

TO: BOARD OF DIRECTORS

FROM: WHITNEY MCDONALD
GENERAL COUNSEL

REVIEWED BY: MARIO IGLESIAS
GENERAL MANAGER

DATE: NOVEMBER 9, 2018

AGENDA ITEM

E-2

NOVEMBER 14, 2018

**ADOPT ORDINANCE ADDING CHAPTER 2.43 TO THE
NIPOMO COMMUNITY SERVICES DISTRICT CODE
REGARDING THE CALIFORNIA UNIFORM PUBLIC CONSTRUCTION
COST ACCOUNTING ACT AND ADOPT RESOLUTION ELECTING TO
BECOME SUBJECT TO THE CALIFORNIA UNIFORM PUBLIC
CONSTRUCTION COST ACCOUNTING ACT**

ITEM

Adopt an ordinance adding Chapter 2.43 to the Nipomo Community Services District Code regarding the California Uniform Public Construction Cost Accounting Act ("Act")

RECOMMEND:

1. SECOND READING: READ FULL TITLE, WAIVE FURTHER READING OF THE ORDINANCE, ADOPT ORDINANCE, AND DIRECT DISTRICT COUNSEL AND STAFF TO PREPARE AND PUBLISH SUMMARY OF ORDINANCE PER GOVERNMENT CODE SECTION 25124.
2. ADOPT RESOLUTION ELECTING TO BECOME SUBJECT TO THE CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT PROCEDURES.

BACKGROUND

The passage of Assembly Bill No. 1666, Chapter 1054, Statutes of 1983, added Chapter 2, commencing with Section 22000, to Part 3 of Division 2 of the Public Contract Code, providing a uniform cost accounting standard for construction work performed or contracted by local public agencies. A Commission to oversee and enforce provisions was established under the Act and developed the uniform public construction cost accounting procedures for implementation by local public agencies in the performance of or in the contracting for construction of public projects. In general, the Act is intended to promote uniformity of the cost accounting standards and bidding procedures on construction work performed or contracted by public entities in California.

The Act applies to any "public agency whose governing board has by resolution elected to become subject to the uniform construction cost accounting procedures set forth in Article 2 (commencing with Section 22010) and which has notified the Controller of that election," as set forth in Public Contract Code section 22030. Nipomo Community Services District ("District") is a California special district formed under the Community Services District Law (Govt. Code §61100 et seq.) and qualifies as a "public agency" under the Act. Today, there are over 300 special districts alone, not counting other public agencies, who are participating member agencies.

As a participating agency, the District benefits by raising the threshold for its informal and formal bidding processes. Small projects and projects completed by District employees benefit by reducing the cost incurred for developing and managing a formal bidding process. Opting to operate under the Act allows the District to negotiate contracts for construction work under \$45,000, procure a contractor using a purchase order, or undertake the work by the District's work force account. The informal bid process for projects with a value between \$45,000 and \$175,000 can be awarded at staff level when the required District developed bidder's list along with trade journals and exchanges are included in soliciting bids, and thereby meet the competitive bidding process without further solicitation. Beginning January 1, 2019, both thresholds, the \$45,000 and \$175,000 limits will be raised to \$60,000 and \$200,000 respectively.

The overall benefits to participating member agencies who choose to implement the Act can be measured in time and cost savings to the agency. The Act provides more leeway in execution of public works projects, speeds up the awards process, and improves timeliness of project completion. Additionally, the Act reduces red tape and cumbersome paperwork relative to advertising and filing of reports thereby simplifying general administration.

At your October 24, 2018 regular meeting, your Board introduced the attached ordinance by reading of its title, waived further reading of the ordinance in full, and directed District Counsel and staff to prepare and publish a summary of the ordinance in accordance with Government Code sections 61010(a) and 25124. The ordinance is now presented to your Board for adoption. If adopted, District Counsel will prepare an additional summary of the ordinance as required by Government Code section 25124, and District staff will publish it pursuant to the Government Code. The full text of the ordinance has been posted on the District's website and made available to the public at the District's office, also in accordance with Government Code section 25124.

FINANCIAL IMPACT

It is anticipated costs for District projects subject to the Act will be reduced as a result of staff time savings as well as the cost savings from those professional service providers engaged by the District to prepare, review, and monitor projects for bidding.

STRATEGIC PLAN

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

Goal 6. GOVERNANCE AND ADMINISTRATION. Conduct District activities in an efficient, equitable and cost-effective manner.

RECOMMENDATION

It is recommended that your Board read the full title, waive further reading of the ordinance, and direct District Counsel and staff to prepare and publish a summary of the ordinance, utilizing the following language: "I move that we ADOPT AN ORDINANCE OF BOARD OF THE DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT ADDING CHAPTER 2.43 TO THE NIPOMO COMMUNITY SERVICES DISTRICT CODE REGARDING THE CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT, waive further reading of the ordinance, and direct District Counsel and staff to prepare and publish a summary of the ordinance in accordance with Government Code section 25124."

It is further recommended that your Board adopt the Resolution electing to become subject to the CUPCCAA attached hereto.

ATTACHMENTS

- A. Ordinance 2018-XXX Adding Chapter 2.43
- B. Resolution 2018-XXXX Electing to become subject to CUPCCAA

NOVEMBER 14, 2018

ITEM E-2

ATTACHMENT A

ORDINANCE NO. 2018-XXXX

AN ORDINANCE OF BOARD OF THE DIRECTORS OF
THE NIPOMO COMMUNITY SERVICES DISTRICT
ADDING CHAPTER 2.43 TO THE
NIPOMO COMMUNITY SERVICES DISTRICT CODE
REGARDING THE CALIFORNIA UNIFORM PUBLIC
CONSTRUCTION COST ACCOUNTING ACT

The Board of Directors of the Nipomo Community Services District ordains as follows:

SECTION 1. Chapter 2.43 is hereby added to the Nipomo Community Services District Code and reads as follows:

Chapter 2.43 – CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT

2.43.01 - Informal Bid Procedures.

Public projects, as defined by the California Uniform Public Construction Cost Accounting Act, Public Contract Code Section 22000, *et seq.*, and in accordance with the limits listed in Section 22032 of the Public Contract Code, may be let to contract by informal procedures as set forth in Section 22032, *et seq.*, of the Public Contract Code.

2.43.02 - Contractors List.

The District shall develop and maintain a contractors list in compliance with the requirements of Public Contract Code Section 22034.

2.43.03 - Notice Inviting Informal Bids.

Where a public project is to be performed which is subject to the provisions of this Chapter, a notice inviting informal bids shall be circulated using one or both of the following alternatives:

A. Notices inviting informal bids may be mailed, faxed, or emailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with District Code Section 2.43.02.

B. Notices inviting informal bids may be mailed to all construction trade journals as specified by the California Uniform Public Construction Cost Accounting Commission in accordance with Section 22036 of the Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the General Manager, provided, however, if the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.

2.43.04 - Award of Contracts.

The General Manager is authorized to award informal contracts pursuant to this Chapter.

SECTION 2. 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

ORDINANCE NO. 2018-XXXX

AN ORDINANCE OF BOARD OF THE DIRECTORS OF
THE NIPOMO COMMUNITY SERVICES DISTRICT
ADDING CHAPTER 2.43 TO THE
NIPOMO COMMUNITY SERVICES DISTRICT CODE
REGARDING THE CALIFORNIA UNIFORM PUBLIC
CONSTRUCTION COST ACCOUNTING ACT

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 3. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage. Before the expiration of the fifteenth (15th) 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 October 24, 2018, and PASSED and ADOPTED by the Board of Directors of the Nipomo Community Services District at its regular meeting on the 14th day of November, 2018, by the following roll call vote, to wit:

AYES:
NOES:
ABSENT:
CONFLICTS:

ED EBY
President, Board of Directors

ATTEST:

APPROVED AS TO FORM AND LEGAL
EFFECT:

MARIO IGLESIAS
General Manager and
Secretary to the Board

WHITNEY G. McDONALD
District Legal Counsel

NOVEMBER 14, 2018

ITEM E-2

ATTACHMENT B

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2018-_____**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT ELECTING TO
BECOME SUBJECT TO THE CALIFORNIA UNIFORM PUBLIC
CONSTRUCTION COST ACCOUNTING ACT PROCEDURES**

WHEREAS, prior to the passage of Assembly Bill No. 1666, Chapter 1054, Statutes of 1983, which added Chapter 2, commencing with Section 22000, to Part 3 of Division 2 of the Public Contract Code, existing law did not provide a uniform cost accounting standard for construction work performed or contracted by local public agencies; and

WHEREAS, Public Contract Code section 22000 et seq., the Uniform Public Construction Cost Accounting Act ("Act"), establishes such a uniform cost accounting standard;

WHEREAS, the Commission established under the Act has developed uniform public construction cost accounting procedures for implementation by local public agencies in the performance of or in the contracting for construction of public projects; and

WHEREAS, the Act applies to any "public agency whose governing board has by resolution elected to become subject to the uniform construction cost accounting procedures set forth in Article 2 (commencing with Section 22010) and which has notified the Controller of that election," as set forth in Public Contract Code section 22030; and

WHEREAS, the Nipomo Community Services District ("District") is a California special district formed under the Community Services District Law (Govt. Code §61100 et seq.) and qualifies as a "public agency" under the Act;

WHEREAS, the District Board of Directors has determined that the procedures developed under the Act would be beneficial for the District and, therefore, supports the District's participation in the Act.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED by the Board of Directors of the Nipomo Community Services District, that:

1. The Nipomo Community Services District hereby elects under Public Contract Code section 22030 to become subject to the uniform public construction cost accounting procedures set forth in the Act and to the Commission's policies and procedures manual and cost accounting review procedures, as they may each from time to time be amended, and directs that the District General Manager notify the State Controller forthwith of this election.
2. In the event of a conflict with any other provision of law relative to bidding procedures, including any previously-adopted District purchasing policy, this Resolution and the procedures adopted herein shall prevail.

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

AYES:
NOES:
ABSENT:
CONFLICTS:

the foregoing resolution is hereby passed and adopted this ____ day of _____, 2018.

ED EBY
President of the Board

ATTEST:

APPROVED AS TO FORM:

MARIO E. IGLESIAS
General Manager and Secretary to the Board

WHITNEY G. McDONALD
District Legal Counsel

TO: BOARD OF DIRECTORS
REVIEWED: MARIO IGLESIAS
GENERAL MANAGER
FROM: PETER V. SEVCIK, P.E. P.V.S.
DIRECTOR OF
ENGINEERING & OPERATIONS
DATE: NOVEMBER 7, 2018

**AGENDA ITEM
E-3
NOVEMBER 14, 2018**

**AUTHORIZE TASK ORDER FOR
SUPPLEMENTAL WATER PROJECT JOSHUA ROAD PUMP STATION
PUMP #4 IMPROVEMENTS INSTRUMENTATION AND SUPERVISORY
CONTROL AND DATA ACQUISITION SYSTEM INTEGRATION**

ITEM

Authorize Task Order for Supplemental Water Project Joshua Road Pump Station Pump #4 Improvements Instrumentation and Supervisory Control and Data Acquisition System (SCADA) Integration with Tesco Controls, Inc. in the amount of \$49,750 [RECOMMEND BY MOTION AND ROLL CALL VOTE ADOPT RESOLUTION AUTHORIZING STAFF TO EXECUTE TASK ORDER IN THE AMOUNT OF \$49,750 WITH TESCO CONTROLS, INC.]

BACKGROUND

In December 2011, at the conclusion of a Request for Proposal (RFP) process, the Board selected Tesco Controls, Inc. (Tesco) to provide process control and instrumentation system integration services for the District's Supervisory Control and Data Acquisition (SCADA) System Upgrade Project. At the time, the District's SCADA system monitored 27 remote sites including water wells, water storage tanks, water pressure reducing stations, sanitary sewer lift stations and both of the District's wastewater treatment plants. The purpose of the project was to upgrade the District's obsolete SCADA system. Since the original SCADA project was completed, Tesco has added the upgraded Southland Wastewater Treatment Facility (WWTF) to the SCADA system as well as the Supplemental Water Project facilities including the Joshua Road Pump Station, the Blosser Road Flow Meter Station, the Santa Maria Vista Way Pressure Reducing Station and the Chloramination Facilities constructed at five of the District's Wells.

Staff requested that Tesco provide a proposal to provide instrumentation and SCADA system integration services for the District's Supplemental Water Project Joshua Road Pump Station Pump #4 Improvements. Tesco provided a proposal with a not to exceed amount of \$49,750.

Tesco furnished all of the instrumentation and control panels for the original Joshua Road Pump Station and is currently supporting the District's SCADA system. In order to maintain the integrity of the District's control panels, instrumentation and SCADA System, minimize the potential for multiple system integrators simultaneously working on the District's SCADA System, and minimize the coordination risk/expense to the District, staff recommends that the Supplemental Water Project Joshua Road Pump Station Pump #4 Improvements instrumentation and SCADA integration be completed by Tesco. In accordance with the District's Purchasing Policy, Tesco is uniquely knowledgeable and qualified because it has previously provided similar/related services to the District.

**ITEM E-3, SWP JRPS PUMP #4 INSTRUMENTATION AND
SCADA INTEGRATION
NOVEMBER 14, 2018**

PAGE 2

In addition, the District is currently out to bid for Supplemental Water Project Joshua Road Pump Station Pump #4 Improvements. Proceeding with the instrumentation and integration work now will facilitate start-up of the Pump #4 Improvements as the lead time on the instrumentation and SCADA integration work is expected to be longer than the lead time for the pump. Bids for the Pump #4 Improvements are due on November 29, 2018 and the construction contract is tentatively scheduled to be awarded on December 12, 2018.

FISCAL IMPACT

The approved FY 18-19 budget includes funding in the amount of \$300,000 for the Supplemental Water Project Joshua Road Pump Station Pump #4 Improvements.

STRATEGIC PLAN

Goal 1 – WATER SUPPLY – Actively plan to provide reliable water supply of sufficient quality and quantity to serve both current customers and those in the long-term future.

Goal 2. FACILITIES THAT ARE RELIABLE, ENVIRONMENTALLY SENSIBLE AND EFFICIENT. Plan, provide for and maintain District facilities and other physical assets to achieve reliable, environmentally sensible, and efficient District operations.

RECOMMENDATION

Staff recommends that the Board, by motion and roll call vote, adopt Resolution 2018-XXXX SWP JRPS Pump #4 Instrumentation and SCADA Integration, authorizing staff to execute a Task Order for Supplemental Water Project Joshua Road Pump Station Pump #4 Improvements instrumentation and SCADA integration with Tesco Controls, Inc. in the amount of \$49,750.

ATTACHMENTS

- A. Resolution 2018-XXXX SWP JRPS Pump #4 Instrumentation and SCADA Integration

NOVEMBER 14, 2018

ITEM E-3

ATTACHMENT A

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2018-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT
AUTHORIZING A TASK ORDER FOR SUPPLEMENTAL WATER PROJECT JOSHUA ROAD PUMP STATION PUMP
#4 IMPROVEMENTS INSTRUMENTATION AND SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEM
INTEGRATION WITH TESCO CONTROLS INC.**

WHEREAS, Tesco Controls, Inc. was previously selected by the District to provide instrumentation and SCADA integration services for the SCADA System Upgrade Project and completed the implementation of the SCADA System Upgrade Project; and

WHEREAS, the District selected Tesco Controls, Inc. to provide instrumentation and SCADA integration services for the Southland WWTF Phase 1 Improvement Project to maintain the integrity of the District's SCADA system; and

WHEREAS, the District selected Tesco Controls, Inc. to provide instrumentation and SCADA integration services for Supplemental Water Project to maintain the integrity of the District's SCADA system; and

WHEREAS, the District is proceeding with the installation of Pump #4 at the Supplemental Water Project Joshua Road Pump Station and requires instrumentation and SCADA integration services to incorporate the project into the District's SCADA system; and

WHEREAS, to maintain the integrity of the District's SCADA System and minimize the coordination risk/expense to the District, staff recommends that the instrumentation and SCADA integration services be completed by Tesco Controls, Inc.; and

WHEREAS, District Purchasing Policy Resolution 2010-1201 provides for the procurement of professional services through non-competitive negotiations in limited situations; and

WHEREAS, Tesco Controls, Inc. is qualified pursuant to Section 8.4.30 of the District's Purchasing Policy, the cost of the services is reasonable, and Tesco Controls, Inc. is uniquely knowledgeable and qualified because similar/related services have been previously provided to the District.

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

- 1) The above recitals are true and correct and constitute findings for the exclusive use of the Tesco Controls, Inc. to provide instrumentation and SCADA integration for the Supplemental Water Project Joshua Road Pump Station Pump #4 Improvements.
- 2) The Board of Directors does hereby direct District staff to execute a Task Order for Supplemental Water Project Joshua Road Pump Station Pump #4 Improvements instrumentation and SCADA integration services with Tesco Controls, Inc. in the amount of \$49,750.

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

AYES:
NOES:
ABSENT:
CONFLICTS:

The foregoing resolution is hereby adopted this 14th day of November 2018.

ED EBY
President, Board of Directors

ATTEST:

APPROVED AS TO FORM AND LEGAL EFFECT:

MARIO IGLESIAS
General Manager and Secretary to the Board

WHITNEY G. MCDONALD
District Legal Counsel

TO: BOARD OF DIRECTORS

FROM: MARIO IGLESIAS
GENERAL MANAGER



DATE: NOVEMBER 8, 2018

AGENDA ITEM
E-4
NOVEMBER 14, 2018

**ADOPT POLICY GOVERNING THE USE OF FRANCHISE FEES
GENERATED FROM THE SOLID WASTE FRANCHISE AGREEMENT
BETWEEN THE NIPOMO COMMUNITY SERVICES DISTRICT
AND SOUTH COUNTY SANITARY SERVICES**

ITEM

Adopt policy governing the use of franchise fees generated from the solid waste franchise agreement between Nipomo Community Services District and Waste Connections and South County Sanitary Services. [RECOMMEND BY MOTION AND ROLL CALL VOTE ADOPT RESOLUTION THAT ADOPTS THE POLICY GOVERNING THE USE OF FRANCHISE FEES]

BACKGROUND

At your October 24, 2018 Board Meeting, staff recommended your Honorable Board consider adopting a policy that would clarify the Board's position with regards to manage Solid Waste Fund #300 [Attachment A]. The policy was presented for consideration and your Board recommended several edits. Your Board directed staff to complete the recommended edits and to bring the policy back for Board consideration once edits were completed.

The policy clarifies how funds generated by solid waste franchise fees ("Fees") collected by the District under Franchise Fee Agreement ("Agreement") with Waste Connections and South County Sanitary Services could be spent, what level of fund balance is appropriate, and set a minimum and maximum percentage level of Fee retention as permitted in the Agreement.

All recommended edits to the policy are completed and the document is ready for your Board's further consideration.

FINANCIAL IMPACT

Franchise fees generated from the agreement cover District administrative cost associated with meeting franchise agreement requirements.

STRATEGIC PLAN

Goal 8.3 SOLID WASTE. Seek to maximize solid waste services for community and build understanding of services like hazardous waste, recycling, etc. and District's role.

RECOMMENDATION

It is recommended that your Honorable Board consider the draft policy and by motion and roll call vote, adopt the resolution that adopts the policy governing the use of franchise fees generated from the Nipomo Community Services District's solid waste collections franchise agreement.

ATTACHMENTS

- A. October 24, 2018 NCSD Staff Report; E-2) Adopt Policy Governing the Use...
- B. Resolution Adopting a Policy to Govern the Use of Franchise Fees

NOVEMBER 14, 2018

ITEM E-4

ATTACHMENT A

TO: BOARD OF DIRECTORS

FROM: MARIO IGLESIAS
GENERAL MANAGER

DATE: OCTOBER 18, 2018

AGENDA ITEM

E-2

OCTOBER 24, 2018

ADOPT POLICY GOVERNING THE USE OF FRANCHISE FEES GENERATED FROM THE SOLID WASTE FRANCHISE AGREEMENT BETWEEN THE NIPOMO COMMUNITY SERVICES DISTRICT AND INTEGRATED WASTE MANAGEMENT

ITEM

Adopt policy governing the use of franchise fees generated from the solid waste franchise agreement between Nipomo Community Services District and Integrated Waste Management. [RECOMMEND ADOPT POLICY]

BACKGROUND

At your July 11, 2018 Board Meeting, staff recommended your Honorable Board consider adopting a policy that would clarify the Board's position with regards to manage Solid Waste Fund #300 [Attachment A]. In particular, the policy should clarify how funds generated by solid waste franchise fees ("Fees") collected by the District under Franchise Fee Agreement ("Agreement") with South County Sanitary Services (SCSS) could be spent, what level of fund balance is appropriate, and set a minimum and maximum percentage level of Fee retention as permitted in the Agreement.

Under the Agreement, the District is required to administer annual lien process for the collection of delinquent solid waste payments and administer Proposition 218 Rate proceedings that are required to adopt solid waste rate increases. The District charges the solid waste fund 15% against annual franchise income for administering the solid waste franchise. Fees, at a minimum must cover these costs if the District is to maintain the Agreement.

Your Board provided staff with guidance at your July 11, 2018 Board Meeting. The proposed policy [Attachment B] includes recommendations and addresses concerns voiced at that meeting. Specifically, the proposed policy speaks to the following:

1. Activities suited for Solid Waste Fund #300 funding
2. Sets a limit on non-budgeted expenditures
3. Establishes a cash reserve target of \$150,000 – up from \$115,000
4. Guidance on managing reserve levels in excess of the defined reserve target
5. Sets the minimum and maximum percentage of Fees generated from the Agreement

Use of Board discretion on these matters is built into the policy, allowing the Board to decide how best to execute the Agreement and Fees generated therein. The policy will help guide staff when executing administrative tasks relating to solid waste activities.

FINANCIAL IMPACT

Franchise fees generated from the agreement cover District administrative cost associated with meeting franchise agreement requirements.

STRATEGIC PLAN

Goal 8.3 SOLID WASTE. Seek to maximize solid waste services for community and build understanding of services like hazardous waste, recycling, etc. and District's role.

RECOMMENDATION

It is recommended that your Honorable Board consider the draft policy and by motion and roll call vote, adopt the policy governing the use of franchise fees generated from the Nipomo Community Services District's solid waste collections franchise agreement.

ATTACHMENTS

- A. July 11, 2018 NCSD Staff Report; E-3) Review and Discuss Solid Waste Fund #300
- B. Draft Policy Governing the Use of Franchise Fees

NOVEMBER 14, 2018

ITEM E-4

ATTACHMENT B

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2018-_____**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT ADOPTING POLICY
GOVERNING THE USE OF FRANCHISE FEES GENERATED FROM
THE NIPOMO COMMUNITY SERVICES DISTRICT'S
SOLID WASTE COLLECTION FRANCHISE AGREEMENT**

WHEREAS, the Nipomo Community Services District ("District") is formed under the Community Services District Law (Govt. Code §61100 et seq.) and is empowered to provide garbage, recycling, and greenwaste collection services; and

WHEREAS, the District entered into a Solid Waste Collection Franchise Agreement ("Agreement") with Waste Connections, Inc., a Delaware corporation, and South County Sanitary Services, Inc., a California corporation (collectively "Contractor"), whereby Contractor provides garbage, recycling, and greenwaste collection services within the District's boundaries; and

WHEREAS, pursuant to the Agreement, the District collects an annual franchise fee from Contractor; and

WHEREAS, the District Board of Directors desires to establish a policy governing the use of franchise fees collected pursuant to the Agreement.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED by the Board of Directors of the Nipomo Community Services District, does resolve as follows:

1. The facts and findings stated above are true and correct and incorporated herein.
2. The Policy Governing the Use of Franchise Fees Generated From the Nipomo Community Services District's Solid Waste Collections Franchise Agreement attached hereto as Exhibit "A" and incorporated herein by reference is hereby adopted.
3. The Board finds that this action is not subject to and is exempt from the California Environmental Quality Act, Public Resources Code section 21000, et seq., because it is not a project undertaken or authorized by the District that will have a reasonably foreseeable impact on the environment and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. (Pub. Res. Code § 21065; 14 Cal. Code Regs. § 15061(b)(3).)

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

AYES:

NOES:

ABSENT:

CONFLICTS:

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**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2018-_____**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT ADOPTING POLICY
GOVERNING THE USE OF FRANCHISE FEES GENERATED FROM
THE NIPOMO COMMUNITY SERVICES DISTRICT'S
SOLID WASTE COLLECTION FRANCHISE AGREEMENT**

the foregoing resolution is hereby passed and adopted this ____ day of _____, 2018.

ED EBY
President of the Board

ATTEST:

APPROVED AS TO FORM:

MARIO E. IGLESIAS
General Manager and Secretary to the Board

WHITNEY G. McDONALD
District Legal Counsel

Exhibit "A"

NIPOMO COMMUNITY SERVICES DISTRICT

**POLICY GOVERNING THE USE OF FRANCHISE FEES
GENERATED FROM THE NIPOMO COMMUNITY SERVICES DISTRICT'S
SOLID WASTE COLLECTIONS FRANCHISE AGREEMENT**

PURPOSE:

This Policy governs the appropriate use of revenues generated from the Franchise Fee collected by the Nipomo Community Services District (District) from the District's Solid Waste Collection Franchise Agreement (Agreement).

APPLICABILITY:

This Policy applies to all revenue generated from the District's Agreement.

DEFINITIONS:

"Agreement" means the current and active District Solid Waste Collection Franchise Agreement.

"Franchisee" means the contractor who is party to the Agreement with the District to collect, recycle, remove and properly dispose of solid waste within the District's franchise area.

"Rate Holiday" is defined as a period of time measured in a billing cycle, where all solid waste customers of the District are exempt from paying a portion of their solid waste collection fee.

"Routine Operating Conditions" are those operating conditions experienced under non-emergency operations, routine in nature as part of daily, weekly, monthly, or annually scheduled work program.

"Solid Waste" in the context of this policy refers to garbage, green-waste, and recyclable materials.

POLICY:

1. District revenue generated from the Agreement must be used in support of and for the sole purpose of activities that benefit District solid waste ratepayers by reducing, diverting, recycling, or in some manner managing solid waste within the boundaries of the District.

Examples of activities routinely budgeted are listed below. This list of activities is not exclusive. The Board of Directors maintains its discretion to determine when an activity

meets the criterion as expressed above.

- County Creek Clean-up Day
 - Olde Towne Refuse Collection
 - District-wide Street Trash Reduction Programs
 - Other Board approved Solid Waste Collection/Recycling Programs
2. The District's Board of Directors must approve non-budgeted expenditures of monies from the Solid Waste Fund #300 in amounts greater than \$5,000 for a single project, event, or activity.
 3. Establish a cash reserve target of \$150,000. The Board will review cash reserve levels of the Solid Waste Fund #300 annually along with the District's other enterprise reserve levels and direct staff to make reasonable effort to maintain the reserve level under routine operating conditions.
 4. If, during the annual review of the Solid Waste Fund #300 reserve level, it is anticipated that the reserve level balance will exceed \$300,000 or twice the reserve level set in NCSD's Cash Reserve Policy by the end of the current fiscal year, then staff will recommend to the Board of Directors that a rate holiday be included in the next fiscal year budget.
 5. The Franchisee may submit proposed rate adjustments to the District. At the Board's discretion, the District may offset all or part of a rate increase by reducing the franchise fee paid to the District by a like amount. Such reductions shall not reduce the franchise fee paid to the District to less than 5% of franchisee's annual gross receipts attributable to services provided under the Agreement.
 6. The administrative costs incurred by the District in managing the services provided by the franchisee and organizing community clean-up activities such as those enumerated in paragraph (1) may be charged against the franchise fees received from the franchisee. Franchise fee receipts may vary from year to year. However, it is recognized by the District that a minimum level of resources is expended by the District to manage the Agreement and the various community activities. Administrative costs chargeable against franchise fee receipts will be calculated during the budgeting process. At that time, a reasonable cost to manage the Agreement and community activities will be established and included in the fiscal year budget.

TO: BOARD OF DIRECTORS

FROM: MARIO IGLESIAS
GENERAL MANAGER

DATE: NOVEMBER 9, 2018

AGENDA ITEM

E-5

NOVEMBER 14, 2018

REVIEW AND DISCUSS UPCOMING 2019 BOARD OFFICER ELECTION

ITEM

Review and discuss upcoming 2019 Board Officer Election. [RECOMMEND DISCUSS
UPCOMING BOARD OFFICER ELECTIONS AND DIRECT STAFF]

BACKGROUND

In accordance with the most recently adopted District resolution, Resolution No. 2018-1468, Adopting Amended Board By-laws and Policies, Exhibit "A" Nipomo Community Services District Board of Directors Board By-laws and Policies ("By-laws"), section 1.4 states "The President and Vice President of the Board shall be elected annually at the last meeting of each calendar year." The last meeting in calendar year 2018 will be held on December 12.

The By-laws governing the election process go on to state in section 1.5 "The term of office for the President and Vice President of the Board shall commence on January 1 of the year immediately following their election."

The By-laws do not address a nomination process, the number of terms a director can serve as a Board Officer, or any methodology, formal or informal, to ensure all Board Members have an opportunity to fulfil the role of a Board Officer. The lack of precision on these matters may be by design or they may be a result of the cooperative nature the current and past Boards have extended to one another and have therefore found these details unnecessary.

President Eby has suggested, at a minimum, that Board Members make it known their desire or willingness to serve as a Board Officer prior the last meeting of the calendar year. This would allow (1) Board Members time to consider candidates prior to casting their vote should a vote be necessary, and (2) determine if there is interest or a lack of interest by any Board Member to serve in this capacity.

FINANCIAL IMPACT

Staff time spent on preparing staff report in support of the Board's discussion is included in the current year budget.

STRATEGIC PLAN

Goal 6. GOVERNANCE AND ADMINISTRATION. Conduct District activities in an efficient, equitable and cost-effective manner.

6.A. activities for Completion

A.1 Periodically review, update and reaffirm District policies and procedures.

RECOMMENDATION

Staff recommends your Honorable Board discuss and direct staff.

ATTACHMENTS

A. NCSD Board of Director, Board By-laws and Policies Exhibit "A" Pg. 2

NOVEMBER 14, 2018

ITEM E-5

ATTACHMENT A

NIPOMO COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTOR
BOARD BY-LAWS AND POLICIES
EXHIBIT "A"

1. OFFICERS OF THE BOARD OF DIRECTORS

- 1.1 The officers of the Board of Directors are President and Vice President.
- 1.2 The President of the Board of Directors shall serve as chairperson at all Board meetings. He/She shall have the same rights as the other Directors of the Board in voting, introducing motions, resolutions and ordinances, and any discussion of questions that follow said actions.
- 1.3 In the absence of the President, the Vice President of the Board of Directors shall serve as chairperson over all meetings of the Board. If the President and Vice President of the Board are both absent, the remaining Directors present shall select one of themselves to act as chairperson of the meeting.
- 1.4 The President and Vice President of the Board shall be elected annually at the last meeting of each calendar year.
- 1.5 The term of office for the President and Vice President of the Board shall commence on January 1 of the year immediately following their election.

2. MEETINGS

- 2.1 Subject to holiday and scheduling conflicts, regular meetings of the Board of Directors shall commence at 9:00 a.m. on the second and fourth Wednesday of each calendar month in the Board Room at the District Office located at 148 South Wilson, Nipomo, CA. The Board of Directors reserves the right to cancel and/or designate other dates, places, and times for Director Meetings due to scheduling conflicts and holidays.
- 2.2 Special Meetings.

Special meetings may be called by the President or three (3) Directors with a minimum of twenty-four (24) hours public notice. Special meeting agenda shall be prepared and distributed pursuant to the procedures of the Brown Act by the General Manager or the Assistant General Manager in consultation with the President or, in his or her absence, the Vice President or those Directors calling the meeting.
- 2.3 Directors shall attend all regular and special meetings of the Board unless there is good cause for absence.
- 2.4 No action or discussion may be taken on an item not on the posted agenda; provided, however, matters deemed to be emergencies or of an urgent nature may be added to the agenda under the procedures of the Brown Act. Pursuant to the Brown Act:
 - (a) Directors may briefly respond to statements or questions from the public;

TO: BOARD OF DIRECTORS

FROM: MARIO IGLESIAS
GENERAL MANAGER

DATE: November 9, 2018

**AGENDA ITEM
F
NOVEMBER 14, 2018**

GENERAL MANAGER'S REPORT

ITEM

Standing report to your Honorable Board -- *Period covered by this report is October 21, 2018 through November 10, 2018.*

DISTRICT BUSINESS

Administrative

The District encourages residents to provide reports of any observed water waste. The District keeps an accounting of leak adjustments as a measure of non-revenue water lost to leaks. The September data is current.

Office Activities

	<u>Sept-18</u>	<u>Jul-Sept 2018</u>
Reports of water waste followed up on	1	4
Leak Adjustments	3	9
Leak Adjustment Amount	\$680	\$2,884

Water Resources

Table 1. Total Production Acre Feet (AF)

	<u>Oct-18</u>	<u>Jul 18 - Oct 18</u>
Groundwater Production	94.2	453.2
Supplemental Water Imported	<u>85.3</u>	<u>337.9</u>
Total Production	<u>179.5</u>	<u>791.1</u>

NCSD imported 85.3 AF of water over the 31 day period in October averaging 622 gallons per minute for a daily total of 896,616 gallons per day. For fiscal year 2018-19 [July-2018 through June-2019] the District must import 800 AF of supplemental water. However, at the current import level, the District could see up to 980 AF for this time period. The District's total production, including groundwater wells and imported water measured at the Joshua Road Pump Station, registered 791.1 AF of water for the current fiscal year.

Table 2. FY 2019 Total Demand To-date Compared to 2013

	<u>Oct-18</u>	<u>Jul 18 - Oct 18</u>
Total Production (AF) for FY 2018-19	179.5	791.1
Total Production (AF) for 2013	<u>240.5</u>	<u>1,061.3</u>
Reduction	<u>61.0</u>	<u>270.2</u>
Percentage Reduction	25.0%	25.5%

On the previous page, Table 2 compares the District's total water production for the month of October and the fiscal year (July 2018 through June 2019) year-end total against those same periods for 2013 (pre-drought production). 2013 is the year the Department of Water Resources ("DWR") designated as the pre-drought production year. The pre-drought production data is included in the monthly water production report and compared to current usage, all of which is submitted by water purveyors statewide to DWR. For October 2018, the community's water conservation effort reached approximately 25% compared to October 2013. The District's year-end conservation effort for fiscal year 2019 will continue to be monitored despite the Governors removal of mandatory conservation requirements.

NCSD GW Reduction

The District's purveyor customers, Golden State Water Company and Woodlands Mutual Water Company, each claim 16.66% (cumulatively 33.33%) of the imported water NCSD brings onto the basin through the NSWP. Of the 800 AF minimum imported water from the CSM, 266.6 AF will be credited to these two purveyor customers. The credited amount must be added to the District's groundwater pumping total every month to reflect the groundwater pumped by these customers in-lieu of taking imported water from the District. Table 3 below demonstrates the calculus for determining the District's groundwater pumping reduction.

Table 3. NCSD GW Production (NCSD GW Well Production plus Purveyor Credit)

	Oct-18	Jul 18 - Oct 18
NCSD GW Well Production	94.2	458.2
Purveyor Customer Credit (33.3% of Import Water)	<u>28.4</u>	<u>112.6</u>
NCSD Total Calculated GW Production	122.6	565.8
Average GW Production for 2009-2013	<u>223.6</u>	<u>1,064.2</u>
NCSD Percentage of GW Reduction	45%	47%

Taking into consideration the above referenced purveyor customer credit, the District can claim a groundwater pumping reduction of 45% for the month of October compared to the 5-year average from 2009 to 2013 (NMMA-TG assigned comparator). For Fiscal Year 2019, the cumulative groundwater pumping reduction is 47%. At the current Stage IV level of NMMA's Water Shortage Condition and Response Plan, the District has targeted groundwater pumping reduction level of 50% for the year.

Table 4. 2019 Fiscal Year Forecasted Groundwater Pumping

	Oct-18	Jul 18-Jun 19	Target	Over_(Under)
NCSD GW Well Production	94.2	1,057.4		AcFt
Purveyor Customer Credit (33.3% of Import Water)	<u>28.4</u>	<u>321.0</u>		
NCSD Total Calculated GW Production	122.6	1,378.3	1,266.7	112 AcFt
Average GW Production for 2009-2013	<u>223.6</u>	<u>2,533.4</u>	2,533.4	
NCSD Percentage of GW Reduction	45%	46%	50%	

Table 4 is a projected view of the District's groundwater pumping reduction efforts for Fiscal Year 2019. The targeted groundwater pumping reduction is 50%. For future months, November

2018 through June 2019, Fiscal Year 2018 production values are used as estimates. Looking at the four months of actual data, July 2018 through October 2018, and completing the year using previous months data, the District can forecast an "Over_(Under)" value. By using this method to forecast groundwater pumping for fiscal year 2019, it can be estimated that the District will be 112 acre feet over the groundwater reduction target. Each year trends slightly different depending upon the weather which drives consumer water consumption. The more actual data input into the table, the more accurate the forecast. The deeper into the year, the more reliable table becomes as a forecasting tool and aids staff to recognize opportunities to adjust sources.

Table 5. FY 2018 v. FY 2019 Groundwater Pumping

	Oct-18	Jul 18-Oct 18	Oct-17	Jul 17-Oct 17
NCSD GW Well Production	94.2	453.2	107.4	450.5
Purveyor Customer Credit (33.3% of Import Water)	28.4	112.6	28.7	113.6
NCSD Total Calculated GW Production	122.6	565.8	136.1	564.2
Average GW Production for 2009-2013	223.6	1,064.2	223.6	1,064.2
NCSD Percentage of GW Reduction	45%	47%	39%	47%

Table 5 compares the previous year's groundwater pumping with the current year groundwater pumping for the same time period (July through October). The comparison demonstrates a similar consumption pattern emerging where demand continues to rely on groundwater supplies slightly more than the target reduction of 50%.

Rainfall Gauge

(Reported in inches)	Nipomo East (Dana Hills Reservoirs)	Nipomo South (Southland Plant)
October 2018 Total	.32	.28
July-2018 through Jun-2019 (Seasonal Total)	.32	.28
Average Annual Year Rainfall	18	16

Safety Program

No Accidents or Incidents to report

Other Items and News of Interest

Supplemental Water Capacity Accounting

The District is not currently accepting applications for new water service.

Supplemental Water Available for Allocation	500	AFY
Supplemental Water Reserved (Will Serve Letter Issued)	-31.1	AFY
Subtotal Net Supplemental Water Available for Allocation	468.9	AFY
Supplemental Water Assigned (Intent-to-Serve Issued)	-70.6	AFY
Total Remaining Supplemental Water Available for Allocation	398.2	AFY

This information is accurate through September 2018.

Connection Report

Nipomo Community Services District Water and Sewer Connections		END OF MONTH REPORT							
	18-Jan	18-Feb	18-Mar	18-Apr	18-May	18-Jun	18-Jul	18-Aug	18-Sep
Water Connections (Total)	4405	4405	4405	4405	4405	4405	4407	4407	4412
Sewer Connections (Total)	3174	3174	3174	3174	3174	3175	3175	3176	3180
New Water Connections	3	0	0	0	0	0	2	0	5
New Sewer Connection	3	0	0	0	0	1	0	1	4
Galaxy & PSHH at Orchard and Division Sewer Connections billed to the County	473	473	473	473	474	476	477	477	477

The Connection Report is current through September 2018 – October data will be presented at the 2nd Board Meeting in November.

Meetings (October 21 through November 10)

Meetings Attended (telephonically or in person):

- Oct. 23, Eng/Admin Meeting
- Oct. 24, Rotary
- Oct. 24, Regular Board Meeting
- Oct. 24, Exec. Team After-Board Meeting
- Oct. 24, Blacklake Community Outreach – Rate Study
- Oct. 25, NMMA-Purveyor Manager’s Meeting
- Oct. 25, Developer Meeting – Mr. Tompkins
- Oct. 29, Sedaru Asset Management Training
- Oct. 31, Rotary
- Nov. 2, NMMA-TG Meeting
- Nov. 2, GSWC Water Quality Meeting
- Nov. 2, RWG – CMC Discussion T. Kim
- Nov. 5, Board Officers
- Nov. 6, Management Team
- Nov. 7, Rotary
- Nov. 7, RWMG Meeting
- Nov. 8, R. Rossi Meeting
- Nov. 8, Ad Hoc Comm. – WSRMP

Meetings Scheduled (November 11 through November 17):

Upcoming Meetings (telephonically or in person):

- Nov. 12, Holiday
- Nov. 13, Eng/Admin Meeting
- Nov. 14, Rotary
- Nov. 14, Regular Board Meeting
- Nov. 14, Exec. Team After-Board Meeting
- Nov. 16, Grover Beach – PW Director

Upcoming Water Resource and Other Meetings

Upcoming Standing Meetings:

- *NMMA-TG: December 11th (Tuesday) @ 10:00 AM, NCSD Board Room*
- *RWVG: December 5th @ 10:00 AM, SLO Library*
- *WRAC: December 5th @ 1:30 PM, SLO Library*
- *NMMA Purveyor Meeting: November 29th @ 10:00 AM, NCSD Admin Office*
- *NCMA/NMMA Managers Meeting: TBA*

RECOMMENDATION

Staff seeks direction and input from your Honorable Board

ATTACHMENTS

NONE