequently expired.

In early 2010, a site environmental investigation commissioned by the District found elevated levels of heavy metals in near surface soils and petroleum impacts in shallow groundwater. The investigation report was provided to the County (property owner) for further consideration. In the meantime, OTNA worked with the County to move the location of the proposed park to different parcel – just across Tefft Street.

The County and District amended their MOU in October 2013 to more formally recognize and include OTNA. A use permit between the County and OTNA was added as Exhibit B to the County/District MOU. The updated MOU is attached.

Today's agenda item is in response to OTNA's desire to update your Board on the status of the Park and to seek your Board's input on moving the project forward.

STRATEGIC PLAN

Goal 8. ADDITIONAL COMMUNITY SERVICES. *Staff should focus on meeting the goals and objectives of existing services. Adding new services will be considered on a case-by-case basis and entered into only if funding can be found and existing services are not harmed.*

- 8.1 *PARK. Remain engaged in community planning at the Board level.*
- 8.2 *PARK. Communicate district's commitment to follow through pending acquisition and/or availability of funding source.*

RECOMMENDATION

It is recommended that your Board discuss the proposed park and provide staff direction.

ATTACHMENT

- A. January 2009 MOU & October 2013 Amendment

February 11, 2015

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ATTACHMENT A

January 2009

MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF SAN LUIS OBISPO AND
THE NIPOMO COMMUNITY SERVICES DISTRICT
REGARDING THE TRANSFER OF OWNERSHIP IN
COUNTY-OWNED REAL PROPERTY

This Memorandum of Understanding ("MOU") is entered by and between the County of San Luis Obispo (hereinafter "County") and the Nipomo Community Services District (hereinafter "District") with reference to the following Recitals:

RECITALS

- A. The District is a Community Services District formed and operated pursuant to California Government Code, Sections 61000 et seq. Pursuant to said code, the District is authorized to acquire, construct, improve, maintain, and operate recreational facilities, including, but not limited to, parks and open space; and
- B. The District is considering the activation of Park Powers pursuant to the Cortese-Knox-Hertzberg Act and the rules and regulations of the Local Agency Formation Commission (hereinafter "LAFCO"); and
- C. The County is the owner of certain real property consisting of approximately one (1) acre located at the northeast corner of West Tefft and Carrillo Street (APN 090-141-006) along with the adjacent 60-foot-wide strip of land to the west of this parcel, formerly a railroad right-of-way (a portion of APN 090-151-008), hereinafter referred to as "Property", as depicted in Exhibit "A"; and
- D. The District has requested the County to transfer ownership of the Property to the District, without compensation, for the purpose of constructing and operating a park; and
- E. The District has a 75' by 75' easement for water well purposes on County land across the street from said Property on APN 090-142-007, recorded on May 29, 1984 as Document No. 27332; and
- F. The District has not developed this site for water well purposes and no longer requires the easement; and
- G. The District requires an easement for a sewer lift station and sewer lines installed in the early 1980's on County-owned land, APN 090-142-007; and
- H. District requests a grant of easement from County for the sewer lift station and sewer lines and offers, in lieu of monetary compensation, to quitclaim the 75' x 75' water well easement currently held by District, described in Paragraph E above; and

- I. Pursuant to Government Code, Section 56824.14, in order to maintain a public park, the District's exercise of Park Powers must be approved by LAFCO; and
- J. Pursuant to Government Code, Section 25365, the Board of Supervisors may, upon determination that said Property is not required for County use and with a four-fifths vote of the Board, transfer fee title of said Property to District; and
- K. It is the purpose of this MOU to identify the responsibilities of the parties in developing the Property for use as a park and the transfer of the property to the District as well as the trading of easements.
- L. County wishes to cooperate with District's request to transfer the property to the District in order to provide a park to the community of Nipomo.

NOW, THEREFORE, the parties agree as follows:

1. County hereby determines that subject Property is not required for County use.
2. In lieu of monetary compensation and in consideration of District's offer to construct and maintain a public park on the Property, County intends to transfer ownership of the Property to District free of charge following completion of the steps outlined below. Nothing contained in this MOU shall be interpreted to predetermine the transfer of the property or to restrict County's full review and implementation of environmental review related to the transfer of this Property pursuant to CEQA. Said transfer shall require a future public hearing before the Board of Supervisors pursuant to Government Code Section 25365 after the environmental determination and General Plan Conformity Report are completed.
3. District will develop a plan identifying park features and improvements for approval by County Planning and Building Department.
4. District will provide County an analysis of the costs and the funding sources for construction of park improvements and for ongoing operation and maintenance. If such funding shall require the formation of an assessment district, transfer of ownership of the Property shall not occur prior to approval of the assessment district by the affected property owners.
5. Transfer of the property shall not occur prior to LAFCO activation of the District's Park Powers.
6. If required, District shall apply for a public lot split with County Planning and Building Department and provide all documentation necessary to obtain approval of the County Subdivision Review Board prior to recordation of the Quitclaim Deed. District shall provide, at District's expense, a legal description of the property to be transferred, which shall be an original exhibit to the Quitclaim

Deed. District agrees to submit a Voluntary Merger or Certificate of Compliance Application and processing fees, if required, to County Planning and Building Department.

7. County shall process a General Plan Conformity Report and Environmental Determination for the transfer of the Property. Transfer of the property shall not occur prior to filing of the General Plan Conformity Report and Environmental Determination with the County Planning Commission or, if appealed, approval by the County Board of Supervisors.
8. The Property shall be improved in substantial conformity to development plans as submitted to County and shall be open to the public within three years following date of recordation of the Quitclaim Deed.
9. The Property must be used for public park purposes. The property may not be used to provide a parking in-lieu program for nearby commercial development.
10. The Quitclaim Deed shall contain a reversionary clause giving County the right to require the Property to be transferred back from District to the County if the requirements of paragraphs 7 and 8 are not fulfilled.
11. District shall, at District's sole cost and expense, prepare an Easement Deed with original stamped legal description attached describing easement to be granted by County to District for sewer lift station area and sewer lines.
12. District shall, at District's sole cost and expense, provide an Environmental Determination for said sewer lift station and sewer line easement for review and approval by County Environmental Coordinator. Said Environmental Determination must be reviewed by the County Board of Supervisors prior to granting of the easement.
13. District shall, at District's sole cost and expense, prepare an Easement Quitclaim Deed to release the 75' x 75' water well easement on APN 090-142-007, recorded on May 29, 1984 as Document No. 27332.
14. Easement Quitclaim Deed for water well shall be signed by District in a timely manner and delivered to County along with a signed Certificate of Acceptance for the Easement Deed for sewer lift station and sewer lines. This action shall proceed independently of actions related to transfer of Property for park purposes. County staff shall present the Easement Quitclaim Deed to the County Board of Supervisors concurrently with the Easement Deed for sewer lift station and sewer lines in District's name. Subject to approval by the County Board of Supervisors, both documents shall be recorded concurrently. In the event that County Board of Supervisors does not approve the Easement Deed, Easement Quitclaim deed shall be returned by County to District

15. District does not object to County's intention to develop their vacant land across the street from the Property (APN 090-142-007 and adjacent 60-foot-wide strip of land to the west of this parcel, formerly a railroad right-of-way, portion of APN 090-151-008) for future County facilities, so long as said development is consistent with the County's existing General Plan, General Plan policies, and zoning regulations.
16. Good Faith and Fair Dealing: Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review or determination of either party 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 District shall each act in good faith in performing their respective obligations as set forth in this Agreement.

/////////////////////////////////NOTHING FURTHER PAST THIS POINT EXCEPT SIGNATURES/////////////////////////////////

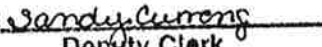
COUNTY OF SAN LUIS OBISPO:

By: 
 Chairperson of the Board of Supervisors

Approved by the Board of Supervisors this
24th day of MARCH, 2009.

ATTEST:
JULIE L. RODEWALD

Clerk of the Board of Supervisors

By: 
 Deputy Clerk


**APPROVED AS TO FORM AND
 LEGAL EFFECT:**

WARREN R. JENSEN
 County Counsel


By: 
 Assistant County Counsel

Date: 1/13/09

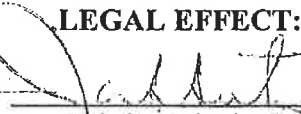
**NIPOMO COMMUNITY SERVICES
 DISTRICT:**

By: 
 Jim Harrison, President

Dated: _____

ATTEST:

 District Secretary

**APPROVED AS TO FORM AND
 LEGAL EFFECT:**


 Jon S. Seitz, District Legal Counsel
 Nipomo Community Services District

Dated: 1-22-09

October 2013

**FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF SAN LUIS OBISPO AND
THE NIPOMO COMMUNITY SERVICES DISTRICT
REGARDING THE TRANSFER OF OWNERSHIP IN
COUNTY-OWNED REAL PROPERTY**

WHEREAS, the County of San Luis Obispo, hereinafter referred to as “County” and the Nipomo Community Services District, hereinafter referred to as “District” have entered into a Memorandum of Understanding dated March 24, 2009, hereinafter referred to as “MOU”; and

WHEREAS, the “Property” described in the MOU consists of approximately one (1) acre of vacant land located at the northeast corner of West Tefft and Carrillo Street, APN 090-141-006 along with the adjacent 60-foot-wide strip of land to the west of this parcel, formerly a railroad right-of-way (portion of APN 090-151-008), hereinafter referred to as “Original Site”; and

WHEREAS, testing of soils for contamination on the Original Site showed evidence of hydrocarbon and heavy metals contamination that would require significant remediation to allow development of this site for a proposed park; and

WHEREAS, County also owns certain real property consisting of approximately one (1) acre located on the southeast corner of West Tefft and Carrillo Streets, APN 090-142-007 along with the adjacent 60-foot-wide strip of land to the west of this parcel, formerly a railroad right-of-way (portion of APN 090-151-008), hereinafter referred to as “New Site”; and

WHEREAS, results of soils sampling performed on the New Site do not indicate contamination at actionable levels; and

WHEREAS, the District did conduct a Prop 218 election under the original MOU and the 218 vote failed; and

WHEREAS, the District no longer has the funding sources that were identified at the time of the Prop 218 vote to fund the District’s obligations under the MOU; and

WHEREAS, the District has not and cannot apply to LAFCO for activation of Parks powers until a funding plan is in place; and

WHEREAS, the District cannot guarantee at this time that funding sources can be developed to fund this project; and

WHEREAS, County and District agree that the substitution of the proposed park site from the Original Site to the New Site increases the feasibility of a park being constructed for the community of Nipomo; and

WHEREAS, the Olde Towne Nipomo Association (“OTNA”), is a 501(c)-3 nonprofit corporation, working with the District and the County to advance the park plan; and

WHEREAS, sections 11, 12, 13, and 14 of the MOU have been accomplished;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree that the MOU is hereby amended as follows:

1. Recital C is deleted in full and replaced with the following:

“ The County is the owner of certain real property consisting of approximately (1) acre located at the southeast corner of West Tefft and Carrillo Streets (APN 090-142-007) along with the adjacent 60-foot-wide strip of land to the west of this parcel, formerly a railroad right-of-way (portion of APN 090-151-008), hereinafter referred to as “Property”, as depicted in Exhibit ‘A-1.’ ”

2. Paragraph 3 is amended to add the following sentence at the end of the paragraph:

“The County and District contemplate that the OTNA will develop plans for park improvements on the Property including but not limited to obtaining approval of an Intent to Serve letter for water and sewer service from the District and a Minor Use Permit from the County Planning and Building Department. County hereby authorizes the District to accept, process and issue in the name of Olde Towne Nipomo Association an Intent to Serve letter for water and sewer service to the Property. District shall approve the design of the park improvements prior to submittal for a Minor Use Permit. Said approval shall not obligate County or District to the payment of fees related to said submittal.”

3. Paragraph 10 is amended to add the following sentence at the end of the paragraph:

“The Quitclaim Deed will also reserve to the County an easement along the westerly portion of the Property for a sidewalk and drainage easement to be built by County to serve a future park-and-ride lot that will be constructed in the Carrillo Street right-of-way.”

4. Paragraph 15 is amended by replacing “APN 090-142-007” with “APN 090-141-006.”

5. New Paragraph 17 is added, as follows:

“District does not object to County’s issuance of the attached Use Permit to the Olde Towne Nipomo Association, in the form attached as Exhibit “B,” and agrees that the issuance of said permit is for the purpose of advancing the park plan for the Property until such time ownership of the Property is transferred to the District or the MOU is terminated.”

6. New Paragraph 18 is added, as follows:

“In the event the Property has not been transferred from the County to the District on or before December 31, 2018, this MOU shall be null and void unless extended by mutual written consent of the parties.”

All other provisions of the MOU shall continue in full force and effect.

//////////////////NOTHING FURTHER PAST THIS POINT EXCEPT SIGNATURES//////////////////

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 9th day of October, 2013.

COUNTY OF SAN LUIS OBISPO

By: Bruce S. Gibson
Acting Chairperson of the Board of Supervisors

APPROVED BY THE BOARD OF SUPERVISORS

THIS 5th day of November, 2013.

ATTEST:

JULIE L. RODEWALD
Clerk of the Board of Supervisors
By: ~~Sandy Curran~~
Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: [Signature]
Chief Deputy County Counsel

Date: 10/21/13

DISTRICT: Nipomo Community Services District

By: [Signature]
Jim Harrison, President

Dated: 10/14/13

ATTEST:

[Signature]
Michael S. LeBrun,
District General Manager and Secretary

APPROVED AS TO FORM AND LEGAL EFFECT:

[Signature]
Michael W. Seitz, District Legal Counsel
Nipomo Community Services District

Dated: 10/16/13

EXHIBIT "A-1"



EXHIBIT "B"
SAN LUIS OBISPO COUNTY
USE PERMIT
U0067

THIS PERMIT, is made and entered into by and between the County of San Luis Obispo, a public entity in the State of California (hereinafter "County") and the Olde Towne Nipomo Association, a 501 (c)-3 nonprofit corporation, (hereinafter "Permittee"). County and Permittee hereby agree as follows:

1. **Premises:** County hereby gives permission to Permittee to access and use County-owned property located at the southeast intersection of Tefft Street and Carrillo Street in Nipomo, CA, APN 090-142-007 along with the adjacent 60-foot-wide strip of land to the west of this parcel, formerly a railroad right-of-way (portion of APN 090-151-008), hereinafter referred to as "Premises" and shown on Exhibit "A".

2. **Use:** Permittee is hereby authorized and granted the non-exclusive access and use of the Premises for the purpose of processing improvement plans and to promote funding for a park to be owned and operated in the future by the Nipomo Community Services District ("NCSD"). Approved uses include installation of a sign promoting the development of the park and special events sponsored by Permittee on the Premises, provided that prior approval for such events is obtained in writing from the County Real Property Manager and from the County Planning and Building Department, if necessary. Permittee may make improvements to the Premises provided that they are consistent with Paragraph 8. Permittee may not use the Premises for any other purpose. In the event that another party desires to use the Premises for any purpose, County shall first obtain Permittee's approval in writing and then may issue a County Use Permit.

Permittee acknowledges that the Premises are intended to be transferred to the NCSD in the future and that County and the NCSD have entered into a Memorandum of Understanding, dated 3/24/2009 and in the process of being amended, which defines the steps leading to the transfer of the Premises to the NCSD.

Permittee acknowledges that the sewer lift station on the Premises belongs to the NCSD and Permittee's use of the Premises shall not interfere with the NCSD's access to and use of their sewer lift station.

Permittee acknowledges that the County will be constructing a park-n-ride lot in the Carrillo Street right-of-way along the westerly property line of the Premises and that the project includes a proposed sidewalk and drainage area that will be placed within the westerly 20-foot wide portion of Premises, with an approximate location as shown in Exhibit "B". Permittee shall allow the sidewalk and drainage area to be constructed and maintained on the Premises and Permittee's use of the Premises shall not interfere with the public's access and use of the sidewalk or with the function and of the drainage improvements.

Permittee acknowledges that the County may continue to use the Premises to sponsor Nipomo Clean-Up Day and to park County Public Works vehicles and equipment in the event of emergencies.

3. **Term:** The term of this Permit shall be for one (1) year from the effective date of the First Amendment to Memorandum of Understanding Between the County of San Luis Obispo and the Nipomo Community Services District Regarding Transfer of Ownership in County-Owned Real Property. This term may be extended for two (2) one-year periods upon Permittee's written notice to County and upon County's approval. This Permit may be terminated at any time and for any reason deemed necessary by either party upon 60 days written notice to the other party. This Permit will immediately terminate upon transfer of ownership of the Premises from County to NCSD.

4. **Permit Fee:** County waives the Permit Fee for this Use Permit.

5. **Insurance:** Permittee shall obtain and maintain for the entire term of the Permit and Permittee shall not perform any work under this Permit until after Permittee has obtained insurance complying with the provisions of this paragraph, and delivered a copy of the insurance certificate for each insurance policy to the County. Said policies shall be issued by companies authorized to do business in the State of California. Permittee shall maintain said insurance in force at all times. The following coverage with the following features shall be provided:

a. **Commercial Liability Insurance:** Permittee shall maintain in full force and effect for the period covered by this Permit, commercial liability insurance. This insurance shall include, but shall not be limited to, comprehensive general and automobile liability insurance providing protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to Premises resulting from any act or occurrence arising out of Permittee's operations in the performance of this Permit, including, without limitation, acts involving vehicles. The policy shall provide not less than single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage in the total amount of One Million Dollars (\$1,000,000). The following endorsements must be attached to the policy:

(1) If the insurance policy covers on an "accident" basis, it must be changed to "occurrence".

(2) The policy must cover personal injury as well as bodily injury.

(3) Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

b. **Workers' Compensation Insurance:** In accordance with the provisions of sections 3700 et seq., of the California Labor Code, if Permittee has any employees, Permittee is required to be insured against liability for workers' compensation or to undertake self insurance. Permittee agrees to comply with such provisions before commencing the performance of this Permit.

c. **Additional Insureds to be Covered:** The commercial general liability policies shall name the "County of San Luis Obispo, its officers, employees, and agents" as additional insureds. The policy shall provide that the Permittee's insurance will operate as primary insurance and that no other insurance maintained by the County, or additional insureds will be called upon to contribute to a loss hereunder.

d. **Certification of Coverage:** Prior to commencing work under this Permit, Permittee shall furnish County with the following for each insurance policy required to be maintained by this Permit:

(1) A copy of the Certificate of Insurance shall be provided. The certificate of insurance must include a certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the County.

(2) A Workers' Compensation certificate of insurance must be provided.

(3) Upon written request by the County, the Permittee shall provide a complete insurance policy.

(4) Approval of Insurance by County shall not relieve or decrease the extent to which the Permittee may be held responsible for payment of damages resulting from Permittee's services or operations pursuant to this Permit. Further, County's act of acceptance of an insurance policy does not waive or relieve Permittee's obligations to provide the insurance coverage required by the specific written provisions of this Permit.

e. **Effect of Failure or Refusal:** If Permittee fails or refuses to procure or maintain the insurance required by this Permit, or fails or refuses to furnish County with the certifications required by subparagraph (d) above, County shall have the right, at its option, to forthwith terminate the Permit for cause.

6. **Indemnification:** Permittee shall defend, indemnify and hold harmless the County, its officers and employees from any and all claims and demands, costs, expenses, judgments, attorney fees or liabilities that may be asserted by any person or entity that arise out of or in connection with the acts or omissions relating to the performance of any obligation or duty provided for or relating (directly or indirectly) to this Use Permit, the tenancy created under this Use Permit, or the Premises hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the County, its officers and employees. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County, its officers and employees.

The preceding paragraph applies to any theory of recovery relating to said act or omission by the Permittee, or its agents, employees or other independent contractors directly responsible to Permittee, including, but not limited to, the following:

- a. Violation of statute, ordinance, or regulation.
- b. Professional malpractice.
- c. Willful, intentional or other wrongful acts, or failures to act.
- d. Negligence or recklessness.
- e. Furnishing of defective or dangerous products.
- f. Premises liability.
- g. Strict liability.
- h. Inverse Condemnation.
- i. Violation of civil rights.
- j. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting payroll taxes, when the Permittee is not an independent contractor.

It is the intent of the parties to provide the County the fullest indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Permit and the remaining language shall be given full force and effect.

7. **Maintenance:** Permittee hereby agrees and is required to maintain the Premises in good order and repair at all times, including trash collection and annual weed abatement, during the term of this Permit. Upon termination of this Permit, Permittee shall restore the Premises to original condition, reasonable wear and tear excepted.

8. **Design and Construction of Improvements:** Permittee accepts the Premises in an "AS IS" condition, without any representations, express or implied, as to the condition, suitability, usefulness, merchantability, fitness for particular purpose, or otherwise, of the Premises. Permittee shall have the right to construct improvements on the Premises at Permittee's sole cost and expense provided that such improvements are consistent with the park design approved by the NCSO and the County of San Luis Obispo Department of Planning and Building. No facility, sign, except where a sign is exempted from permit requirements by Section

23.04.306(2) of the San Luis Obispo County Code, or improvement of any type shall be constructed or located on the Premises unless and until the design, location, and the type of any and all proposed construction materials have been expressly approved in writing by the General Services Agency Director ("Director") or designee. Each party shall cooperate with the other if field conditions require minor changes to the Development Plan. Permittee shall be responsible for the monitoring of all activity during Permittee's use of the Premises, and shall comply with all such rules and regulations necessary to protect the health, safety, and welfare of the public therein.

In the design and construction of the improvements to the Premises, the following shall apply:

A. Permittee's use of said Premises is subject to all statutes, ordinances and regulations, including, without limitation, those relating to land use and zoning now or hereafter applicable to the Premises, and to all covenants, easements, reservations and restrictions of record applicable to the Premises. Permittee, agent or contractor will be solely responsible for securing all permits, adherence to regulations and dealings with the County of San Luis Obispo Planning and Building Department, or other appropriate agencies, for construction on the Premises.

B. Permittee shall be responsible for installing and maintaining any landscaping and sprinkler systems that Permittee installs on the Premises including, without limitation, spraying, trimming, watering, and replanting trees and shrubs.

C. All utilities to the Premises shall be maintained or improved at Permittee's sole cost and expense.

D. Permittee shall comply with the Americans with Disabilities Act and all applicable laws at Permittee's sole cost and expense. All improvements shall be maintained and repaired by Permittee at Permittee's sole cost and expense.

E. Permittee shall be responsible for obtaining any required environmental determinations for Permittee's improvements from the appropriate agency(s). If an EIR or other environmental review is needed, Permittee shall comply at Permittee's sole cost and expense. Permittee shall be responsible for any and all environmental mitigation at Permittee's sole cost and expense.

F. Permittee shall construct any proposed improvements at Permittee's sole cost and expense. Permittee shall seek and obtain its own legal advice with regard to the possible applicability of State or Federal wage regulations and other labor laws, or other laws.

9. Ownership of Improvements: The ownership of all approved improvements constructed by the Permittee during the term of this Use Permit shall remain in Permittee until expiration of the term of this Use Permit.

At the expiration or earlier termination of this Use Permit, all permanent structures, alterations, modifications, or improvements upon the Premises made by Permittee shall, absent any agreement between the County and Permittee to the contrary, or unless County otherwise elects, which election shall be made by giving a notice in writing not less than ninety (90) days prior to the expiration or other termination of this Use Permit, become County property free and clear of all claims to or against the improvements by Permittee or any third person, and Permittee shall defend and indemnify the County against all liability and loss arising from such claims or from the County's exercise of the rights conferred by this paragraph, and County shall be responsible for the removal of said improvements.

In the event County elects not to take ownership of the permanent improvements, County shall notify Permittee to remove any or all of the permanent structures, alterations, modifications, or improvements, and Permittee shall do so, at Permittee's sole cost and expense, and shall promptly repair any damage caused by such removal in a first class manner. Removal is to be completed no later than three (3) months from the date of said notice or at such further time as County may agree to in writing. In the event Permittee fails to remove any or all of the permanent structures, alterations, modifications, or improvements as required by County, County may remove same and charge Permittee for the cost of such removals and Permittee hereby agrees to pay any and all such costs upon demand.

10. **Environmental Matters/Covenants Regarding Hazardous Materials:** Permittee shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, UREA formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "TOXIC SUBSTANCES" under such laws, ordinance or regulations (collectively, "Hazardous Materials").

Permittee shall, except in the event of County's sole negligence, indemnify, defend, protect, and hold County, each of County's officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by:

a. The presence in, on, under or about the Premises or discharge in or from the Premises of any Hazardous Materials or Permittee's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials, to, in, on, under, about or from the Premises; or,

b. Permittee's failure to comply with any Hazardous Materials Law. Permittee's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith caused by Permittee and shall survive the expiration or earlier termination of the term of the Permit. For purposes of the release and indemnity provisions hereof, any acts or omissions of County, or by employees, agents, assignees, Contractors or Subcontractors of County or others acting for or on behalf of County (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to County.

11. **Assignment Prohibition:** The rights and privileges granted to Permittee hereunder are not assignable, and any assignment or attempted assignment is void without prior written consent by the Director first had and obtained.

12. **Notice:** All notices, demands, or communication in connection with this Permit may be served upon County or Permittee by personal service or by mailing the same in the United States Mail, postage prepaid, and directed as follows:

County at: County of San Luis Obispo
General Services Agency
Attn: Real Property Manager
1087 Santa Rosa Street
San Luis Obispo, CA 93408
(805) 781-5200

Permittee at: Olde Towne Nipomo Association
Attn: President
PO Box 1171
Nipomo, CA 93444

13. **Compliance:** Permittee agrees and promises that it will comply with and observe any and all statutes, ordinances, rules and regulations of the Federal, State, Municipal, County or other public authority, and as amended. Director reserves the right at any time to make such reasonable regulations as in its judgment may from time to time be necessary for the safety, care, and cleanliness of the Premises, and for the preservation of good order therein, and Permittee hereby agrees to strictly comply therewith.

14. **Possessory Interest:** Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee will be subject to payment of taxes levied on such interest.

15. **Status:** Permittee shall during the entire term of the Permit, be construed to be an independent Contractor, and shall in no event be construed to be an employee of County.

16. **Waiver:** Permittee hereby waives any and all claims for damages that may be caused by County in re-entering and taking possession of the Premises as herein provided, and all claims for damages that may result from the destruction of or injury to the Premises thereby, and all claims for damages to or loss of such property belonging to the Permittee as may be in or upon the Premises at the time of such re-entering. Permittee hereby also waives any and all claims against the County for loss or damages to any property of Permittee from any cause arising at any time.

17. **Closure:** At any time should an occurrence necessitate the closing of the Premises, Permittee shall have no recourse by law to County for losses incurred.

18. **Employees of Permittee:** All employees, agents and assignees of Permittee shall be licensed when required by law. All such employees, agents, and assignees shall be employees, agents, or assignees of Permittee only and shall not in any instance be, or construed to be, employees, agents or assignees of County.

19. **Venue:** This Permit has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Permit, shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

20. **Severability:** The invalidity of any provision of this Permit shall not affect the validity, enforceability or any other provision of this Permit.

21. **Entire Agreement and Modifications:** This Permit supersedes all previous Permits and constitutes the entire understanding of the parties hereto. Permittee shall be entitled to no other benefits than those specified herein. County makes no other promises or covenants beyond the scope of this Permit. No changes, amendments, or modifications shall be effective unless in writing and signed, in advance of the effective date of the change, amendment or modification, by both parties. Permittee specifically acknowledges that in entering into this Permit, Permittee relies solely upon the provisions contained in the Permit and no other Permit or oral discussions prior to entering this Permit.

IN WITNESS WHEREOF, County and Permittee agree to all of the terms and conditions hereinabove set forth.

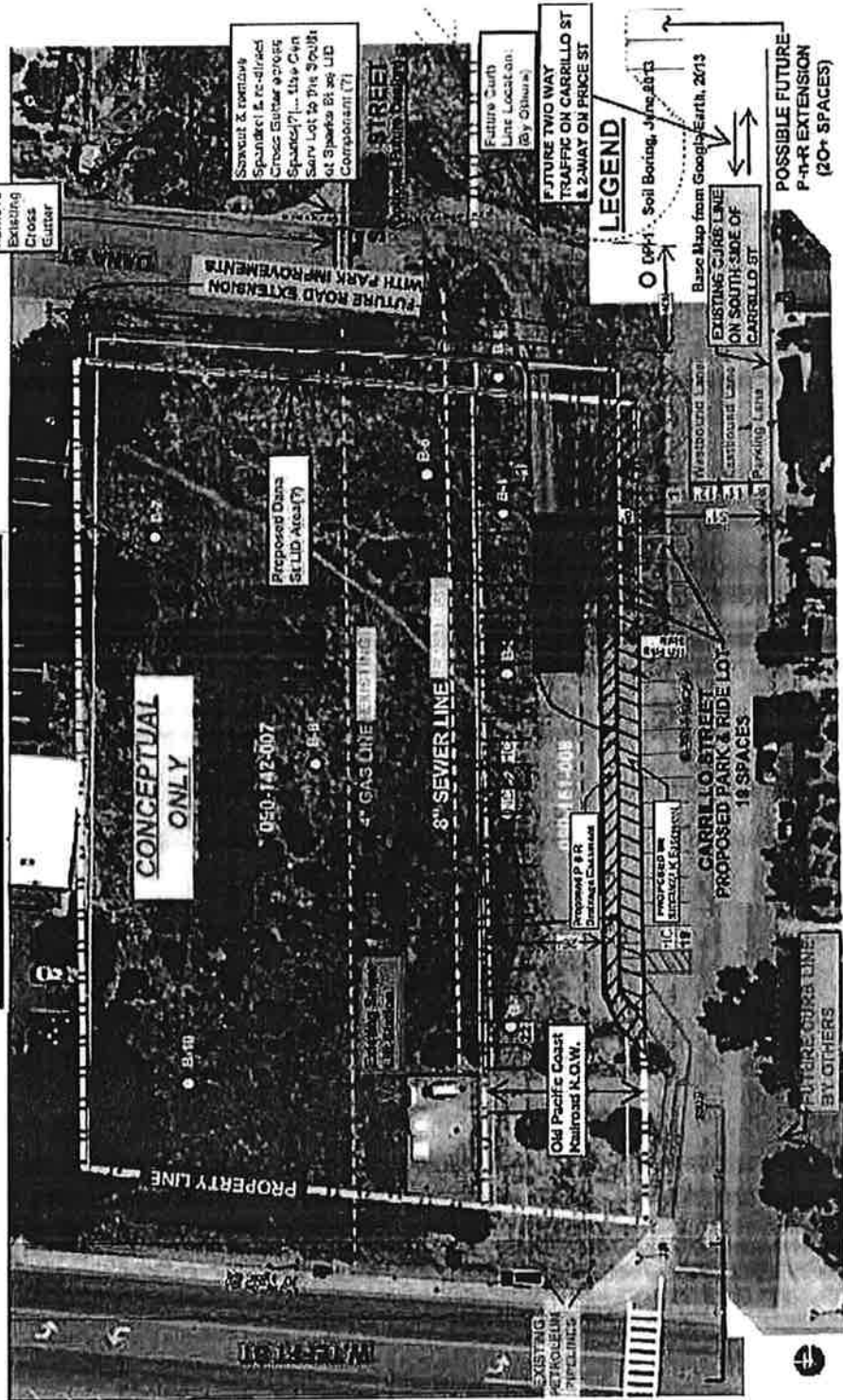
County of San Luis Obispo:	Olde Towne Nipomo Association
By: <u>Janelle D. Pell</u> Janelle D. Pell General Services Agency Director	By: <u>Kathy Kubiak</u> Kathy Kubiak, President
Date: <u>8.30</u> , 2013	Date: <u>AUG. 29</u> , 2013

Exhibit "A"



EXHIBIT "B"

20 scale = Reduce to 77% on Utility Plotter



TO: BOARD OF DIRECTORS
FROM: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER
DATE: FEBRUARY 6, 2015

**AGENDA ITEM
E-4
FEBRUARY 11, 2015**

**CONDUCT A HEARING TO ADOPT AN ORDINANCE
AMENDING TITLE 2, 3 AND TITLE 4 OF THE
NIPOMO COMMUNITY SERVICES DISTRICT CODE
TO AMEND AND TO ESTABLISH NEW ADMINISTRATIVE
PROCEDURES AND APPROVE RESOLUTION ADOPTING UPDATED
AND NEW MISCELLANEOUS FEES**

ITEM

Conduct a hearing to adopt an Ordinance amending Title 2, 3 and Title 4 of District Code to establish new administrative procedures and approve Resolution adopting updated and new miscellaneous fees [RECOMMEND, BY MOTION AND ROLL CALL VOTE, ADOPT ORDINANCE AND APPROVE RESOLUTION]

BACKGROUND

On September 24, 2014, your Board approved Water Rate and Capacity Charge Study – September 2014. In addition to establishing new Water Capacity Charges and Supplemental Water Capacity Charges, the Rate Study proposed updated and new Miscellaneous Fees. The approved Rate Study has been available for public inspection since adoption.

Miscellaneous fees cover the cost of time, materials, and equipment related to providing requested incurred services such as account setup, late payment, customer-caused after-hours repair/shut-off, late notice etc. The recent rate study represented the first formal review and update of District miscellaneous fees in over twenty-years.

If adopted, the new fees will become effective on July 1, 2015. During the first six months of implementing the new fee schedule, staff recommends a one-time forgiveness of the new or updated fee, when requested in writing.

The Ordinance (Attachment A) will amend current code so all miscellaneous fees reference a consolidated fee schedule. The fee schedule will be adopted by Resolution and updated periodically. The draft fee Resolution is Attachment B.

FISCAL IMPACT

Special handling of customer accounts and requested additional services result in staff time, materials and equipment expense. If the customer receiving the service is not charged, the cost is absorbed by the entire customer base.

Well designed and current miscellaneous fees keep District water rates equitable for all customers.

STRATEGIC PLAN

Goal 4. FINANCE. Maintain conservative, long-term financial management to minimize rate impacts on customers while meeting program financial needs.

RECOMMENDATION

By motion and roll call vote:

- Adopt proposed Ordinance amending Title 2, 3 and Title 4 of District Code; and
- Approve proposed Resolution adopting new and updated miscellaneous fees; and
- Direct staff to prepare and file CEQA notice and findings; and
- Direct staff to allow for a one-time forgiveness of the new fee to customers during the first six months of applicability.

ATTACHMENTS

- A. Ordinance 2015-Miscellaneous Fees
- B. Resolution 2015-Miscellaneous Fees

February 11, 2015

E-4

ATTACHMENT A

NIPOMO COMMUNITY SERVICES DISTRICT
ORDINANCE 2015-XXXX

AN ORDINANCE OF THE BOARD OF DIRECTORS OF
THE NIPOMO COMMUNITY SERVICES DISTRICT
AMENDING TITLE 2, 3 AND TITLE 4 OF THE
NIPOMO COMMUNITY SERVICES DISTRICT CODE
TO AMEND AND TO ESTABLISH NEW ADMINISTRATIVE PROCEDURES

WHEREAS, based upon facts and analysis presented by Staff, the Staff Report, and public testimony received, the Board of Directors finds:

A. This public meeting has been properly noticed pursuant to Government Code Section 54954.2 (The Brown Act); and that the District has complied with the requirements of Government Code Section 66016; and

B. The fees, rates and charges that are the subject of this Ordinance do not exceed the estimated reasonable cost of providing the services for which the fees and/or charge or charges are imposed;

C. Amending the District Procedures as provided in this Ordinance is in the best interest of the District and its residents:

E. All references to District Code herein refer to the Nipomo Community Services District Code:

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED, by the Board of Directors of the District as follows:

Section 1. Authority

This Ordinance is enacted pursuant to Government Code Sections 61600(a)(b), 61621, 61621.5, 61622, 66013, and 66016.

Section 2. Administrative Procedures

Section 1.04.030(D) of the District Code is repealed in its entirety and replaced with the following:

D. Deposit – Before accepting an application for variance, the District shall collect a deposit. If that portion of the deposit is in excess of the actual time spent by District Staff, including consultants and legal counsel, then the difference shall be refunded to Applicant. Conversely, if the actual time spend by District Staff, including consultants and legal counsel, is in excess of the amount attributable to the deposit, then the difference shall be paid by the Applicant upon demand and before any final action is taken by the District.

NIPOMO COMMUNITY SERVICES DISTRICT
ORDINANCE 2015-XXXX

AN ORDINANCE OF THE BOARD OF DIRECTORS OF
THE NIPOMO COMMUNITY SERVICES DISTRICT
AMENDING TITLE 2, 3 AND TITLE 4 OF THE
NIPOMO COMMUNITY SERVICES DISTRICT CODE
TO AMEND AND TO ESTABLISH ADMINISTRATIVE PROCEDURES

Section 2.09.010(A) of the District Code is hereby repealed in its entirety and replaced with the following:

The Board of Directors hereby approves and adopts the application fees and charges incorporated herein by this reference.

Section 2.09.020 of the District Code is hereby repealed in its entirety and replaced with the following:

All application fees are nonrefundable and are due and payable at the time of application for service.

Chapter 2.11 is hereby added to the District Code as follows:

*Section 2.11.010 Government Code §6257 authorizes the District to recover its cost of reproducing records.
Reproduction Charges - The fees are established by Resolution.*

Chapter 2.13 Board Room Policy is hereby added to the District Code as follows:

Section 2.13.010 Adopted by reference.

District's Board Room Policy is hereby approved and adopted by Resolution.

Chapter 2.14 Inspection Prior to Connection is here by added to the District Code as follows:

Section 2.14.010 Prior to providing water and/ or sewer service to an individual parcel, the applicant must comply with all conditions of the Intent-to-Serve Letter and Verification of Will Serve Letter. Applicant must request final water and/or sewer lateral inspection and pay the applicable lateral inspection fee prior to District providing service. The fee is established by Resolution.

Section 3.03.020 (A) of the District Code is hereby repealed in its entirety and replaced with the following:

Account set up fee - Applications for service shall be made by the property owner or a bona fide nonresident property manager (authorized agent), in writing on a form provided by the District. All applications shall include a nonrefundable account set up fee and payment of outstanding accrued fees and charges, if applicable. The account set up fee shall be established by Resolution.

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Section 3.03.030(C)(2) is added to the District Code as follows:

Meter Read Surcharge - Customers shall have the water meter accessible at all times to District personnel. Meters shall be free of items including, but not limited to, parked vehicles, debris, guard animals, overgrown landscaping, fences and locked gates. At no charge, the District will notify the owner, in writing, of an initial accessibility issue. A fee will be assessed for each subsequent unsuccessful attempt to access the meter. The fee will be placed on the next regularly scheduled utility billing. In addition, the District will estimate water usage for billing purposes. The Meter Read Surcharge fee shall be established by Resolution.

Section 3.03.030 (E) of the District Code is hereby repealed in its entirety and replaced with the following:

Billing statement - All billing statements shall be mailed to the person designated in the application.

Duplicate billing statement - The person designated in the application may request in writing on a form provided by the District to have a duplicate bill and late notice mailed to the service address, provided a mail receptacle is available. The duplicate billing fee shall be established by Resolution.

Section 3.03.050 of the District code is hereby repealed in its entirety and replaced with the following:

Late Fee - Utility bills are due and payable upon presentation. Accounts not collected by 4:30 p.m. on the twenty-fifth day after presentation of the bill are delinquent. Postmarks are not accepted. Delinquent accounts shall incur a penalty on the total charges owing. A late notice that includes the penalties assessed and the final due date prior to discontinuance of service will be generated and mailed to the billing address. The Late fee shall be established by Resolution.

Section 3.03.060(B) of the District Code is hereby repealed in its entirety and replaced with the following:

Non-Payment Fee - Commencing at 4:30 p.m. on the due date stated in the late notice, a non-payment fee will be charged to the account. Further, a work order may be generated to discontinue service for failure to make payment pursuant to subsection A of this section. The Non-Payment fee shall be established by Resolution.

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Section 3.03.060(C) of the District Code is hereby repealed in its entirety and replaced with the following:

Permanent discontinuance - Ten days after the District initiates a work order to discontinue service pursuant to subsection B of this section, the service shall be considered permanently discontinued and the account will be terminated. The meter will be removed and the location will be assessed a Meter Remove/Re-install fee. The meter will not be re-installed until all fees and charges have been paid in full, including a meter re-installation charge. The fees shall be established by Resolution.

Section 3.03.070(A)(1) is added to the District Code as follows:

Shut Off Notice (Door Hanger) - A fee will be added to every account for which a forty-eight hour Shut Off notice (door hanger) is generated. The fee will be added to the account and payable upon the presentation of the next regularly scheduled bill. This fee is in addition to the past due balance and late fee. The Shut Off notice fee shall be established by Resolution.

Section 3.03.100(B) is added to the District Code as follows:

B. Water on/off after hours fee - Any customer who requests a meter to be turned on or off for any reason, other than for non-payment, on any Saturday, Sunday, legal holiday, or at any time during which the business office of the District is not open to the public shall be assessed a fee for each request. The fee(s) shall be placed on the next regularly scheduled utility bill. The Turn on/off after hours fee shall be established by Resolution.

Section 3.03.150 of the District Code is hereby repealed in its entirety and replaced with the following:

Returned Check fee - A fee will be charged against any account whose check is returned by the bank for any reason. Returned checks are processed as delinquent payments for purposes of applying Section 3.03.050, 3.03.060 or 3.03.070 et seq of the District Code. The Returned Check fee shall be established by Resolution.

Section 3.03.160 (A) of the District Code is hereby repealed in its entirety and replaced with the following:

Meter Calibration Deposit - A customer who questions the accuracy of a meter serving the premises may request in writing a test of meter registration. A deposit equal to the Water Meter Calibration Check charge and any calibration charges shall

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be required in advance when a test is requested. The Water Meter Calibration Charge fee shall be established by Resolution.

Section 3.03.170(B) of the District Code is repealed in its entirety and replaced with the following:

Tampering fee - In addition to other District fees and charges, a Tampering fee will be charged to the customer in all situations where a person has tampered with District services or privately restores water service without District permission. Such fee shall be added to the account for the property affected by the illegal tampering. The Tampering fee shall be established by Resolution.

Section 3.03.170(C) of the District Code is repealed in its entirety and replaced with the following:

Repair Authorization fee - If a person's actions result in damage to the District's water or sewer systems, the cost of repair and/or replacement will be charged to the customer. The Repair Authorization fee shall be established by Resolution.

Section 3.04.070(A)(1) is added to the District Code as follows:

1. *Backflow Administration fee - Each District customer with a cross-connection device shall be assessed a Backflow Administration fee to cover the cost of the program. The fee will be included on the utility bill for the property. The Backflow Administration fee shall be established by Resolution.*

Section 3.04.090(A) and (B) of the District Code are repealed in its entirety and replaced with the following:

- A. *Replace Small Meter with Larger Meter – The customer shall pay the Meter Removal/Re-install fee and the then current connection/capacity charge required for the larger meter less a credit for the then current connection/capacity fee for the existing meter. Capacity charges and Meter Removal/Re-install fee shall be established by Resolution.*
- B. *Replace Large Meter with Small Meter – This change in size shall be made without credit for connection/capacity charge to the customer. The customer shall pay for the Meter Removal/Re-install fee. The Meter Removal/Re-install fee shall be established by Resolution.*

Section 3.04.310(B) of the District Code is repealed in its entirety and replaced with the following:

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The annexation fee is established by Resolution.

Section 3.20.010(D) of the District Code is hereby added:

Fire Flow Letter – The District will process Fire Flow Letters at the request of applicant and upon payment of applicable fee. The Fire Flow Letter fee is established by Resolution.

Section 3.20.010(E) of the District Code is hereby added:

Fire Hydrant Flow Test – The District will conduct a Fire Hydrant Flow Test at the request of applicant and upon payment of applicable fee. The Fire Hydrant Flow Test fee is established by Resolution.

Section 3.20.030 (A), (B) and (C) and Section 3.20.035 (A), (B) and (C) of the District Code are hereby repealed in its entirety and replaced with the following:

Section 3.20.030 (A), (B)

- A. *Fire Hydrant Meter fees - All temporary water service shall be preapproved by the District and shall be supplied through a fire hydrant meter at a fire hydrant designated by the District. Fire Hydrant Meter charges are applicable including deposit, rental, flat charge, volume charge, supplemental water charge, and hydrant meter relocation charge. All hydrant sales related fees are established by Resolution.*
- B. *Fire Hydrant Relocation – Upon request by applicant and approval by the District, a fire hydrant meter may only be relocated by District personnel. The fire hydrant relocation fee shall be established by Resolution.*

Section 4.12.150(A), (B) and (C) of the District Code are hereby repealed in its entirety and replaced with the following:

Bi-monthly User Fee. The bi-monthly sewer user rates and fees are set forth in Appendix A of this chapter. All collection procedures as outlined in Chapter 3.03 are applicable to sewer charges.

Section 3. Inconsistency

To the extent that the terms of provision of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior district Ordinance(s), Motions, Resolutions, Rules, or Regulations adopted by the District, governing the same subject

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matter thereof, then such inconsistent and conflicting provisions of prior Ordinances, Motions, Resolutions, Rules, and Regulations are hereby repealed.

Section 4. Incorporation of Recitals

The recitals to this Ordinance are true and correct, are incorporated herein by this reference, including the referenced documents, and constitute further findings for the implementation of the changes adopted by this Ordinance.

Section 5. Severance Clause

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the District hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

Section 6. Effect of Headings in Ordinance

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

Section 7. CEQA

The Board of Directors of the District finds that the policies and procedures adopted by this Ordinance are exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15378 (b) (2) because such policies and procedures constitute general policy and procedure making. The Board of Directors further finds that the adoption of the rules and regulations established by this Ordinance is not a project as defined in CEQA Guideline Section 15378, because it can be seen that limited relief from high water bills will not result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The District General Manager is directed to prepare and file an appropriate notice of exemption.

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Section 8. CA Department of Fish and Wildlife Certificate of Fee Exemption

Pursuant to § 711.4 (c)(2)A of the Fish and Wildlife Code, the District Board of Directors finds that rules and regulations adopted by this Ordinance will have no effect on fish and wildlife. The General Manager is authorized to file a California Department of Fish and Wildlife Certificate of Fee Exemption.

Section 9 . Effective Date

This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of the tenth (10th) day after passage this Ordinance shall be published once with the names of the members of the Board of Directors voting for or against the Ordinance in a newspaper of general circulation within the District.

Introduced at its regular meeting of the Board of Directors held on January 14, 2015, and passed and adopted by the Board of Directors of the Nipomo Community Services District on the ___ day of _____, 2015 by the following roll call vote, to wit:

AYES:
NOES:
ABSENT:
CONFLICTS:

CRAIG ARMSTRONG
President of the Board

ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN
General Manager and Secretary to the Board

MICHAEL W. SEITZ
District Legal Counsel

February 11, 2015

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ATTACHMENT B

NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION 2015-XXXX

A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE NIPOMO COMMUNITY SERVICES DISTRICT
TO RESTATE, AMEND AND/OR ESTABLISH MISCELLANEOUS FEES

WHEREAS, it is a major responsibility of the Nipomo Community Services District ("District") to maintain adequate levels of revenue, equitably collected from all classes of utility customers, to meet the District's financial commitments; and

WHEREAS the District retained Tuckfield & Associates to perform a Water Rate and Capacity Charge Study (herein "Study"). The Study included an analysis of existing miscellaneous fees and charges. The fees were reviewed based on estimates of District labor, materials and equipment used to perform the service to ensure the District is charging the appropriate fee for the costs incurred. In addition, the Study recommended adding new miscellaneous fees that would recover District costs where services are being provided but are not currently being charged.

WHEREAS, Government Code §61115 authorized the District to adopt rates and charges by Resolution; and

WHEREAS, the Study was received, approved, and filed on September 24, 2014, and has been available for public inspection at the District office and on the District website since that date.

WHEREAS, based upon facts and analysis presented by Tuckfield & Associates, the Study, the Staff Report, and public testimony received, the Board of Directors finds:

- A. The miscellaneous fees and charges that are the subject of this Resolution do not exceed the estimated reasonable cost of providing the services for which the fees and/or charge or charges are imposed;
- B. The District should recover the full cost of providing services from those whom the services are provided.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED, by the Board of Directors of the District as follows:

Section 1. Incorporation of Recitals

The Recitals are true and correct and incorporated herein by this reference. The Recitals and referenced reports and studies contained therein constitute and support the findings of the District in support of this Resolution.

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Section 2. Miscellaneous Fee Schedule

Chapter 2.07 – Miscellaneous Fee Schedule shall be added to the District Code and amended from time to time by Resolution. Any and all District fees and chargers that are not specifically amended by this Resolution shall remain in effect unless and until expressly amended or repealed by the Dsitrict.

Section 3. Effect of Repeal on Past Actions and Obligations

This Resolution does not affect prosecutions for violations committed prior to the effective date of this Resolution, does not waive any fee or penalty due and unpaid on the effective date of this Resolution, and does not affect the validity of any bond or cash deposit posted, filed or deposited pursuant to the requirements of any prior Resolution or Ordinance.

Section 4. CEQA Findings

The Board of Directors of the District finds that the rates and charges adopted by this Resolution exempt from the California Environmental Quality Act pursuant to Public Resources Code § 21080(b)(8) and CEQA Guidelines Section 15273. The District General Manager is directed to prepare and file appropriate notices.

Section 5. Severance Clause

If any section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Resolution. The Governing Board of the District hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

Section 6. Effective Date

This Resolution shall take effect immediately. The rates and charges adopted by this Resolution shall take effect _____ 1, 2015.

Upon the motion of Director _____ seconded by Director _____, and on the following roll call vote, to wit:

AYES:
NOES:

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ABSENT:
CONFLICTS:

the foregoing resolution is hereby adopted this ___th day of _____, 2014.

CRAIG ARMSTRONG
President of the Board

ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN
Secretary to the Board

MICHAEL W. SEITZ
District Legal Counsel

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A RESOLUTION OF THE BOARD OF DIRECTORS OF
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EXHIBIT A

NIPOMO COMMUNITY SERVICES DISTRICT
SCHEDULE OF MISCELLANEOUS FEES

FEE	CODE SECTION	AS OF 1, 2015
Account Set Up Fee	3.03.020(A)	\$42.00
Duplicate Billing	3.03.030(E)	\$1.50
Late Fee	3.03.050	Greater of \$10.00 or 10% of unpaid balance
Shut Off Notice (Door Hanger)	3.030.070(A)(1)	\$20.00
Non-Payment Fee	3.03.070(7)(B)	\$50.00
Returned Check	3.03.150	\$28.00
Tampering Fee	3.03.170(B)	\$137.00
Turn On/Off after hours	3.03.100 (B)	\$147.00
Repair Authorization	3.03.170(C)	Actual cost with \$75.00 minimum
Meter Read Surcharge	3.03.030(C)(2)	\$36.00
Backflow Administration	3.04.070(A)(1)	\$1.00 per month
Meter Remove/Re-install	3.030.060(C) and 3.04.090(A) and (B)	Actual cost plus \$118.00 minimum plus capacity charge, if applicable
Outside Water Sales	3.16.020	Double inside rates
Outside Sewer Sales	4.08.220	Double inside rates
Water Meter Calibration Check	3.03.160(A)	\$118.00 plus cost of calibration
Fire Flow Letter	3.20.010(D)	\$50.00
Verification of Water and/or Sewer Service Letter	3.28.010 and 4.16.010	\$50.00
Application fees for Intent-to-Serve Letter	2.09.020	See 2.09.020 Appendix A
Renewal Fee for Intent-to-Serve	3.28.030(A)(1) and 4.16.030(A)(1)	\$50.00
Water or Sewer Lateral Inspection	2.14.010	\$115.00 per lateral
Annexation Fee	3.04.310(B)	\$500.00 per acre or parcel, if less than one acre
Variance Fee	1.04.030(D)	Actual cost with \$900.00 deposit
District Hydrant Access	3.20.030	\$39.00 plus account set up fee plus cost of water
Fire Hydrant Meter	3.20.030	\$2,000.00 deposit, \$30.00 per month equipment rental with one month minimum; \$39.00 month flat charge plus

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EXHIBIT A

FEE	CODE SECTION	AS OF _____ 1, 2015
		cost of water and applicable Supplemental Water Charges
Fire Hydrant Meter Relocation Charge	3.20.030	\$150.00
Fire Hydrant Flow Test	3.20.010(E)	\$175.00 per hour with 1.5 hour minimum
In-house copy charge, Black and White	2.11.010	\$1.50 for first page and \$0.20 each page thereafter
In-house copy charge, Color	2.11.010	\$1.50 for first page and \$0.40 each page thereafter
Outside Copy Charge	2.11.010	\$25.00 plus actual cost
CD Copy Charge	2.11.010	\$15.00
Board Room Use	2.13.010	See Resolution No. 2007-1035