

TO: BOARD OF DIRECTORS

FROM: MARIO IGLESIAS
GENERAL MANAGER



DATE: OCTOBER 20, 2017

AGENDA ITEM

D

OCTOBER 25, 2017

CONSENT AGENDA

The following items are considered routine and non-controversial by staff and may be approved by one motion if no member of the Board wishes an item removed. If discussion is desired, the item may be removed from the Consent Agenda by a Board member and will be considered separately at the conclusion of the Administrative Items. Individual items on the Consent Agenda are approved by the same vote that approves the Consent Agenda, unless an item is pulled for separate consideration. The recommendations for each item are noted in bracket. Members of the public may comment on the Consent Agenda items.

**Questions or clarification may be made by the Board members
without removal from the Consent Agenda.**

- D-1) WARRANTS [RECOMMEND APPROVAL]
- D-2) APPROVE OCTOBER 11, 2017, REGULAR BOARD MEETING MINUTES
[RECOMMEND APPROVAL]
- D-3) INVESTMENT POLICY THIRD QUARTER REPORT [RECOMMEND REVIEW
AND ACCEPT REPORT]
- D-4) ADOPT RESOLUTION AUTHORIZING A BUDGET ADJUSTMENT AND APPROVE
SOLE-SOURCE AGREEMENT WITH OPTERRA ENERGY SERVICES INC IN THE
AMOUNT OF \$29,853 FOR PROFESSIONAL SERVICES TO COMPLETE A
DEVELOPMENT PROGRAM REPORT [RECOMMEND ADOPT RESOLUTION]

TO: BOARD OF DIRECTORS

REVIEWED: MARIO IGLESIAS
GENERAL MANAGER



FROM: LISA BOGNUDA
FINANCE DIRECTOR



DATE: OCTOBER 20, 2017

AGENDA ITEM
D-1
OCTOBER 25, 2017

WARRANTS

HANDWRITTEN CHECKS - NONE

TOTAL COMPUTER CHECKS

VOIDS - NONE

COMPUTER GENERATED CHECKS - SEE ATTACHED



Nipomo Community Services District

Item D-1 Warrants OCTOBER 25, 2017
By Payment Number

Payment Dates 10/25/2017 - 10/25/2017

Vendor Name	Description (Payable)	Payable Number	Payment Date	Amount
Payment: 2962				
Advantage Answering Plus, In	Answering service	000009-829-521	10/25/2017	198.15
				Payment 2962 Total: 198.15
Payment: 2963				
Aerzen USA Corporation	Air filter cartridge	17-02966	10/25/2017	517.96
				Payment 2963 Total: 517.96
Payment: 2964				
Allweather Landscape Mainte	LMD	30714	10/25/2017	325.00
				Payment 2964 Total: 325.00
Payment: 2965				
AmeriPride	Uniforms	1501993330	10/25/2017	226.03
AmeriPride	Uniforms	1501998285	10/25/2017	219.91
				Payment 2965 Total: 445.94
Payment: 2966				
Anderson, Matthew	Washer rebate	OCT2017	10/25/2017	75.00
				Payment 2966 Total: 75.00
Payment: 2967				
AT&T	Telephone	10347682	10/25/2017	171.91
				Payment 2967 Total: 171.91
Payment: 2968				
Burdine Printing	Mail bills	34469A	10/25/2017	176.05
Burdine Printing	Office supplies - envelopes	33787	10/25/2017	2,803.09
Burdine Printing	Postage for bills	34469B	10/25/2017	204.70
Burdine Printing	Mail bills	34473	10/25/2017	259.36
Burdine Printing	Postage for bills	34473B	10/25/2017	804.08
				Payment 2968 Total: 4,247.28
Payment: 2969				
Cannon Corporation	Nipomo Palms LS rehab	64549	10/25/2017	776.00
Cannon Corporation	Eureka Well replacement proj	64540	10/25/2017	19,309.26
				Payment 2969 Total: 20,085.26
Payment: 2970				
Channing Bete Company	Conservation brochures	53421377	10/25/2017	285.84
				Payment 2970 Total: 285.84
Payment: 2971				
Clever Ducks	Computer expense	24183	10/25/2017	2,535.00
				Payment 2971 Total: 2,535.00
Payment: 2972				
Corpro Companies, Inc.	Annual tank inspections	459996	10/25/2017	3,350.00
				Payment 2972 Total: 3,350.00
Payment: 2973				
Engel & Gray, Inc.	Biosolids collection	79077	10/25/2017	2,657.99
				Payment 2973 Total: 2,657.99
Payment: 2974				
Ferguson Enterprises, Inc.	Schedule 80 pipe and couplin	5233923	10/25/2017	1,707.06
				Payment 2974 Total: 1,707.06
Payment: 2975				
FGL Environmental	Lab tests	783289	10/25/2017	521.00
				Payment 2975 Total: 521.00

Item D-1 Warrants OCTOBER 25, 2017

Payment Dates: 10/25/2017 - 10/25/2017

Vendor Name	Description (Payable)	Payable Number	Payment Date	Amount
Payment: 2976				
Frontier Communications	BL phone	OCT2017	10/25/2017	52.95
Payment 2976 Total:				<u>52.95</u>
Payment: 2977				
Gaddis, Dan Allen	Per Diem-CSDA 9-26-17	CSDA2017B	10/25/2017	30.00
Gaddis, Dan Allen	Travel and mileage reimburse	OCT2017	10/25/2017	32.56
Payment 2977 Total:				<u>62.56</u>
Payment: 2978				
Golden State Copier & Mailin	Inkjet cartridges for postage	41141	10/25/2017	127.93
Payment 2978 Total:				<u>127.93</u>
Payment: 2979				
Hach Company	Cable assembly with probe ex	10651304	10/25/2017	232.52
Payment 2979 Total:				<u>232.52</u>
Payment: 2980				
Hopkins Technical Products, I	O-rings, stirrer rods	3617301167	10/25/2017	179.17
Hopkins Technical Products, I	Griffco spare part kits	3617301125	10/25/2017	1,422.33
Payment 2980 Total:				<u>1,601.50</u>
Payment: 2981				
Iglesias, Mario	Cell phone reimbursement	OCT2017	10/25/2017	65.00
Payment 2981 Total:				<u>65.00</u>
Payment: 2982				
Integrated Industrial Supply, I	Hose, disposable gloves, first	48783	10/25/2017	319.89
Payment 2982 Total:				<u>319.89</u>
Payment: 2983				
JB Dewar, Inc.	Pump lubricants	174500	10/25/2017	588.24
Payment 2983 Total:				<u>588.24</u>
Payment: 2984				
Mettler-Toledo, LLC	Calibration of lab equipment,	654551086	10/25/2017	556.55
Payment 2984 Total:				<u>556.55</u>
Payment: 2985				
Mid State Concrete Products,	Concrete boxes and grates	54029	10/25/2017	425.52
Payment 2985 Total:				<u>425.52</u>
Payment: 2986				
Miner's Ace Hardware	Supplies	SEPT2017	10/25/2017	225.77
Payment 2986 Total:				<u>225.77</u>
Payment: 2987				
More Office Solutions	B&W/Color copies	1787013	10/25/2017	58.14
More Office Solutions	Copier maintenance	1778685	10/25/2017	668.25
More Office Solutions	B&W/Color copies	1787014	10/25/2017	60.98
Payment 2987 Total:				<u>787.37</u>
Payment: 2988				
Municipal Code Corporation	Annual web hosting of District	00296554	10/25/2017	900.00
Payment 2988 Total:				<u>900.00</u>
Payment: 2989				
National Safety Council	Membership renewal	OCT2017	10/25/2017	395.00
Payment 2989 Total:				<u>395.00</u>
Payment: 2990				
NexTraq	GPS subscription	01320752	10/25/2017	439.45
Payment 2990 Total:				<u>439.45</u>
Payment: 2991				
Office Depot	Office supplies	967795661001	10/25/2017	282.72
Office Depot	Office supplies	967795661002	10/25/2017	49.42
Payment 2991 Total:				<u>332.14</u>
Payment: 2992				
PG&E	Electricity	OCT2017	10/25/2017	50,343.14

Item D-1 Warrants OCTOBER 25, 2017

Payment Dates: 10/25/2017 - 10/25/2017

Vendor Name	Description (Payable)	Payable Number	Payment Date	Amount
Payment: 2992				Payment 2992 Total: <u>50,343.14</u>
Plumbers Depot, Inc	Shaft for 3/4" Warthog	PD-36223	10/25/2017	401.86
Payment: 2993				Payment 2993 Total: <u>401.86</u>
Portable Johns, Inc	Portable bathrooms for Creek	211569	10/25/2017	297.57
Payment: 2994				Payment 2994 Total: <u>297.57</u>
Price, Postel & Parma, LLP	Water Inter Tie Project	144256	10/25/2017	8,562.60
Payment: 2995				Payment 2995 Total: <u>8,562.60</u>
Quinn Company	Equipment rental - track load	03165001	10/25/2017	5,412.86
Quinn Company	Equipment repair - Caterpillar	WON30002196	10/25/2017	643.62
Payment: 2996				Payment 2996 Total: <u>6,056.48</u>
R. Burke Corporation	Utility Adjustment Project thr	727513	10/25/2017	101,175.03
Payment: 2997				Payment 2997 Total: <u>101,175.03</u>
Richards, Watson & Gershon	Legal services through 09-30-	213915	10/25/2017	16,080.93
Payment: 2998				Payment 2998 Total: <u>16,080.93</u>
Richards, Watson & Gershon	Water rights adjudication	213916	10/25/2017	1,710.02
Payment: 2999				Payment 2999 Total: <u>1,710.02</u>
Rogers, Anderson, Malody &	Progress billing of FY 2016-20	55781	10/25/2017	4,000.00
Payment: 3000				Payment 3000 Total: <u>4,000.00</u>
Sabre Backflow, LLC	Backflow test kit	54	10/25/2017	946.25
Payment: 3001				Payment 3001 Total: <u>946.25</u>
Santa Maria Sun, LLC	Conservation ads	269466	10/25/2017	396.00
Payment: 3002				Payment 3002 Total: <u>396.00</u>
SoCalGas	Heat - shop/office	OCT2017B	10/25/2017	17.95
SoCalGas	Heat - shop/office	OCT2017	10/25/2017	15.21
Payment: 3003				Payment 3003 Total: <u>33.16</u>
Special District Financing & A	Arbitrage Report 2013 COP b	13896	10/25/2017	2,000.00
Payment: 3004				Payment 3004 Total: <u>2,000.00</u>
Tyler Business Forms	Office supplies	4934	10/25/2017	191.48
Payment: 3005				Payment 3005 Total: <u>191.48</u>
UPS Store #6031	Package handling	7329	10/25/2017	10.17
Payment: 3006				Payment 3006 Total: <u>10.17</u>
USA Bluebook	Credit for defective locks	357856	10/25/2017	-144.68
USA Bluebook	Paladin barrel locks	339656	10/25/2017	144.68
USA Bluebook	Pressure gauges, ball valves	378420	10/25/2017	409.22
USA Bluebook	Rebuild kit for check valves	387897	10/25/2017	428.25
USA Bluebook	Credit for Griffco valves	357861	10/25/2017	-695.95
USA Bluebook	Paladin barrel lock	322477	10/25/2017	144.68
USA Bluebook	Pre-weighed filters, cable ties,	389226	10/25/2017	261.94
USA Bluebook	Padlocks with extra long shac	363221	10/25/2017	374.26
USA Bluebook	Ball valves	382897	10/25/2017	143.19

Item D-1 Warrants OCTOBER 25, 2017

Payment Dates: 10/25/2017 - 10/25/2017

Vendor Name	Description (Payable)	Payable Number	Payment Date	Amount
USA Bluebook	Credit for Paladin barrel locks	360420	10/25/2017	-274.40
Payment 3007 Total:				<u>791.19</u>
Payment: 3008				
Wallace Group	FOG program	44669	10/25/2017	2,433.72
Payment 3008 Total:				<u>2,433.72</u>

TO: BOARD OF DIRECTORS
FROM: MARIO IGLESIAS
GENERAL MANAGER
DATE: OCTOBER 20, 2017



AGENDA ITEM
D-2
OCTOBER 25, 2017

**APPROVE OCTOBER 11, 2017
REGULAR BOARD MEETING MINUTES**

ITEM

Approve action minutes from previous Board meetings. [RECOMMEND APPROVE MINUTES]

BACKGROUND

The draft minutes are a written record of the previous Board Meeting action.

RECOMMENDATION

Approve Minutes

ATTACHMENT

- A. October 11, 2017 draft Regular Board Meeting Minutes

October 25, 2017

ITEM D-2

ATTACHMENT A

NIPOMO COMMUNITY SERVICES DISTRICT

Serving the Community Since 1965

DRAFT REGULAR MINUTES

OCTOBER 11, 2017 AT 9:00 A.M.

JON S. SEITZ BOARD ROOM 148 SOUTH WILSON STREET, NIPOMO, CA

BOARD of DIRECTORS

DAN ALLEN GADDIS, **PRESIDENT**
ED EBY, **VICE PRESIDENT**
BOB BLAIR, **DIRECTOR**
CRAIG ARMSTRONG, **DIRECTOR**
DAN WOODSON, **DIRECTOR**

PRINCIPAL STAFF

MARIO IGLESIAS, **GENERAL MANAGER**
LISA BOGNUDA, **FINANCE DIRECTOR**
WHITNEY MCDONALD, **GENERAL COUNSEL**
PETER SEVCIK, **DIRECTOR OF ENG. & OPS.**
JESSICA MATSON, **BOARD CLERK**

Mission Statement: The Nipomo Community Services District's mission is to provide its customers with reliable, quality, and cost-effective services now and in the future.

00:00:00 A. CALL TO ORDER AND FLAG SALUTE

President Gaddis called the Regular Meeting of October 11, 2017 to order at 9:00 a.m. and led the flag salute.

The audio recorder was not operational for this portion of the meeting.

00:00:29 B. ROLL CALL AND PUBLIC COMMENT FOR ITEMS NOT ON AGENDA

At Roll Call, all Directors were present.

There were no public comments.

President Gaddis called for a moment of silence for the victims of the Las Vegas shooting.

00:03:00 C. PRESENTATIONS AND REPORTS

PRESIDENT GADDIS ANNOUNCED THAT THE BOARD WOULD HEAR ITEM C-2 NEXT.

C-2) DIRECTORS' ANNOUNCEMENTS OF DISTRICT & COMMUNITY INTEREST AND REPORTS ON ATTENDANCE AT PUBLIC MEETINGS, TRAINING PROGRAMS, CONFERENCES, AND SEMINARS.

Receive Announcements and Reports from Directors

Director Woodson

- *September 25-28, Attended the California Special District Association (CSDA) Annual Conference in Monterey where he attended various sessions including one on the Brown Act.*

Director Blair

- *September 25-28, Attended the California Special District Association (CSDA) Annual Conference in Monterey and completed his Ethics training.*

Audio recording resumed.

Director Eby

- *September 25-28, Attended the California Special District Association (CSDA) Annual Conference in Monterey.*
- *October 2, Attended the Blacklake Wastewater Treatment Plant (WWTP) Master Plan Ad Hoc meeting with the Blacklake Facilities Committee members.*
- *October 2, Attended the District Board Officer's meeting.*

SUBJECT TO BOARD APPROVAL

**Nipomo Community Services District
REGULAR MEETING
MINUTES**

- *October 8, Attended the Nipomo Octoberfest where the District had an informational booth.*

Director Gaddis

- *September 24-28, Attended the California Special District Association (CSDA) Annual Conference in Monterey and attended a presentation on new cannabis laws and how it can affect the workplace.*
- *October 2, Attended the District Board Officer's meeting.*
- *October 4, Attended the Regional Water Management Group (RWMG) meeting.*

PRESIDENT GADDIS ANNOUNCED THAT THE BOARD WOULD HEAR ITEM D-1 NEXT.

00:12:00

D. CONSENT AGENDA

D-1) WARRANTS

D-2) APPROVE SEPTEMBER 13, REGULAR BOARD MEETING MINUTES

Directors Woodson requested clarification on warrants. Mario Iglesias, General Manager, and Jessica Matson, Public Information Director, responded.

There were no public comments.

Upon the motion of Director Craig Armstrong and seconded, the Board unanimously approved the Consent Agenda.

Vote 5-0.

YES VOTES	NO VOTES	ABSENT
<i>Directors Armstrong, Blair, Woodson, Eby, and Gaddis</i>	<i>None</i>	<i>None</i>

PRESIDENT GADDIS ANNOUNCED THAT THE BOARD WOULD RETURN TO ITEM C-1.

00:15:00

C-1) 2017 GROUNDWATER INDEX PRESENTATION – DISTRICT GEO-HYDROLOGIST DR. BRAD NEWTON

Dr. Brad Newton, from Newton Geo-Hydrology Consulting Services, gave a presentation on data collection methods and results from the latest readings. Dr. Newton commented that the method of auto readings allows quicker access to data. Data from the Spring 2017 readings show the groundwater table improved some.

The Board discussed. Dr. Newton answered questions from the Board.

The following members of the public spoke:

Abigail Davis, NCS D Customer, asked about the average depth of wells in the area since she interested in agriculture options. Dr. Newton responded.

C-3) RECEIVE PUBLIC COMMENT ON PRESENTATIONS AND REPORTS PRESENTED UNDER ITEM C AND BY MOTION RECEIVE and FILE PRESENTATIONS AND REPORTS

There were no public comments.

**Nipomo Community Services District
REGULAR MEETING
MINUTES**

Upon the motion of Director Craig Armstrong and seconded, the Board unanimously approved to receive and file the presentations and reports as submitted.
Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Armstrong, Eby, Woodson, Blair, and Gaddis	None	None

E. ADMINISTRATIVE ITEMS

01:00:00

- E-1) CONDUCT PROTEST HEARING, DETERMINE PROTEST STATUS, AND IF THERE IS NOT A MAJORITY PROTEST CONSIDER ADOPTION OF RESOLUTION INCREASING DISTRICT WATER USER FEES

Mario Iglesias, General Manager, reviewed the report as presented in the Board Packet.

PRESIDENT GADDIS OPENED THE PUBLIC HEARING AND INSTRUCTED PUBLIC TO DELIVER ANY WRITTEN PROTESTS TO LEGAL COUNSEL.

The following members of the public spoke:

Joe Dominic, NCS D Customer, commented on District costs of service.

Abigail Davis, NCS D Customer, commented on the possibility of a special agriculture rate. Mr. Iglesias responded about rates being tied to cost of service and there is no mechanism to determine that for agriculture.

Joanne Dominic, NCS D Customer, asked about the rate structure and growth of cannabis. Mr. Iglesias responded that the cannabis farms are outside the District's boundaries.

Joe Dominic, NCS D Customer, asked about meter sizes and associated rates. Mr. Iglesias responded.

PRESIDENT GADDIS CLOSED THE PUBLIC HEARING.

Mr. Iglesias tallied all written protests and reported that the District had received 59 protests as of the close of the hearing.

A MAJORITY PROTEST WAS DETERMINED TO NOT EXIST.

Upon the motion of Director Craig Armstrong and seconded, the Board adopted the Resolution increasing District water user fees.
Vote 5-0.

YES VOTES	NO VOTES	ABSENT
Directors Armstrong, Eby, Woodson, Blair, and Gaddis	None	None

**RESOLUTION 2017-1460
A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT
SETTING WATER RATES AND PRIVATE FIRE PROTECTION CHARGES**

01:28:00

- E-2) INTRODUCE AN ORDINANCE OF THE BOARD OF DIRECTORS OF NIPOMO COMMUNITY SERVICES DISTRICT AMENDING DISTRICT CODE SECTIONS 3.03.110, 3.03.120, 3.03.180, AND 3.04.180

Mario Iglesias, General Manager, reviewed the report as presented in the Board Packet.

Whitney McDonald, District Legal Counsel, explained the ordinance adoption process and read the Ordinance by title only. Ms. McDonald also reviewed the proposed changes shown in Attachment A of the staff report which include changes to the district’s leak adjustment process.

The Board discussed. Ms. McDonald and Mr. Iglesias answered questions from the Board.

Director Blair expressed opposition to Code Section 3.03.180 stating he did not see this provision when the original Ordinance passed in 2014.

The Board discussed the language in Code Section 3.03.180.

Director Armstrong suggested keeping the proposed wording and directed staff to follow-up with Director Blair regarding his claims.

Ms. McDonald commented on her detailed research of Code Section 3.03.180, the Assessment District, Ordinances, review of Summit Station and stated the Assessment did not cover meter costs directly.

The following members of the public spoke:

Mike Werland, NCSD Customer, commented on his understanding that the District owns the meter and customers pay a standby charge for use of the meter.

*Upon the motion of Director Craig Armstrong and seconded, the Board agreed to introduce the Ordinance, “An Ordinance of the Board of Directors of the Nipomo Community Services District Amending Nipomo Community Services District Code Sections 3.03.110, 3.03.120, 3.03.180, and 3.04.140,” waive the full reading of the Ordinance, and set it for second reading and adoption at the next Regular Board meeting on October 25, 2017.
 Vote 4-1.*

YES VOTES	NO VOTES	ABSENT
Directors Armstrong, Woodson, Eby, and Gaddis	Director Blair	None

02:00:00

- E-3) APPROVE SEWER SERVICE REQUEST FOR DANA ELEMENTARY SCHOOL, 920 WEST TEFFT STREET, NIPOMO

Mario Iglesias, General Manager, reviewed the report as presented in the Board Packet. Mr. Iglesias answered questions from the Board.

The following members of the public spoke:

Alberto Lopez, project representative for Dana Elementary, commented that no schools in the Lucia Mar School District do any food preparation on site and grease separators have been removed – food is brought in.

**Nipomo Community Services District
REGULAR MEETING
MINUTES**

*Upon the motion of Director Craig Armstrong and seconded, the Board unanimously approved the Intent-to-Serve Letter with conditions.
Vote 5-0.*

YES VOTES	NO VOTES	ABSENT
<i>Directors Armstrong, Blair, Woodson, Eby and Gaddis</i>	None	None

02:10:00 F. MANAGER’S REPORT

Mario Iglesias, General Manager, reviewed the report as presented in the Board packet. Mr. Iglesias also reported the following:

- The supplemental water deliveries are on schedule.*
- The District reduced groundwater pumping by 58% in September and 52% year-to-date, meeting the target of 50%.*
- He attended a seminar on how to report the Water Loss Audit and reduce water loss.*
- Lucia Mar School District has requested testing for lead at each of their sites within the District.*
- The District received the Special District Risk Management Association’s (SDRMA) President’s Special Acknowledgement Award for having no paid claims during the prior five consecutive program years.*
- The District also received the Special District Leadership Foundation’s (SDLF) Excellence in Transparency Award for a third time.*

Mr. Iglesias answered questions from the Board.

Director Eby requested staff review District policy for compliance with latest cannabis laws and report back to the Board at a future meeting.

There were no public comments.

02:20:00 G. COMMITTEE REPORTS

Director Eby reported that the Blacklake Sewer Master Plan Ad Hoc Committee met and reviewed the Master Plan with the Blacklake Facilities Committee who accepted the technical and financial findings. The Plan will be presented at the next Regular Board meeting.

Director Eby requested financial and outreach plans as well as a schedule for roll-out to the Blacklake community.

The Ad Hoc Committee would also like to see a better name for the Master Plan since “regionalization” is too vague.

02:35:00 H. DIRECTORS’ REQUESTS TO STAFF AND SUPPLEMENTAL REPORTS

Director Blair

- Requested staff look at the possibility of meter turn on/off fees.*

02:37:00 I. CLOSED SESSION ANNOUNCEMENTS

- 1. CONFERENCE WITH DISTRICT LEGAL COUNSEL RE: PENDING LITIGATION PURSUANT TO GC §54956.9**

Nipomo Community Services District
REGULAR MEETING
MINUTES

- a) SMVWCD VS. NCSD (SANTA CLARA COUNTY CASE NO. CV 770214, SIXTH APPELLATE COURT CASE NO. H032750 AND ALL CONSOLIDATED CASES).
- b) NCSD VS. LOS PRIMOS PROPERTIES LLC, SAN LUIS OBISPO COUNTY CASE NO. 16CV0512

2. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Gov't Code §54956.8)

PROPERTY: 793 GUADALUPE ROAD, NIPOMO CALIFORNIA, APN 090-192-052
 AGENCY NEGOTIATOR: MARIO IGLESIAS
 NEGOTIATING PARTIES: NIPOMO COMMUNITY SERVICES DISTRICT,
 JAMES AMBURGEY, AND SYLVIA AMBURGEY
 UNDER NEGOTIATION: PRICE AND TERMS OF PAYMENT

Whitney McDonald, District Legal Counsel, clarified that Item 2 is an easement.

J. PUBLIC COMMENT ON CLOSED SESSION ITEMS

There were no public comments.

K. ADJOURN TO CLOSED SESSION

President Gaddis adjourned to closed session at 11:39 a.m.

L. OPEN SESSION

ANNOUNCEMENT OF ACTIONS, IF ANY, TAKEN IN CLOSED SESSION

The Board came back into Open Session at 12:13 p.m.

Whitney McDonald, District Legal Counsel, announced that the Board discussed Item I.1(a), 1(b), and I.2, but took no reportable action.

ADJOURN


President Gaddis adjourned the meeting at 12:14 p.m.

MEETING SUMMARY	HOURS & MINUTES
Regular Meeting	2 hours 40 minutes
Closed Session	34 minutes
TOTAL HOURS	3 hours 14 minutes

Respectfully submitted,

Mario Iglesias, General Manager and Secretary to the Board

Date

TO: BOARD OF DIRECTORS
 FROM: MARIO IGLESIAS
 GENERAL MANAGER 
 DATE: OCTOBER 20, 2017

**AGENDA ITEM
 D-3
 OCTOBER 25, 2017**

INVESTMENT POLICY – THIRD QUARTER REPORT

ITEM

Review Investment Policy Third Quarter Report [RECOMMEND ACCEPT]

BACKGROUND

The District’s Investment Policy requires the Finance Officer file a quarterly report that identifies the District’s investments and their compliance with the policy. The quarterly report is considered by the Board of Directors and is filed with the District’s auditor.

As District Finance Officer and Treasurer, I am pleased to inform the Board of Directors that the District is in compliance with the Investment Policy and that the objectives of safety, liquidity, and yield have been met. The District has the ability to meet cash flow requirements for the next six months.

INVESTMENT POLICY-THIRD QUARTER REPORT 9/30/17

Investment	Institution	Amount of Deposit as of 9/30/17	Rate of Interest	Quarterly Interest Earned or Accrued 9/30/17	Amount of Deposit as of 9/30/16	Rate of Interest	Quarterly Interest Earned or Accrued 9/30/16
Public Checking	Rabobank	\$239,144.08	0.00%	\$0.00	\$370,175.97	0.00%	\$0.00
Savings-Improvement Bonds	Rabobank	\$44,944.30	0.20%	\$9.27	\$30,322.57	0.20%	\$88.08
Savings-Performance Bonds	Rabobank	\$201,994.14	0.20%	\$100.69	\$201,591.69	0.20%	\$101.59
Savings-NMWCA Fees (1)	Rabobank	\$0	0.20%	\$225.11	\$519,187.05	0.20%	\$261.65
(1)Savings – NSWP Funded Replacement	Rabobank	\$414,571.73	0.20%	\$195.03	\$207,091.34	0.20%	\$91.33
Pooled Money Investment	Local Agency Investment Fund (LAIF)	\$15,043,288.91	1.07%	\$39,845.30	\$15,671,578.42	0.60%	\$24,420.12

(1) Per Board action 9-13-17, funds allocated to NSWP and transferred to LAIF.

RECOMMENDATION

After Board consideration and public comment, it is recommended that your Honorable Board accept the quarterly report by motion and minute order and direct staff to file the Report with District Auditor.

ATTACHMENTS

None

TO: BOARD OF DIRECTORS
FROM: MARIO IGLESIAS
GENERAL MANAGER
DATE: OCTOBER 18, 2017

**AGENDA ITEM
D-4**

OCTOBER 25, 2017

ADOPT RESOLUTION AUTHORIZING A BUDGET ADJUSTMENT AND APPROVE SOLE-SOURCE AGREEMENT WITH OPTERRA ENERGY SERVICES INC. IN THE AMOUNT OF \$29,853 FOR PROFESSIONAL SERVICES TO COMPLETE A DEVELOPMENT PROGRAM REPORT

ITEM

Consider adopting a resolution that amends the Town Sewer Fund #130 and Water Fund #125 for fiscal year budget 2017-18 in the amount of \$15,000 each for a total adjustment of \$30,000 to fund a Development Program Report provided by OpTerra Energy Services for the purpose of evaluating solar power opportunities at the Southland Wastewater Treatment Plant and various Nipomo Community Services District ("District") water production facilities. [RECOMMEND ADOPT RESOLUTION]

BACKGROUND

At your Honorable Board's September 13, 2017 Board Meeting, OpTerra Energy Services Inc. ("OpTerra") presented an Opportunity Assessment that demonstrated potential energy cost savings for the Nipomo Community Services District's ("District") Water and Wastewater Enterprises. Your Board considered evidence provided in the Opportunity Assessment sufficient to take the next step in the integrated energy evaluation process proposed by OpTerra. Your Board authorized the General Manager to sign a Program Development Agreement (Attachment B) with OpTerra to conduct an integrated energy assessment ("Assessment").

The action before your Board now looks to meet requirements of the California Government Code, Sections 4217.10 through 4217.18 ("Government Code") and District policy. Government Code allows the District to enter into sole-sourced energy conservation contracts to develop, acquire, and finance equipment and services to reduce energy use or to make for a more efficient use of energy, after making certain findings at a noticed public hearing [Attachment C]. Your Board has the opportunity to make such findings at today's meeting and satisfy this requirement.

District policy requires expenditures be identified in the appropriate Enterprise Fund's annual budget. To satisfy this requirement, a budget adjustment is necessary to make funding available to cover the potential costs of services under the Agreement. The costs are described as "potential" because these costs may be placed in a subsequent agreement. The Board may find that, based on the results of the Assessment, a project would meet Government Code requirements and serve the interest of the community. Costs to complete the Agreement would then be incorporated into OpTerra's project engineering and design costs for the project. Should that occur, funds allocated through the budget adjustment process would return to the appropriate enterprise reserve funds.

FISCAL IMPACT

Fiscal Year 2017-18 Budget does not include funding for an integrated energy assessment. Funding for the Agreement would come from the Town Sewer Enterprise and the Water

Enterprise Reserve Fund Balance – each fund would contribute 50% of the \$29,853 Agreement cost. There is sufficient Fund Balance in each of these enterprise reserve accounts.

In the event your Board finds benefit to advance the process to a project, the cost of the Agreement would be included in the engineering and design cost of the project and funds dedicated to the Agreement through this budget adjustment would be returned to the appropriate enterprise reserve funds.

RECOMMENDATION

Staff recommends Board adoption of the Resolution.

ATTACHMENTS

- A. Resolution – 2017 XXXX
- B. OpTerra Program Development Agreement
- C. NCSD Public Notice – Proof of Publication

October 25, 2017

ITEM D-4

ATTACHMENT A

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2017-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT
AUTHORIZING A BUDGET ADJUSTMENT AND
APPROVING A SOLE-SOURCE AGREEMENT WITH
OPTERRA ENERGY SERVICES, INC., PURSUANT TO
GOVERNMENT CODE SECTION 4217.10, ET SEQ.**

WHEREAS, the Board of Directors (“Board”) of the Nipomo Community Services District (“District”) desires to improve the energy efficiency and lower the energy costs of its facilities; and

WHEREAS, OpTerra Energy Services, Inc. (“OpTerra”), is a qualified provider of energy conservation services and proposes to complete an integrated energy assessment of the District’s facilities to identify supply-side and/or demand-side energy conservation measures that may be installed or implemented at those facilities in a manner whereby the anticipated cost to the District for the conservation measures would be less than the anticipated marginal cost to the District for the energy that would have been consumed by the District in the absence of those measures; and

WHEREAS, the Board is authorized, pursuant to Sections 4217.10 through 4217.18 of the California Government Code (the “Act”), to enter into sole-sourced energy conservation contracts to develop, acquire, and finance equipment and services to reduce energy use or to make for a more efficient use of energy, after making certain findings at a noticed public hearing; and

WHEREAS, a duly noticed public hearing was held in accordance with the Act on October 25, 2017; and

WHEREAS, a budget adjustment is necessary to make funding available to cover the potential costs of services under the Agreement.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT AS FOLLOWS:

Section 1. All of the recitals above are true and correct.

Section 2. The Board hereby determines that it is in the best interests of the District to enter into a Program Development Agreement (“Agreement”) with OpTerra Energy Services, Inc., to perform an integrated energy assessment and to identify supply-side and/or demand-side energy conservation measures to be installed or implemented at District facilities (“Energy Conservation Program”).

Section 3. Pursuant to Government Code Section 4217.12, the Board hereby finds that the anticipated cost to the District for the services provided by the Agreement will be less than the anticipated marginal cost to the District of the energy that would be consumed by the District in the absence of the program that will be developed pursuant

NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2017-XXXX

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT
AUTHORIZING A BUDGET ADJUSTMENT AND
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GOVERNMENT CODE SECTION 4217.10, ET SEQ.

to the Agreement. As provided in the Agreement, the District will incur no costs and will not compensate OpTerra if the integrated energy assessment prepared pursuant to the Agreement indicates that the anticipated costs to the District for implementing the identified energy conservation measures would exceed the District's marginal energy costs.

Section 4. The Board authorizes a budget adjustment of \$30,000 to be transferred from Fund #130 Town Sewer Reserves and Fund #125 Water Reserves equally for purposes of financing the Agreement.

Section 5. The District hereby authorizes the District Manager to execute the Agreement on behalf of the District and to take any and all actions and to execute and deliver any and all agreements, documents and certificates which they may deem necessary or advisable in order to carry out, give effect to and comply with the terms of this Resolution. Such actions are hereby ratified, confirmed and approved.

Section 6. The Board finds and declares that the actions approved herein do not constitute a "project" as that term is defined in the California Environmental Quality Act, Public Resources Code Section 21000, et seq. ("CEQA"), and that, therefore, it is not subject to CEQA. The Agreement authorizes the preparation of an integrated energy assessment to identify supply-side and/or demand-side energy conservation measures that may be installed or implemented at District facilities in order to reduce the District's energy costs and to make the District's facilities more energy efficient. In the event that the energy assessment shows that the District could implement the identified energy conservation measures in a manner that would cost less to the District than its anticipated marginal energy costs, the District may negotiate a future agreement to develop, engineer, and install some or all of the identified energy conservation measures. Because this Agreement does not commit the District to an activity which may cause either a direct or reasonably foreseeable physical change in the environment, it is not a project under CEQA and CEQA does not apply.

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

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

the foregoing resolution is hereby adopted this 25th day of October, 2017.

DAN GADDIS
President of the Board

NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2017-XXXX

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT
AUTHORIZING A BUDGET ADJUSTMENT AND
APPROVING A SOLE-SOURCE AGREEMENT WITH
OPTERRA ENERGY SERVICES, INC., PURSUANT TO
GOVERNMENT CODE SECTION 4217.10, ET SEQ.

ATTEST:

APPROVED AS TO FORM AND
LEGAL EFFECT:

MARIO IGLESIAS
General Manager and Secretary to the Board

WHITNEY G. McDONALD
District Legal Counsel

October 25, 2017

ITEM D-4

ATTACHMENT B



RECEIVED
OCT 12 2017
NIPOMO COMMUNITY
SERVICES DISTRICT

OpTerra Energy Services
500 12th Street, Suite 300
Oakland, CA 94607
Tel 844-678-3772

DATE: October 11, 2017

TO: Mario Iglesias
Nipomo Community Services District

RE: Contract Document

Transmittal Letter

We are sending you:

- Attached Under Separate Cover

COPIES	DATED	DESCRIPTION
2	10/25/17	Program Development Agreement - OpTerra ES Contract No. R3242

These are transmitted as checked below:

- For approval
 As requested
 For your signature
 For your use
 For your review & comment
 Return one fully executed original for our files

Enclosed are two (2) originals of the above-referenced document executed by OpTerra Energy Services. Please have both documents executed by an authorized signatory at Nipomo Community Services District, keep one (1) for your records, and return one (1) fully executed original to the attention of Chrisann Young at the above address for our records.

If you have any questions or comments, please do not hesitate to contact:

Chris McCormick, Senior Counsel at (415) 351-9956 or
Ashu Jain, Senior Manager at (714) 473-7837

PROGRAM DEVELOPMENT AGREEMENT

This PROGRAM DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this 25th day of October 2017 between OpTerra Energy Services, Inc., a Delaware corporation ("OpTerra Energy Services"), having its principal offices at 500 12th Street, Suite 300, Oakland, CA 94607, and Nipomo Community Services District, located at 148 South Wilson Street, Nipomo, CA 93444 ("Nipomo Community Services District" and together with OpTerra Energy Services the "Parties" and each of Nipomo Community Services District and OpTerra Energy Services a "Party".)

WHEREAS, OpTerra Energy Services is an energy services and solutions company with the technical and management capabilities and experience to perform an integrated energy assessment (an "Assessment") and to identify supply-side and/or demand-side energy conservation measures ("ECMs");

WHEREAS, Nipomo Community Services District desires to enter into an agreement to have OpTerra Energy Services perform an Assessment in accordance with the scope of work set forth in Attachment A (the "Scope of Work") for the sites listed on Part I of Attachment B (the "Sites"), and to identify energy improvements and operational changes which are recommended to be installed or implemented at the Included Facilities; and

WHEREAS, the primary purpose of the Assessment is to provide an engineering and economic basis for the implementation of ECMs, which, if the Assessment shows adequate bases for the ECMs, the Parties may negotiate and execute a contract providing for, among other things, engineering, procurement, installation, construction, and training services for the identified ECMs (an "Energy Services Contract");

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. ASSESSMENT

OpTerra Energy Services agrees to complete the Assessment within one hundred and twenty (120) calendar days after the date on which OpTerra Energy Services receives the information listed in Part I of Attachment A (the "Required Information"). Nipomo Community Services District agrees to deliver the Required Information to OpTerra Energy Services no later than thirty (30) calendar days after the date hereof.

Nipomo Community Services District agrees to assist OpTerra Energy Services in performing the Assessment by (i) providing OpTerra Energy Services with access to key decision makers and stakeholders of the Nipomo Community Services District, (ii) providing OpTerra Energy Services, its employees and agents, such access to the Sites and other relevant facilities of Nipomo Community Services District as OpTerra Energy Services deems necessary, and (iii) providing, or causing Nipomo Community Services District's energy suppliers to provide, complete and accurate data concerning energy usage and costs related to the Sites and other relevant facilities. OpTerra Energy Services will be entitled to rely upon the accuracy and completeness of all information provided to OpTerra Energy Services by Nipomo Community Services District and Nipomo Community Services District's energy suppliers. OpTerra Energy Services will promptly provide written notice to Nipomo Community Services District if OpTerra Energy Services determines there is any incorrect data included in the information provided by Nipomo Community Services District or Nipomo Community Services District's energy suppliers, but OpTerra Energy Services will have no obligation to correct or confirm any such information unless otherwise specified in the Scope of Work. Any change(s) in the Scope of Work will be set forth in a writing executed by the Parties.

OpTerra Energy Services will determine, as part of the Assessment, whether the anticipated cost to the Nipomo Community Services District for the ECMs will be less than the anticipated marginal cost to the Nipomo Community Services District of the thermal, electrical, or other energy that would have been consumed by the Nipomo Community Services District in the absence of those purchases, as described in California Government Code sections 4217.10-4217.18 ("Paid-From-Savings Project").

2. COMPENSATION TO OPTERRA ENERGY SERVICES

Nipomo Community Services District will compensate OpTerra Energy Services for its performance of the Assessments by payment to OpTerra Energy Services of a fee (the "Assessment Fee") in the amount of Twenty-Nine

Thousand Eight Hundred Fifty-Three Dollars (\$29,853). If OpTerra Energy Services determines that the projected monetary savings from implementation of the ECMs identified during the Assessment cannot result in a Paid-From-Savings Project that complies with California Government Code Sections 4217.10 through 4217.18, the Assessment Fee will not apply and the Nipomo Community Services District will have no obligation to pay any portion of the Assessment Fee to OpTerra Energy Services

The Assessment Fee will be due and payable sixty (60) calendar days after completion of the Assessment; *provided* that if on such sixtieth (60th) calendar day OpTerra Energy Services and Nipomo Community Services District are negotiating an Energy Services Contract in good faith, the Assessment Fee will be due ninety (90) calendar days after completion of the Assessment; *provided further*, that if OpTerra Energy Services and Nipomo Community Services District execute an Energy Services Contract within one hundred twenty (120) calendar days after completion of the Assessment, the Assessment Fee shall be incorporated into the total contract amount payable under such Energy Services Contract.

Each of Nipomo Community Services District and OpTerra Energy Services reserves the right to terminate this Agreement at any time during the course of the Assessment, by delivery of written notice to the other. If this Agreement is terminated by Nipomo Community Services District, a fee will be payable by Nipomo Community Services District to OpTerra Energy Services within thirty (30) calendar days of termination, in an amount equal to the greater of (i) OpTerra Energy Services' estimate of its fees, costs, expenses, disbursements and overhead incurred through the date of termination, or (ii) a pro-rated fee based on OpTerra Energy Services' estimate of the percentage of completion of the Assessment. If this Agreement is terminated by OpTerra Energy Services, Nipomo Community Services District shall have no obligation to pay any portion of the Assessment Fee to OpTerra Energy Services.

Additionally, if OpTerra Energy Services determines that, over a maximum term of nineteen (19) years after implementation of the ECMs identified during the Assessment, the average annual savings generated from the implementation of those ECMs will be less than Thirty-Five Thousand Dollars (\$35,000) using an electricity escalation rate of four-and-a-half percent (4.5%) per annum, then this Agreement will be terminated by OpTerra Energy Services and Nipomo Community Services District shall have no obligation to pay any portion of the Assessment Fee to OpTerra Energy Services.

3. INSURANCE

OpTerra Energy Services will maintain, or cause to be maintained, for the duration of this Agreement, the insurance coverage outlined in (A) through (F) below, and all such other insurance as required by applicable law. Evidence of coverage will be provided to Nipomo Community Services District via a certificate of insurance.

- A. Workers' Compensation/Employers Liability for states in which OpTerra Energy Services is not a qualified self-insured. Limits as follows:
 - * Workers' Compensation: Statutory
 - * Employers Liability: Bodily Injury by accident \$1,000,000 each accident
Bodily Injury by disease \$1,000,000 each employee
Bodily Injury by disease \$1,000,000 policy limit

 - B. Commercial General Liability insurance with limits of:
 - * \$1,000,000 each occurrence for Bodily Injury and Property Damage
 - * \$1,000,000 General Aggregate - other than Products/Completed Operations
 - * \$1,000,000 Products/Completed Operations Aggregate
 - * \$1,000,000 Personal & Advertising Injury
 - * \$ 100,000 Damage to premises rented to OpTerra Energy Services
- Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13), without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest or (2) explosion, collapse, underground hazard.
- C. Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

 - D. Professional Liability insurance with limits of:
 - * \$1,000,000 per occurrence
 - * \$1,000,000 aggregate

Coverage to be written on a claims-made form.

E. Umbrella / Excess Liability insurance. Limits as follows:

- * \$1,000,000 each occurrence
- * \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

F. Policy Endorsements.

The Nipomo Community Services District, its officers, employees, and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured will not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein will not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured will not be required to contribute anything toward any loss or expense covered by the insurance provided by this provision.

G. Subrogation

The insurance provided by OpTerra Energy Services shall be primary to any coverage available to the Nipomo Community Services District with respect to any activity conducted pursuant to this Agreement. OpTerra Energy Services hereby grants to the Nipomo Community Services District, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Party with respect to the services addressed herein, a waiver of any right to subrogation which any such insurer of OpTerra Energy Services may acquire against the Nipomo Community Services District by virtue of the payment of any loss under such insurance.

4. INDEPENDENT CONTRACTOR

OpTerra Energy Services, and the agents and employees of OpTerra Energy Services, its subcontractors and/or consultants, are acting in an independent capacity in the performance of this Agreement, and not as public officials, officers, employees, consultants, or agents of the Nipomo Community Services District. This Agreement may not be construed to represent the creation of an employer/employee or principal/agent relationship. OpTerra Energy Services will act in an independent capacity and retain sole discretion in the manner and means of carrying out its activities under this Agreement. OpTerra Energy Services is free to work for other entities while under contract with Nipomo Community Services District.

5. ENERGY SERVICES CONTRACT

As it is the intent of Nipomo Community Services District and OpTerra Energy Services to pursue cost effective energy retrofits and ECMs at the Sites pursuant to an Energy Services Contract, both Parties agree to enter into good faith negotiations of an Energy Services Contract immediately following completion of the Assessment, if the Assessment concludes that the ECMs will result in a Paid-From-Savings Project.

6. WORK PRODUCT

Nipomo Community Services District will not, by virtue of this Agreement, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Assessment. All data, proposals, plans, specifications, flow sheets, drawings, and other work product prepared or produced by OpTerra Energy Services hereunder ("**Work Product**") and furnished directly or indirectly, in writing or otherwise, to Nipomo Community Services District under this Agreement will remain OpTerra Energy Services' property and will be used only in connection with work performed by OpTerra Energy Services. OpTerra Energy Services will be deemed the author and owner of such Work Product and will retain all common law, statutory and other reserved rights, including copyrights. The Work Product may not be used by Nipomo Community Services District as a basis for facility construction or implementation of ECMs developed herein by any entity other than OpTerra Energy Services, without the prior written agreement of OpTerra Energy Services. Any unauthorized use of the Work Product will be at Nipomo Community Services District's sole risk and without liability to OpTerra Energy Services, and Nipomo Community

Services District agrees to waive and release, and indemnify and hold harmless, OpTerra Energy Services, its subcontractors, and their directors, employees, subcontractors, and agents from any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature (collectively, "Losses") associated with or resulting from such use.

7. LIMITATION OF LIABILITY

The liability of a defaulting Party, in connection with this Agreement or any analysis, report, or other deliverables provided hereunder, will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense. Additionally, each Party waives any claims for negligence against the other Party to the greatest extent permitted by law. In no event will either Party be liable to the other for any Losses which collectively exceed the amount of the Assessment Fee, regardless of whether such amounts arise out of breach of contract, guarantee or warranty, tort, product liability, contribution, strict liability or any other legal theory. This Section 7 shall not apply to or otherwise limit third party claims subject to the provisions of Section 8 herein.

8. INDEMNITY

To the maximum extent permitted by law, OpTerra Energy Services hereby agrees, at its sole cost and expense, to defend with competent defense counsel reasonably approved by the Nipomo Community Services District, protect, indemnify, and hold harmless the Nipomo Community Services District, its elected and appointed officials, officers, employees, volunteers, attorneys, agents (including those Nipomo Community Services District representatives), successors, and assigns (collectively "Indemnitees") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, charges, obligations, damages, causes of action, proceedings, suits, losses, stop payment notices, judgments, fines, liens, penalties, liabilities, costs and expenses of every kind and nature whatsoever arising out of, incident to, related to, in connection with or resulting from any act, failure to act, error or omission of OpTerra Energy Services or any of its officers, agents, servants, employees, Subcontractors, material suppliers or any of their officers, agents, servants or employees, in the performance of this Agreement; including, without limitation, the payment of attorneys' fees, experts' fees, and other related costs and expenses (individually, a "Claim," or collectively, "Claims"), except to the extent any such Claim is due to the sole negligence or willful misconduct of the indemnified party. OpTerra Energy Services shall promptly pay and satisfy any judgment, award, or decree that may be rendered against any of the Indemnitees as to any such Claim. OpTerra Energy Services' obligation to indemnify shall not be restricted to insurance proceeds, if any, received by OpTerra Energy Services or Indemnitees.

Nothing in this Section 8 shall be construed to encompass Indemnitees' sole or active negligence or willful misconduct to the extent that this Agreement is subject to California Civil Code section 2782.

9. NONDISCRIMINATION; COMPLIANCE WITH LAWS

OpTerra Energy Services will comply with all applicable laws, rules, regulations and policies, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

The Parties acknowledge and agree that OpTerra Energy Services is not a municipal advisor and cannot give advice to Nipomo Community Services District with respect to municipal securities or municipal financial products absent Nipomo Community Services District being represented by, and relying upon the advice of, an independent registered municipal advisor. OpTerra Energy Services is not subject to a fiduciary duty with regard to Nipomo Community Services District or the provision of information to Nipomo Community Services District. Nipomo Community Services District will consult with an independent registered municipal advisor about the financing option(s) appropriate for Nipomo Community Services District's situation.

OpTerra Energy Services cannot guarantee that Nipomo Community Services District will receive funding from any energy efficiency rebate, incentive, and/or loan program(s) (collectively, "Incentive Funds"); OpTerra Energy Services expressly disclaims any liability for Nipomo Community Services District's failure to receive any portion of the Incentive Funds, and Nipomo Community Services District acknowledges and agrees that OpTerra Energy Services will have no liability for any failure to receive all or any portion of the Incentive Funds.

10. FORCE MAJEURE

Neither Party will be considered to be in default in the performance of any material obligation under this Agreement (other than the obligation to make payments) when a failure of performance will be due to an event of Force Majeure. The term "Force Majeure" will mean any cause beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which, despite using commercially reasonable efforts, it has been unable to overcome. Neither Party will be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an event of Force Majeure will give prompt written notice of such fact to the other Party.

11. INTEGRATION; AMENDMENT

This Agreement constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement may not be amended except by a writing executed by both Parties. No oral amendment shall be enforceable, even if supported by new consideration. Delivery of an executed counterpart of a signature page of this Agreement by email or fax shall be effective as delivery of a manually executed counterpart of this Agreement.

12. DISPUTE RESOLUTION; APPLICABLE LAW; VENUE; SEVERABILITY

If a dispute arises out of or relates to this Agreement, or the transaction contemplated by this Agreement (a "Dispute"), either Party may initiate the dispute resolution process set forth in this Section 12 by giving notice to the other Party. Senior executives for the Parties will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation.

If the Dispute is not settled by senior management conference, the Parties will endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association. Mediation is a condition precedent to the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator.


If any term of this Agreement is declared by a court to be illegal, invalid or unenforceable, the legality, validity and enforceability of the other terms of this Agreement will not be affected or impaired thereby, and the rights and obligations of the Parties will be enforced as if the illegal, invalid or unenforceable term were revised to the minimum extent necessary to make such term legal, valid and enforceable.

[the Parties' signatures appear on the following page]

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Agreement.

OPTERRA ENERGY SERVICES, INC., a Delaware Corporation

NIPOMO COMMUNITY SERVICES DISTRICT:

By: 
Print Name: **John Gajan**
Title: **Sr. VP & General Manager**

By: _____
Print Name: _____
Title: _____

ATTACHMENT A

SCOPE OF WORK

Attachment A – Scope of Work

I. Required Documents (Needed to Proceed).

A. Nipomo Community Services District will provide the following detailed documentation:

1. Most recent three (3) years of audited financial statements.
2. Actual utility company invoices for all utilities serving the Sites, for a minimum of two (2) years, and preferably three (3) years, immediately prior to the date hereof, with, beginning with the most recently completed month.
3. Utility company demand interval recordings of 15/30 minute electrical demand for one year, where available.
4. Record drawings (AutoCAD or hard copy) for the Sites:
 - a. electrical
 - b. structural
 - c. architectural
 - d. modifications and remodels
 - e. site landscaping
5. AutoCAD or hard copy of 8 ½" x 11" or 11" x 17" floor and roof plans of all Sites, as well as information on the age, type and condition of buildings and roofs.
6. A list of key contacts at each site, including Nipomo Community Services District personnel knowledgeable of the electrical, HVAC, lighting and controls systems.

II. Scope of Work.

An Assessment will be performed as described below:

A. Perform detailed review of documents delivered above.

B. Perform an inspection survey to:

1. Identify potential ECMs.
2. Identify the potential locations and type of application for solar PV and other ECM installations.
3. Interview the facility manager, chief engineer, or others as needed.
4. Identify comfort or system-function problems which may impact the performance of the recommended measures.
5. Obtain the hours of operation for building systems and equipment, and expected occupancy and use.
6. Survey major energy using equipment, and evaluate for performance improvement or replacement.

C. To the extent deemed necessary by agreement of Nipomo Community Services District and OpTerra Energy Services, prepare preliminary engineering for ECMs at Sites, to include:

1. A written description including:
 - a. the existing conditions
 - b. the changes to be made
2. A general scope of the construction work required for installation of work.
3. Preliminary selection of major equipment.

- D. Calculate energy use and cost for viable ECMs:
 - 1. For each ECM, calculate annual energy savings.
 - 2. Calculation methodology will be determined by OpTerra Energy Services, and may include spreadsheet analysis or other accepted, standard engineering procedures.
 - 3. Operational and maintenance savings, if any, will be identified as a separate line item.
- E. Prepare a proposed "Project Cost" and a list of "Services to Be Provided," in anticipation of OpTerra Energy Services and Nipomo Community Services District entering into an Energy Services Contract to design, construct, install, and monitor the proposed ECMs. The proposed Project Cost is conditioned on prompt execution of the Energy Services Contract and the condition that hazardous substance or abnormal subsurface/soil condition issues are not present.
- F. Provide to Nipomo Community Services District the financial analysis and the draft Energy Services Contract.

III. Technologies to be Considered:

- A. The technologies listed below will be considered during the performance of assessments:
 - 1. Solar PV
 - 2. HVAC upgrades/replacements
 - 3. Lighting retrofits
 - 4. Pump upgrades
 - 5. Water meter replacement, including advanced metering technology
 - 6. Energy storage

ATTACHMENT B

NIPOMO COMMUNITY SERVICES DISTRICT SITE INVENTORY

PART I: SITES INCLUDED IN ASSESSMENT

Site Name

Facility Name	Address
Southland Wastewater Shop	509 Southland
Office and Board Room	148 S Wilson
Southland Wastewater Facility	515/519 Southland
Sundale Well	1604 Camino Caballo

PART II: SITES NOT INCLUDED IN ASSESSMENT

Any Sites not included above

PROGRAM DEVELOPMENT AGREEMENT

This PROGRAM DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this 25th day of October 2017 between OpTerra Energy Services, Inc., a Delaware corporation ("OpTerra Energy Services"), having its principal offices at 500 12th Street, Suite 300, Oakland, CA 94607, and Nipomo Community Services District, located at 148 South Wilson Street, Nipomo, CA 93444 ("Nipomo Community Services District" and together with OpTerra Energy Services the "Parties" and each of Nipomo Community Services District and OpTerra Energy Services a "Party".)

WHEREAS, OpTerra Energy Services is an energy services and solutions company with the technical and management capabilities and experience to perform an integrated energy assessment (an "Assessment") and to identify supply-side and/or demand-side energy conservation measures ("ECMs");

WHEREAS, Nipomo Community Services District desires to enter into an agreement to have OpTerra Energy Services perform an Assessment in accordance with the scope of work set forth in Attachment A (the "Scope of Work") for the sites listed on Part I of Attachment B (the "Sites"), and to identify energy improvements and operational changes which are recommended to be installed or implemented at the Included Facilities; and

WHEREAS, the primary purpose of the Assessment is to provide an engineering and economic basis for the implementation of ECMs, which, if the Assessment shows adequate bases for the ECMs, the Parties may negotiate and execute a contract providing for, among other things, engineering, procurement, installation, construction, and training services for the identified ECMs (an "Energy Services Contract");

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. ASSESSMENT

OpTerra Energy Services agrees to complete the Assessment within one hundred and twenty (120) calendar days after the date on which OpTerra Energy Services receives the information listed in Part I of Attachment A (the "Required Information"). Nipomo Community Services District agrees to deliver the Required Information to OpTerra Energy Services no later than thirty (30) calendar days after the date hereof.

Nipomo Community Services District agrees to assist OpTerra Energy Services in performing the Assessment by (i) providing OpTerra Energy Services with access to key decision makers and stakeholders of the Nipomo Community Services District, (ii) providing OpTerra Energy Services, its employees and agents, such access to the Sites and other relevant facilities of Nipomo Community Services District as OpTerra Energy Services deems necessary, and (iii) providing, or causing Nipomo Community Services District's energy suppliers to provide, complete and accurate data concerning energy usage and costs related to the Sites and other relevant facilities. OpTerra Energy Services will be entitled to rely upon the accuracy and completeness of all information provided to OpTerra Energy Services by Nipomo Community Services District and Nipomo Community Services District's energy suppliers. OpTerra Energy Services will promptly provide written notice to Nipomo Community Services District if OpTerra Energy Services determines there is any incorrect data included in the information provided by Nipomo Community Services District or Nipomo Community Services District's energy suppliers, but OpTerra Energy Services will have no obligation to correct or confirm any such information unless otherwise specified in the Scope of Work. Any change(s) in the Scope of Work will be set forth in a writing executed by the Parties.

OpTerra Energy Services will determine, as part of the Assessment, whether the anticipated cost to the Nipomo Community Services District for the ECMs will be less than the anticipated marginal cost to the Nipomo Community Services District of the thermal, electrical, or other energy that would have been consumed by the Nipomo Community Services District in the absence of those purchases, as described in California Government Code sections 4217.10-4217.18 ("Paid-From-Savings Project").

2. COMPENSATION TO OPTERRA ENERGY SERVICES

Nipomo Community Services District will compensate OpTerra Energy Services for its performance of the Assessments by payment to OpTerra Energy Services of a fee (the "Assessment Fee") in the amount of Twenty-Nine

Thousand Eight Hundred Fifty-Three Dollars (\$29,853). If OpTerra Energy Services determines that the projected monetary savings from implementation of the ECMs identified during the Assessment cannot result in a Paid-From-Savings Project that complies with California Government Code Sections 4217.10 through 4217.18, the Assessment Fee will not apply and the Nipomo Community Services District will have no obligation to pay any portion of the Assessment Fee to OpTerra Energy Services

The Assessment Fee will be due and payable sixty (60) calendar days after completion of the Assessment; *provided* that if on such sixtieth (60th) calendar day OpTerra Energy Services and Nipomo Community Services District are negotiating an Energy Services Contract in good faith, the Assessment Fee will be due ninety (90) calendar days after completion of the Assessment; *provided further*, that if OpTerra Energy Services and Nipomo Community Services District execute an Energy Services Contract within one hundred twenty (120) calendar days after completion of the Assessment, the Assessment Fee shall be incorporated into the total contract amount payable under such Energy Services Contract.

Each of Nipomo Community Services District and OpTerra Energy Services reserves the right to terminate this Agreement at any time during the course of the Assessment, by delivery of written notice to the other. If this Agreement is terminated by Nipomo Community Services District, a fee will be payable by Nipomo Community Services District to OpTerra Energy Services within thirty (30) calendar days of termination, in an amount equal to the greater of (i) OpTerra Energy Services' estimate of its fees, costs, expenses, disbursements and overhead incurred through the date of termination, or (ii) a pro-rated fee based on OpTerra Energy Services' estimate of the percentage of completion of the Assessment. If this Agreement is terminated by OpTerra Energy Services, Nipomo Community Services District shall have no obligation to pay any portion of the Assessment Fee to OpTerra Energy Services.

Additionally, if OpTerra Energy Services determines that, over a maximum term of nineteen (19) years after implementation of the ECMs identified during the Assessment, the average annual savings generated from the implementation of those ECMs will be less than Thirty-Five Thousand Dollars (\$35,000) using an electricity escalation rate of four-and-a-half percent (4.5%) per annum, then this Agreement will be terminated by OpTerra Energy Services and Nipomo Community Services District shall have no obligation to pay any portion of the Assessment Fee to OpTerra Energy Services.

3. INSURANCE

OpTerra Energy Services will maintain, or cause to be maintained, for the duration of this Agreement, the insurance coverage outlined in (A) through (F) below, and all such other insurance as required by applicable law. Evidence of coverage will be provided to Nipomo Community Services District via a certificate of insurance.

- A. Workers' Compensation/Employers Liability for states in which OpTerra Energy Services is not a qualified self-insured. Limits as follows:
 - * Workers' Compensation: Statutory
 - * Employers Liability: Bodily Injury by accident \$1,000,000 each accident
Bodily Injury by disease \$1,000,000 each employee
Bodily Injury by disease \$1,000,000 policy limit

 - B. Commercial General Liability insurance with limits of:
 - * \$1,000,000 each occurrence for Bodily Injury and Property Damage
 - * \$1,000,000 General Aggregate - other than Products/Completed Operations
 - * \$1,000,000 Products/Completed Operations Aggregate
 - * \$1,000,000 Personal & Advertising Injury
 - * \$ 100,000 Damage to premises rented to OpTerra Energy Services
- Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13), without endorsements that limit the policy terms with respect to: (1) provisions for severability of interest or (2) explosion, collapse, underground hazard.
- C. Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

 - D. Professional Liability insurance with limits of:
 - * \$1,000,000 per occurrence
 - * \$1,000,000 aggregate

Coverage to be written on a claims-made form.

E. Umbrella / Excess Liability insurance. Limits as follows:

- * \$1,000,000 each occurrence
- * \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

F. Policy Endorsements.

The Nipomo Community Services District, its officers, employees, and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured will not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein will not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured will not be required to contribute anything toward any loss or expense covered by the insurance provided by this provision.

G. Subrogation

The insurance provided by OpTerra Energy Services shall be primary to any coverage available to the Nipomo Community Services District with respect to any activity conducted pursuant to this Agreement. OpTerra Energy Services hereby grants to the Nipomo Community Services District, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Party with respect to the services addressed herein, a waiver of any right to subrogation which any such insurer of OpTerra Energy Services may acquire against the Nipomo Community Services District by virtue of the payment of any loss under such insurance.

4. INDEPENDENT CONTRACTOR

OpTerra Energy Services, and the agents and employees of OpTerra Energy Services, its subcontractors and/or consultants, are acting in an independent capacity in the performance of this Agreement, and not as public officials, officers, employees, consultants, or agents of the Nipomo Community Services District. This Agreement may not be construed to represent the creation of an employer/employee or principal/agent relationship. OpTerra Energy Services will act in an independent capacity and retain sole discretion in the manner and means of carrying out its activities under this Agreement. OpTerra Energy Services is free to work for other entities while under contract with Nipomo Community Services District.

5. ENERGY SERVICES CONTRACT

As it is the intent of Nipomo Community Services District and OpTerra Energy Services to pursue cost effective energy retrofits and ECMs at the Sites pursuant to an Energy Services Contract, both Parties agree to enter into good faith negotiations of an Energy Services Contract immediately following completion of the Assessment, if the Assessment concludes that the ECMs will result in a Paid-From-Savings Project.

6. WORK PRODUCT

Nipomo Community Services District will not, by virtue of this Agreement, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Assessment. All data, proposals, plans, specifications, flow sheets, drawings, and other work product prepared or produced by OpTerra Energy Services hereunder ("Work Product") and furnished directly or indirectly, in writing or otherwise, to Nipomo Community Services District under this Agreement will remain OpTerra Energy Services' property and will be used only in connection with work performed by OpTerra Energy Services. OpTerra Energy Services will be deemed the author and owner of such Work Product and will retain all common law, statutory and other reserved rights, including copyrights. The Work Product may not be used by Nipomo Community Services District as a basis for facility construction or implementation of ECMs developed herein by any entity other than OpTerra Energy Services, without the prior written agreement of OpTerra Energy Services. Any unauthorized use of the Work Product will be at Nipomo Community Services District's sole risk and without liability to OpTerra Energy Services, and Nipomo Community

Services District agrees to waive and release, and indemnify and hold harmless, OpTerra Energy Services, its subcontractors, and their directors, employees, subcontractors, and agents from any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature (collectively, "Losses") associated with or resulting from such use.

7. LIMITATION OF LIABILITY

The liability of a defaulting Party, in connection with this Agreement or any analysis, report, or other deliverables provided hereunder, will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense. Additionally, each Party waives any claims for negligence against the other Party to the greatest extent permitted by law. In no event will either Party be liable to the other for any Losses which collectively exceed the amount of the Assessment Fee, regardless of whether such amounts arise out of breach of contract, guarantee or warranty, tort, product liability, contribution, strict liability or any other legal theory. This Section 7 shall not apply to or otherwise limit third party claims subject to the provisions of Section 8 herein.

8. INDEMNITY

To the maximum extent permitted by law, OpTerra Energy Services hereby agrees, at its sole cost and expense, to defend with competent defense counsel reasonably approved by the Nipomo Community Services District, protect, indemnify, and hold harmless the Nipomo Community Services District, its elected and appointed officials, officers, employees, volunteers, attorneys, agents (including those Nipomo Community Services District agents serving as independent contractors in the role of Nipomo Community Services District representatives), successors, and assigns (collectively "Indemnitees") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, charges, obligations, damages, causes of action, proceedings, suits, losses, stop payment notices, judgments, fines, liens, penalties, liabilities, costs and expenses of every kind and nature whatsoever arising out of, incident to, related to, in connection with or resulting from any act, failure to act, error or omission of OpTerra Energy Services or any of its officers, agents, servants, employees, Subcontractors, material suppliers or any of their officers, agents, servants or employees, in the performance of this Agreement; including, without limitation, the payment of attorneys' fees, experts' fees, and other related costs and expenses (individually, a "Claim," or collectively, "Claims"), except to the extent any such Claim is due to the sole negligence or willful misconduct of the indemnified party. OpTerra Energy Services shall promptly pay and satisfy any judgment, award, or decree that may be rendered against any of the Indemnitees as to any such Claim. OpTerra Energy Services' obligation to indemnify shall not be restricted to insurance proceeds, if any, received by OpTerra Energy Services or Indemnitees.

Nothing in this Section 8 shall be construed to encompass Indemnitees' sole or active negligence or willful misconduct to the extent that this Agreement is subject to California Civil Code section 2782.

9. NONDISCRIMINATION; COMPLIANCE WITH LAWS

OpTerra Energy Services will comply with all applicable laws, rules, regulations and policies, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

The Parties acknowledge and agree that OpTerra Energy Services is not a municipal advisor and cannot give advice to Nipomo Community Services District with respect to municipal securities or municipal financial products absent Nipomo Community Services District being represented by, and relying upon the advice of, an independent registered municipal advisor. OpTerra Energy Services is not subject to a fiduciary duty with regard to Nipomo Community Services District or the provision of information to Nipomo Community Services District. Nipomo Community Services District will consult with an independent registered municipal advisor about the financing option(s) appropriate for Nipomo Community Services District's situation.

OpTerra Energy Services cannot guarantee that Nipomo Community Services District will receive funding from any energy efficiency rebate, incentive, and/or loan program(s) (collectively, "Incentive Funds"); OpTerra Energy Services expressly disclaims any liability for Nipomo Community Services District's failure to receive any portion of the Incentive Funds, and Nipomo Community Services District acknowledges and agrees that OpTerra Energy Services will have no liability for any failure to receive all or any portion of the Incentive Funds.

10. FORCE MAJEURE

Neither Party will be considered to be in default in the performance of any material obligation under this Agreement (other than the obligation to make payments) when a failure of performance will be due to an event of Force Majeure. The term "Force Majeure" will mean any cause beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which, despite using commercially reasonable efforts, it has been unable to overcome. Neither Party will be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an event of Force Majeure will give prompt written notice of such fact to the other Party.

11. INTEGRATION; AMENDMENT

This Agreement constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement may not be amended except by a writing executed by both Parties. No oral amendment shall be enforceable, even if supported by new consideration. Delivery of an executed counterpart of a signature page of this Agreement by email or fax shall be effective as delivery of a manually executed counterpart of this Agreement.

12. DISPUTE RESOLUTION; APPLICABLE LAW; VENUE; SEVERABILITY

If a dispute arises out of or relates to this Agreement, or the transaction contemplated by this Agreement (a "Dispute"), either Party may initiate the dispute resolution process set forth in this Section 12 by giving notice to the other Party. Senior executives for the Parties will meet, within thirty (30) calendar days after notice of the Dispute, in an attempt to resolve the Dispute and any other identified disputes or any unresolved issues that may lead to a dispute. If the senior executives are unable to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation.

If the Dispute is not settled by senior management conference, the Parties will endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of the American Arbitration Association. Mediation is a condition precedent to the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the American Arbitration Association, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator.

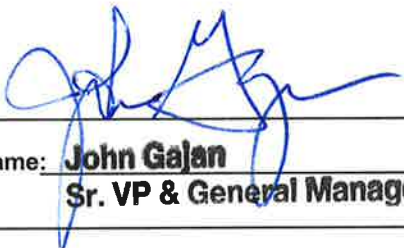
If any term of this Agreement is declared by a court to be illegal, invalid or unenforceable, the legality, validity and enforceability of the other terms of this Agreement will not be affected or impaired thereby, and the rights and obligations of the Parties will be enforced as if the illegal, invalid or unenforceable term were revised to the minimum extent necessary to make such term legal, valid and enforceable.

[the Parties' signatures appear on the following page]

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Agreement.

OPTERRA ENERGY SERVICES, INC., a Delaware Corporation

NIPOMO COMMUNITY SERVICES DISTRICT:

By:  _____
Print Name: **John Gajan** _____
Title: **Sr. VP & General Manager** _____

By: _____
Print Name: _____
Title: _____

ATTACHMENT A

SCOPE OF WORK

Attachment A – Scope of Work

I. Required Documents (Needed to Proceed).

A. Nipomo Community Services District will provide the following detailed documentation:

1. Most recent three (3) years of audited financial statements.
2. Actual utility company invoices for all utilities serving the Sites, for a minimum of two (2) years, and preferably three (3) years, immediately prior to the date hereof, with, beginning with the most recently completed month.
3. Utility company demand interval recordings of 15/30 minute electrical demand for one year, where available.
4. Record drawings (AutoCAD or hard copy) for the Sites:
 - a. electrical
 - b. structural
 - c. architectural
 - d. modifications and remodels
 - e. site landscaping
5. AutoCAD or hard copy of 8 ½" x 11" or 11" x 17" floor and roof plans of all Sites, as well as information on the age, type and condition of buildings and roofs.
6. A list of key contacts at each site, including Nipomo Community Services District personnel knowledgeable of the electrical, HVAC, lighting and controls systems.

II. Scope of Work.

An Assessment will be performed as described below:

A. Perform detailed review of documents delivered above.

B. Perform an inspection survey to:

1. Identify potential ECMs.
2. Identify the potential locations and type of application for solar PV and other ECM installations.
3. Interview the facility manager, chief engineer, or others as needed.
4. Identify comfort or system-function problems which may impact the performance of the recommended measures.
5. Obtain the hours of operation for building systems and equipment, and expected occupancy and use.
6. Survey major energy using equipment, and evaluate for performance improvement or replacement.

C. To the extent deemed necessary by agreement of Nipomo Community Services District and OpTerra Energy Services, prepare preliminary engineering for ECMs at Sites, to include:

1. A written description including:
 - a. the existing conditions
 - b. the changes to be made
2. A general scope of the construction work required for installation of work.
3. Preliminary selection of major equipment.

D. Calculate energy use and cost for viable ECMs:

1. For each ECM, calculate annual energy savings.
2. Calculation methodology will be determined by OpTerra Energy Services, and may include spreadsheet analysis or other accepted, standard engineering procedures.
3. Operational and maintenance savings, if any, will be identified as a separate line item.

E. Prepare a proposed "Project Cost" and a list of "Services to Be Provided," in anticipation of OpTerra Energy Services and Nipomo Community Services District entering into an Energy Services Contract to design, construct, install, and monitor the proposed ECMs. The proposed Project Cost is conditioned on prompt execution of the Energy Services Contract and the condition that hazardous substance or abnormal subsurface/soil condition issues are not present.

F. Provide to Nipomo Community Services District the financial analysis and the draft Energy Services Contract.

III. Technologies to be Considered:

A. The technologies listed below will be considered during the performance of assessments:

1. Solar PV
2. HVAC upgrades/replacements
3. Lighting retrofits
4. Pump upgrades
5. Water meter replacement, including advanced metering technology
6. Energy storage

ATTACHMENT B

NIPOMO COMMUNITY SERVICES DISTRICT SITE INVENTORY

PART I: SITES INCLUDED IN ASSESSMENT

Site Name

Facility Name	Address
Southland Wastewater Shop	509 Southland
Office and Board Room	148 S Wilson
Southland Wastewater Facility	515/519 Southland
Sundale Well	1604 Camino Caballo

PART II: SITES NOT INCLUDED IN ASSESSMENT

Any Sites not included above

October 25, 2017

ITEM D-4

ATTACHMENT C

THE *Newspaper of the Central Coast*
TRIBUNE

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In The Superior Court of The State of California
In and for the County of San Luis Obispo

AD #3327806
NIPOMO CSD

STATE OF CALIFORNIA

ss.

County of San Luis Obispo

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen and not interested in the above entitled matter; I am now, and at all times embraced in the publication herein mentioned was, the principal clerk of the printers and publishers of THE TRIBUNE, a newspaper of general Circulation, printed and published daily at the City of San Luis Obispo in the above named county and state; that notice at which the annexed clippings is a true copy, was published in the above-named newspaper and not in any supplement thereof – on the following dates to wit; OCTOBER 11, 2017 that said newspaper was duly and regularly ascertained and established a newspaper of general circulation by Decree entered in the Superior Court of San Luis Obispo County, State of California, on June 9, 1952, Case #19139 under the Government Code of the State of California.

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.



(Signature of Principal Clerk)

DATE: OCTOBER 11, 2017
AD COST: \$125.84

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN the Board of Directors ("Board") of the Nipomo Community Services District ("District") will hold a public hearing on October 25, 2017, at 9:00 a.m. or as soon thereafter as is possible, in the Jon E. Seitz Board Room, located at 148 South Wilson Street, Nipomo, California.

Said public hearing is to consider approving a budget adjustment and a Program Development Agreement ("Agreement") with Oplerra Energy Services, Inc., to perform an integrated energy assessment and to identify supply-side and/or demand-side energy conservation measures to be installed or implemented at District facilities. The sole-sourcing of the Agreement is authorized by California Government Code Section 4217.10, et seq., and the District Board will adopt a resolution containing certain findings required by said Government Code Sections.

Please note that if you challenge the Board's action with respect to this matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the District, either at or prior to the public hearing.

DATE: October 11, 2017

NIPOMO COMMUNITY SERVICES
DISTRICT

MARIO IGLESIAS, GENERAL MANAGER