

TO: BOARD OF DIRECTORS

FROM: MARIO IGLESIAS
GENERAL MANAGER 

AGENDA ITEM

E-1

JULY 24, 2019

DATE: JULY 17, 2019

**ADOPT RESOLUTION APPROVING INTEGRATED WASTE
MANAGEMENT AUTHORITY HOUSEHOLD HAZARDOUS WASTE
COLLECTION SITE GROUND LEASE AGREEMENT**

ITEM

Review and consider approving Integrated Waste Management Authority (IWMA) proposed Household Hazardous Waste collection ground lease agreement to maintain a community Household Hazardous Waste collection facility at the Nipomo Community Services District's ("District") Operations Center located at 509 Southland Street, Nipomo. [RECOMMEND REVIEW PROPOSED GROUND LEASE AGREEMENT AND, BY MOTION AND ROLE CALL VOTE, ADOPT RESOLUTION].

BACKGROUND

The District and IWMA entered into a Household Hazardous Waste Agreement dated November 7, 2001 ("Original Agreement") [Attachment A], whereby IWMA leased the Household Hazardous Waste ("HHW") Collection Site from the District, subject to certain terms and conditions, for a period of ten (10) years. The Original Agreement further provided that IWMA, if not in default of the terms of the Original Agreement, would have an option to extend the term for an additional period of ten (10) years from the original expiration date. There is no record that IWMA exercised this option, however, it has remained at the HHW collection site as a holdover tenant since the expiration of the Original Agreement.

IWMA staff requested that the District execute an Affirmation and Restatement of the Original Agreement ("Restatement of Agreement"), which District staff presented to your Honorable Board at your Board's February 13, 2019 Board Meeting. The Restatement of Agreement would have, if executed by the District, extended IWMA's operations of the HHW site until at least November 7, 2021 with no changes to the Original Agreement. At that Board Meeting, staff and District General Counsel recommended that certain changes be made to the Original Agreement to address operational concerns at the site and to add certain clarifying legal provisions. After hearing from staff and District General Counsel, your Board directed staff to discuss the Original Agreement with IWMA and to make the changes to the Original Agreement recommended by staff and District General Counsel, including the following:

- IWMA should provide the District with an annual update that identifies regular and emergency contact information.
- IWMA should improve the site to include a concrete pad for the trash container located outside the collection site's fenced enclosure.
- IWMA should replace slats in the existing fence around the facility to screen the interior of the site.
- A commitment by IWMA to remove graffiti within a reasonable amount of time.

District Legal Counsel has drafted a new agreement that addresses these items and updates the form of the agreement to clarify the applicable term of the lease and other contractual

provisions. The IWMA has agreed to the revised Ground Lease agreement. On July 10, 2019, the Board of Directors for IWMA authorized their Board President to execute the revised/updated HHW Lease Agreement.

STRATEGIC PLAN

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

A.1 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 review the Ground Lease Agreement between the San Luis Obispo County IWMA and the District for the Household Hazardous Waste Collection Site and, by motion and roll call vote, adopt the attached resolution approving the Ground Lease Agreement.

ATTACHMENT

- A. Resolution 2001-796, Approving Hazardous Waste Collection Agreement with Integrated Waste Management Authority
- B. Resolution 2019-XXXX - A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT APPROVING A GROUND LEASE AGREEMENT WITH THE INTEGRATED WASTE MANAGEMENT AUTHORITY FOR A HOUSEHOLD HAZARDOUS WASTE COLLECTION SITE

JULY 24, 2019

ITEM E-1

ATTACHMENT A

RESOLUTION 2001-796

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
APPROVING HAZARDOUS WASTE COLLECTION AGREEMENT WITH
INTEGRATED WASTE MANAGEMENT AUTHORITY**

WHEREAS, the District recognizes the need to have a hazardous waste collection site in the Nipomo area, and

WHEREAS, the Integrated Waste Management Authority (IWMA) has made a proposal to establish a site next to the District yard, and

WHEREAS, staff and the Board of Directors have reviewed the proposal and agreement from IWMA to provide this service

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED by the Board of Directors of the Nipomo Community Services District, San Luis Obispo County, California, as follows:


1. That the agreement with Integrated Waste Management Authority (IWMA) to establish a hazardous waste collection site in Nipomo is approved.
2. That the President of the Board is instructed to execute the agreement on behalf of the District.

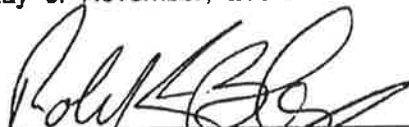
Upon motion of Director Mobraaten, seconded by Director Blair and on the following roll call vote, to wit:

AYES: Directors Mobraaten, Blair, Trotter, Wirsing and Winn
NOES: None
ABSENT: None
ABSTAIN: None

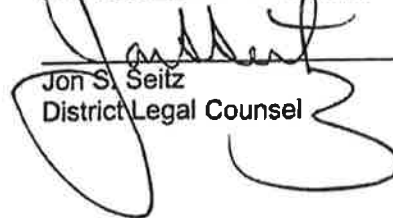
the foregoing Resolution is hereby adopted this 7th day of November, 2001.

ATTEST:


Donna K. Johnson
Secretary to the Board


Robert L. Blair, President
Nipomo Community Services District

APPROVED AS TO FORM:


Jon S. Seitz
District Legal Counsel

HOUSEHOLD HAZARDOUS WASTE AGREEMENT

BETWEEN IWMA AND NCSD

This Agreement is made and entered into between the San Luis Obispo County Integrated Waste Management Authority, hereinafter called "IWMA", and Nipomo Community Services District, hereinafter referred to as "Owner."

RECITALS

WHEREAS, the IWMA desires to lease from Owner, a portion of land at the Owner's facility located at 509 Southland Street and described on "Exhibit 1", which is attached and made a part of this Agreement, for the purposes of constructing a permanent household hazardous waste (HHW) collection facility; and

WHEREAS, The Owner will make its premises available for such use by the IWMA, subject to the terms and conditions of the Agreement; and

WHEREAS, the IWMA and the Owner desire to provide a HHW collection facility (herein "Collection Facility") to provide for the convenient and proper management of household hazardous waste. The Collection Facility is more particularly described in "Exhibit A" attached hereto and incorporated herein by reference ("Site Plan").

NOW, THEREFORE, the parties do mutually agree as follows:

A. RESPONSIBILITIES OF THE IWMA

1. The IWMA, at its sole cost, shall design and construct a concrete pad for placement of a HHW collection facility in accordance with the Site Plan
2. The IWMA shall provide and place at the designated HHW Collection Facility location modular structures to be used by IWMA for the acceptance and storage of HHW pursuant to the Agreement. The structures shall meet or exceed applicable fire and hazardous materials storage requirements. IWMA will also provide a roll-off box for trash located at the Collection Facility.
3. The IWMA shall provide all personnel, storage and handling equipment necessary for the storage of HHW collected by the IWMA and adequate materials for packing the same.
4. The IWMA shall be responsible for collecting HHW from the public.
5. The IWMA shall be responsible for packing the drums for shipment. The IWMA will also label and manifest the drums.
6. The IWMA shall contract with a licensed hazardous waste hauler to remove and dispose of all HHW collected by IWMA on a regular basis, at least annually.
7. The IWMA shall be responsible for obtaining all necessary permits for the construction and operation of the HHW Collection Facility.
8. The IWMA shall be responsible for complying with all County, State and Federal ordinances, regulations and statutes now in force and effect or which may hereinafter be in force with regards to the use and operation of the Collection Facility.
9. The IWMA shall train personnel prior to initiation of collection services, and as necessary thereafter due to changes in law or circumstances, but at least annually.

HOUSEHOLD HAZARDOUS WASTE AGREEMENT

BETWEEN IWMA AND NCSD

10. The IWMA shall provide the closure assurance required by State Law.
11. The IWMA shall provide general liability insurance of at least \$1 million. Said insurance shall be on an "occurrence basis" and shall include the following endorsements:
 - (a) Owner, its officers, directors, employees, volunteers and agents shall be named as an additional insured;
 - (b) The coverage afforded to Owner shall be primary and non-contributing with other insurance maintained by Owner.
12. The IWMA shall fence the Collection Facility and shall be responsible for insuring that the Collection Facility and the surrounding property is maintained in a secure, safe and appropriate manner.
13. The IWMA shall be responsible for cleanup and remediation, to industry standards, of all spills and/or leaks of waste material that is collected and/or stored at the Collection Facility.
14. The IWMA shall provide signage that provides the public with notice of the location of the Collection Facility, hours of operation and the facility's entrance and exits.
15. IWMA shall be responsible for all repairs and maintenance at the Collection Facility.

B. RESPONSIBILITY OF THE OWNER

1. The Owner agrees to lease the designated HHW Collection Facility location to the IWMA. The parties agree that the term of the lease shall be for a period of 10 years commencing on the date of this signed agreement. The IWMA agrees to pay to Owner annual rent on one dollar (\$1.00) for each year during the term of this lease. The parties agree that the IWMA shall, if not then in default of this Agreement, have an option to extend the term of this Agreement for an additional period of ten (10) years from the original expiration date of this Agreement.

C. INDEMNIFICATION

1. It is agreed that IWMA shall defend, save harmless, and indemnify the Owner, its officers, and employees from any and all claims for injuries and damages to persons and/or property which arise out of the terms and conditions of this Agreement and the operation and maintenance of the Collection Facility and which result from the negligent acts or omissions of the IWMA, its officers, agents, consultants, contractors, and/or employees.
2. It is further agreed that the Owner shall defend, save harmless, and indemnify the IWMA, its officers, and employees from any and all claims for injuries and damages to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of the Owner, their officers and/or employees.
3. Termination of this Agreement shall not release IWMA from its obligations referenced in Subsection 1, above, as to any claims, so long as the event upon which such claim is

HOUSEHOLD HAZARDOUS WASTE AGREEMENT BETWEEN IWMA AND NCSD

predicated shall have occurred prior to the effective date of any such termination and arose out of or was in any way connected with the performance or operations under this Agreement by the IWMA, its employees, agents, contractors and/or consultants, or the employee, agent and/or consultant of any one of them.

4. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements referenced in Paragraph A -11 above does not relieve IWMA from liability referenced in Subsection 1 above. The obligations of Subparagraph 1 above shall apply whether or not the insurance policies have been determined to be applicable to any of such damages or claims for damages.

D. CONDEMNATION

1. If all or any portion of the Collection Facility is condemned or is transferred in lieu of condemnation, IWMA or District may, upon written notice given within sixty (60) days after the taking or transfer, terminate this Lease. IWMA shall not be entitled to share any portion of the award, and IWMA expressly waives any right or claim to any part of the award. The IWMA shall, however, have the right to claim and recover, from the condemning authority only, but not from District, any allowable costs for the removal and/or relocation of its facilities.
2. In the event of condemnation District agrees to permit the IWMA to relocate the Collection Facility to an appropriate alternative location on District property that is approved by District in its sole discretion.

E. CLEAN UP OF SITE

At the end of this Agreement, the IWMA shall remove any and all of IWMA's equipment, including collection structure, office trailer, storage tanks and drums, and any household hazardous waste remaining at the facility. The only item remaining on-site will be the concrete pad which will become the property of the Owner.

F. RELATIONSHIP OF THE PARTIES

The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Owner does not in any way nor for any purpose become a partner of the IWMA or a joint venturer with the IWMA in the conduct of the IWMA's business or otherwise.

G. TERMINATION

This Agreement is subject to the annual appropriation of funds to provide HHW services. If the IWMA fails to appropriate the funds necessary to conduct the program, then the Agreement can be terminated with 30 days notice.

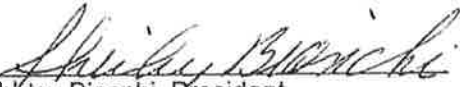
HOUSEHOLD HAZARDOUS WASTE AGREEMENT
BETWEEN IWMA AND NCSD

H. COMPLETE AGREEMENT

This Agreement contains the complete agreement between the parties and can only be modified by written amendment.

IN WITNESS WHEREOF, the parties have executed this Agreement this 7TH day of November, 2001.

San Luis Obispo County
Integrated Waste Management Authority

By: 
Shirley Bianchi, President

Date: 11/24/01

Nipoma Community Services District

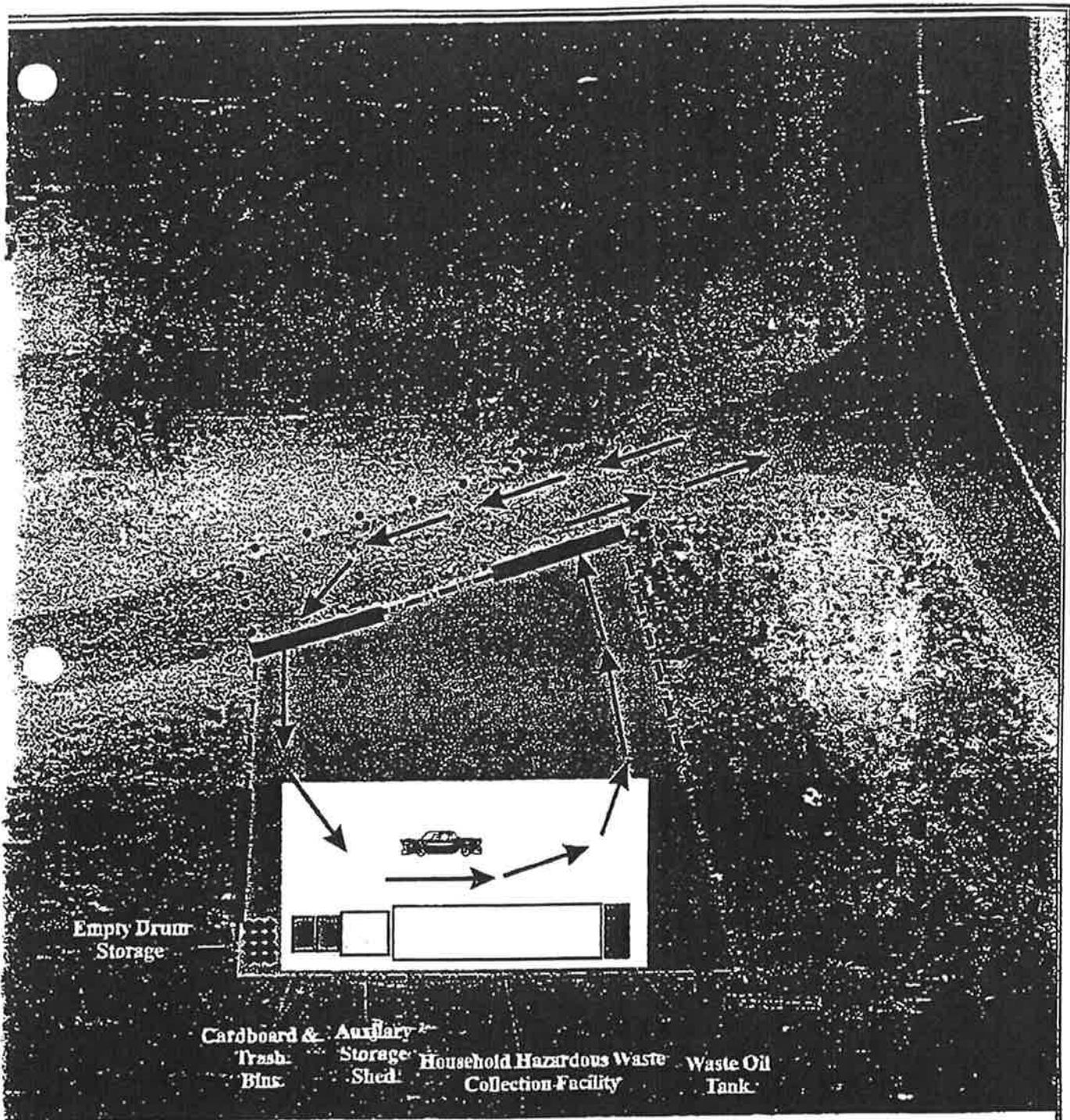
By: 
Robert L. Blair, President

Date: 11-27-01

Approved as to form and legal effect:

By: 
Raymond A. Biering, IWMA Counsel

Date: 11/14/01



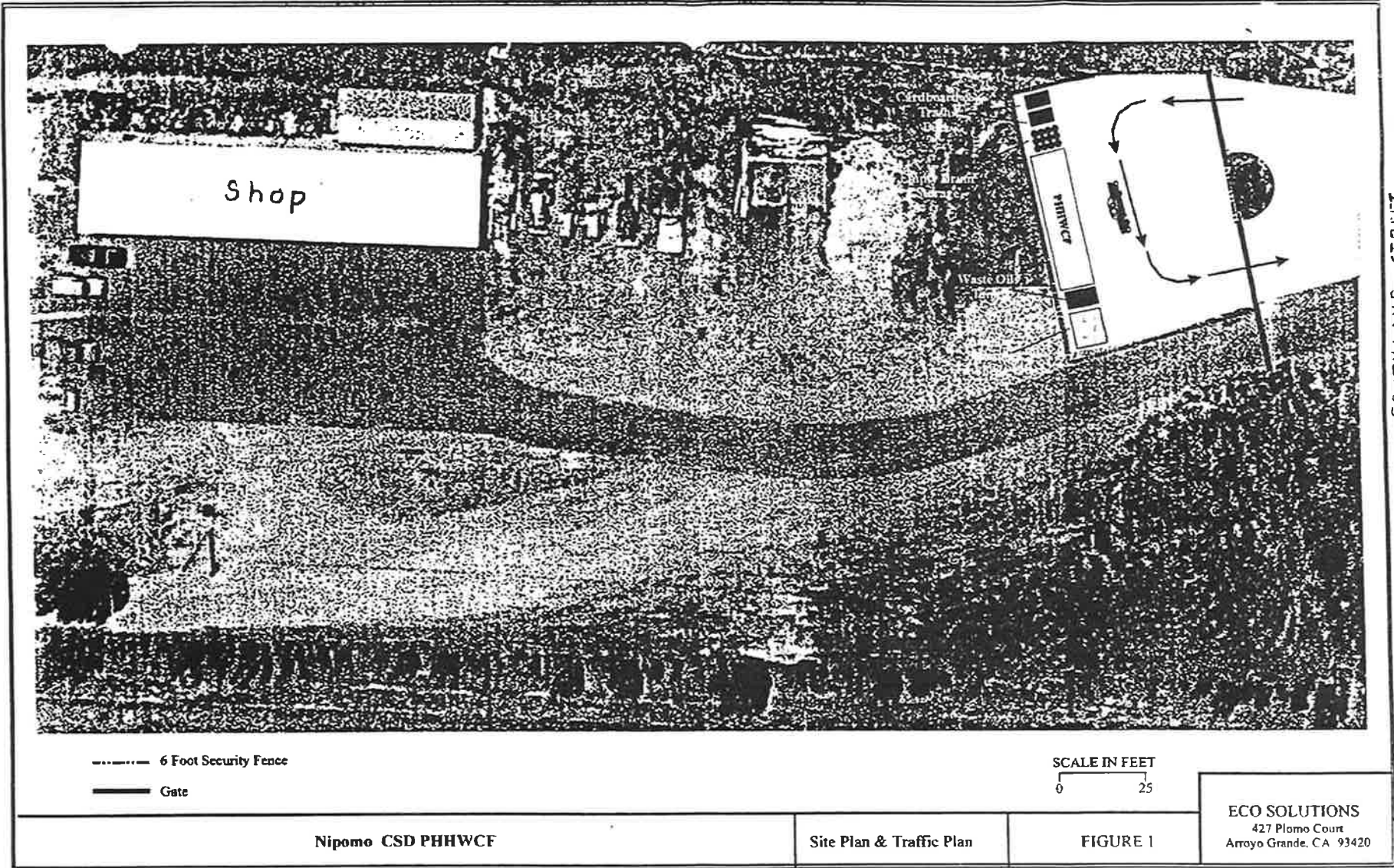
SCALE IN FEET



ECO SOLUTIONS
427 Plomo Court
Arroyo Grande, CA 93420

Site Plan & Traffic Plan

FIGURE 1



Nipomo CSD PHHWCF

Site Plan & Traffic Plan

FIGURE 1

ECO SOLUTIONS
427 Plomo Court
Arroyo Grande, CA 93420

← US 101 HWY →

EXHIBIT 1

JULY 24, 2019

ITEM E-1

ATTACHMENT B

RESOLUTION 2019-XXXX

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
APPROVING A GROUND LEASE AGREEMENT WITH THE
INTEGRATED WASTE MANAGEMENT AUTHORITY
FOR A HOUSEHOLD HAZARDOUS WASTE COLLECTION SITE**

WHEREAS, the Nipomo Community Services District ("District") recognizes the community benefit to having a household hazardous waste collection site in the Nipomo area; and

WHEREAS, the Integrated Waste Management Authority ("IWMA") has established a site next to the District yard located at 509 Southland St., Nipomo, pursuant to a Household Hazardous Waste Agreement dated November 7, 2001 ("Original Agreement"); and

WHEREAS, the IWMA wishes to maintain their current operations on the existing site; and

WHEREAS, the Original Agreement between the IWMA and the District expired on November 7, 2011, and the parties wish to allow the IWMA to continue its operations at the site subject to a new Ground Lease agreement that will expire on November 7, 2021; and

WHEREAS, staff and the Board of Directors have reviewed the Ground Lease and find it sufficiently provides the District with improved operations and contract clarity while providing IWMA with similar benefits in pursuit of providing household hazardous waste collection services to the Nipomo community.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED by the Board of Directors of the Nipomo Community Services District, San Luis Obispo County, California, as follows:

1. That the Ground Lease Between San Luis Obispo County Integrated Waste Management Authority and the Nipomo Community Services District For Household Hazardous Waste Collection Site dated May 30, 2019, and attached hereto as Exhibit A is hereby approved.
2. That the President of the Board is instructed to execute the agreement on behalf of the District.

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 _____ day of _____ 2019.

ED EBY
President, Board of Directors

ATTEST:

APPROVED AS TO FORM:

MARIO IGLESIAS
General Manager and Secretary to the Board

WHITNEY MCDONALD
District Legal Counsel

**A GROUND LEASE BETWEEN SAN LUIS OBISPO COUNTY INTEGRATED WASTE
MANAGEMENT AUTHORITY AND NIPOMO COMMUNITY SERVICES DISTRICT FOR
HOUSEHOLD HAZARDOUS WASTE COLLECTION SITE**

THIS GROUND LEASE ("Lease") is effective as of May 30, 2019 ("Effective Date"), by and between the Nipomo Community Services District, a California special district ("NCSD" or "Lessor"), and the San Luis Obispo County Integrated Waste Management Authority, a California joint powers authority ("IWMA" or "Lessee"):

RECITALS

A. Lessor is the owner of certain real property identified as Assessor's Parcel Number 092-152-030, located at 509 Southland Road in Nipomo, California ("Property"), whereon Lessor operates a Utility Operations Center and whereon Lessee operates a Household Hazardous Waste Collection Site on an approximately 0.16 acre portion of the Property, which is legally described in Exhibit A attached hereto and incorporated herein by reference ("HHW Collection Site").

B. Lessor and Lessee entered into a Household Hazardous Waste Agreement dated November 7, 2001 ("Original Agreement"), whereby Lessee leased the HHW Collection Site from Lessor, subject to certain terms and conditions, for a period of ten (10) years. The Original Lease further provided that Lessee, if not in default of the terms of the Original Agreement, the IWMA would have an option to extend the term for an additional period of ten (10) from the original expiration date. There is no record that IWMA exercised this option, however, it has remained at the HHW Collection Site as a holdover tenant since the expiration of the Original Agreement.

C. Lessor and Lessee wish to enter into a new lease to allow IWMA to continue operating the household hazardous waste collection facility at the HHW Collection Site, to collect materials deemed "household hazardous waste" pursuant to applicable statutes, regulations, and ordinances, which may include the following: antifreeze, batteries, drain cleaners, electronic waste (e.g., TVs, computer monitors, cell phones), glue and adhesives, household and oven cleaners, paint, pesticides, pool cleaners, solvents, used oil, waste containing asbestos or mercury (e.g. thermometers, fluorescent lights), materials deemed business universal waste pursuant to applicable statutes, regulations, and ordinances, including household batteries, fluorescent lamps, sodium/metal hydride/halogen bulbs, used oil and latex paint, and materials to be collected from businesses participating in IWMA's Conditionally Exempt Small Quantity Generator (CESQG) Program pursuant to applicable statutes, regulations, and ordinances (collectively referenced herein as "HHW"), subject to the terms and conditions contained herein.

NOW THEREFORE, in consideration of the foregoing recitals which are incorporated by this reference and the covenants hereinafter contained, Lessor and Lessee agree as follows:

ARTICLE 1.
BASIC PROVISIONS

1.1 Description of Property. A legal description and map depiction of the Property are hereto attached as Exhibit A. Lessee accepts the property in its current "as-is" condition without any representations or warranties from Lessor as to its condition or suitability for the household hazardous waste facility, or any associated IWMA use.

1.2 Lease and Grant of Use. Lessor does lease to Lessee and Lessee does hereby lease from Lessor, upon the terms and conditions set forth herein, the HHW Collection Site described in Exhibit A.

1.3 Notices:

LESSOR/NCSD:

Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444-0326
Attn: General Manager
Email: gm@ncsd.ca.gov

LESSEE/IWMA:

San Luis Obispo County Integrated Waste Management Authority
870 Osos Street
San Luis Obispo, CA 93401-2717
Attn: Executive Director

1.4 Exhibits. The following exhibits are attached hereto and incorporated herein by this reference:

Exhibit A – Map Depiction of HHW Collection Site

ARTICLE 2.
TERM

2.1 Term. From May 30, 2019 to November 7, 2021. The phrase "Term of this Lease" or "the Term hereof" as used in this Lease, or words of similar import, will refer to the initial term of this Lease together with any holdover term.

2.2 Holdover. If Lessee remains in possession of the HHW Collection Site or any part thereof after the expiration of the Term of this Lease, such occupancy will be a

tenancy which is terminable only upon thirty (30) days written notice from Lessor or Lessee, and subject to all of the terms, covenants and conditions of this Lease.

ARTICLE 3.

RENT

3.1 Rent. Lessee will pay Lessor one dollar (\$1.00) per year during the initial term and any holdover period. Given the benefits to NCSD's customers of the services provided by IWMA at the HHW Collection Site, and in exchange for Lessee's compliance with the obligations stated herein, consideration received by NCSD under the terms of this Lease is deemed sufficient.

ARTICLE 4.

USE

4.1 Permitted Use. Lessee will utilize the HHW Collection Site only for the development, construction, operation, and maintenance of a HHW collection facility, including the operation, maintenance, repair, and replacement of the facility components and equipment and all fixtures or appurtenances incidental thereto ("Facility"). The permitted uses further include the removal of the Facility components, fixtures, and appurtenances.

4.2 Compliance with Law. Lessee will, at Lessee's sole cost and expense, comply with all applicable statutes, laws, and regulations applicable to its use of the HHW Collection Site for the collection of HHW and operation of the Facility. If any license, permit, or other governmental authorization is required for the lawful collection of HHW and use or occupancy of the Facility, Lessee will procure, maintain, and fully comply with said license, permit, or authorization, at Lessee's sole cost and expense, throughout the term of this Lease, including the term of any holdover period.

4.3 Additional Obligations and Use Requirements of Lessee.

4.3.1 Concrete Pads. Lessee shall, at its sole cost and expense, maintain the concrete pad within the HHW Collection Site and shall design, construct, and maintain an additional concrete pad with curbs, in accordance with plans approved by Lessor, under the two (2) HHW trash bins located adjacent to the HHW Collection Site.

4.3.2 Modular Structures. Lessee shall provide and maintain all modular structures within the HHW Collection Site to be used by IWMA for the acceptance and storage of HHW. The structures shall meet or exceed applicable fire and hazardous material storage requirements at all times.

4.3.3 Trash Bins. Lessee shall provide, maintain, and is deemed responsible for, at all times, for the two (2) HHW trash bins located on the concrete pad adjacent to the HHW Collection Site as discussed in Section 4.3.1, above. Lessee shall ensure that the trash bins are emptied at least once weekly, or sooner if necessary, to ensure that the HHW Collection Site remains clean to a commercially reasonable standard at all times.

4.3.4 Fencing and Locking Gate. Lessee shall install and maintain a fence surrounding the HHW Collection Site with a locking gate and ensure that the HHW Collection Site, the Facility, and the surrounding property is maintained in a secure, safe, and appropriate manner. The fence shall shield the facility from public view along Southland Boulevard and along the driveway into the Property. The gate shall be locked at all times except when the HHW Collection Site is open to the public and a responsible IWMA representative is present.

4.3.5 Storage and Packing of HHW. Lessee shall provide all personnel, storage, and handling equipment necessary for the storage of HHW at the HHW Collection Site and adequate materials for packing the same. Lessee is responsible for packing the drums for shipment and shall label and manifest the drums.

4.3.6 Training. Lessee shall train personnel prior to initiation of collection services, and as necessary thereafter due to changes in the law or circumstances, but at least annually.

4.3.7 Emergency Contact. Lessee shall provide District, at least annually, with current contact information for a responsible Lessee representative with the authority and ability to respond to Lessor's inquiries during working hours and during non-working hours in case of emergency.

4.3.8 Open to Public. Lessee is responsible for collecting HHW from the public. Lessee shall provide and maintain signage that is readily visible from the public right of way and that provides the public with notice of the location of the HHW Collection Site, the hours of operation, and the Facility's entrance and exits. 4.3.9 Removal of HHW from HHW Collection Site. Lessee shall contract with a licensed hazardous waste hauler to remove and dispose of all HHW collected at the HHW Collection Site on a regular basis, at least annually.

4.4 Ownership of Facility. During the term of this Lease, and for any holdover period, and upon termination of this Lease, title to the Facility and all components thereof, including all associated equipment, fixtures, appurtenances, and HHW located on the HHW Collection Site will be vested in Lessee.

4.5 Right of Entry. Lessor reserves the right for any of its duly authorized representatives to enter the HHW Collection Site upon at any reasonable time for any reasonable actions, including but not limited to (i) inspecting the HHW Collection Site and (ii) taking any actions required to ensure the safety of the Property and any employees or agents of Lessor thereon.

ARTICLE 5.
PERMITS

5.1 Responsibility to Obtain and Maintain Permits. Lessee shall be responsible for obtaining, maintaining in good standing, and complying with all conditions of any and all permits necessary for the construction and operation of the Facility.

5.2 Applications for Discretionary Permits. During the term of this Lease, Lessor will, promptly upon Lessee's request, sign (as owner of the Property) and acknowledge any application to any governmental entity having jurisdiction over the Facility for any of the discretionary permits necessary for construction or maintenance of the Facility, provided that Lessor incurs no cost. No such signing by Lessor will be deemed to be Lessor's commitment to satisfy, any condition (i) in or precedent to a discretionary permit or (ii) adversely affecting Lessor's interest in the Property.

ARTICLE 6.
MAINTENANCE, REPAIR, COMPLIANCE WITH ALL LAWS

6.1 Maintenance. At all times during the term of this Lease including any or holdover period, Lessee will, at Lessee's sole cost and expense, keep and maintain the HHW Collection Site and the Facility in good order and repair, and in a safe and attractive condition. Lessor will have no obligation to alter, remodel, improve, or repair the HHW Collection Site or the Facility.

6.2 Repair and Compliance With All Laws. At all times during the term of this Lease and for any holdover period, Lessee will, at Lessee's own cost and expense, do all of the following:

6.2.1 Make all alterations, additions, or repairs to the HHW Collection Site or the Facility required by any applicable law, ordinance, statute, or regulation now or hereafter issued by any federal, state, county, local, or other governmental agency, as amended from time to time;

6.2.2 Observe and comply with all applicable laws, ordinances, statutes, orders, and regulations now or hereafter made by any federal, state, county, local, or other governmental agency respecting the HHW Collection Site, the Facility, or the collection, storage, handling, or disposal of HHW;

6.2.3 Remove all graffiti from the HHW Collection Site to the satisfaction of Lessor within ten (10) working days of notification by Lessor; and 6.2.4 Lessee shall cleanup and remediate, to industry and regulatory standards, all spills and/or leaks of materials collected and/or stored at the HHW Collection Site.

6.3 Damage or Destruction. In the event of damage to, or destruction of all or any portion of the Facility, Lessee shall diligently repair, reconstruct, and restore (collectively, "restore") the Facility to substantially the same condition as it existed

immediately prior to the casualty, whether or not insurance proceeds are sufficient to verify the actual cost of restoration. This Lease will continue in full force and effect notwithstanding such damage or destruction; provided, however, that the Lessee may, at its option, demolish the Facility and terminate the Lease.

6.4 Mechanics Liens. At all times during the term of this Lease, Lessee will keep the Property and the Facility now or hereafter located on the Property free and clear of all liens and claims of liens for labor, service, materials, supplies, or equipment performed on or furnished to the Property.

ARTICLE 7. INDEMNIFICATION AND INSURANCE

7.1 Indemnification.

7.1.1 Lessee will indemnify, defend and hold harmless Lessor, its trustees, officers, agents, and employees from and against any and all liability, loss, expense, or claims for injury or damages arising out of the performance of this Lease, but only in proportion to and to the extent such liability, loss, expense, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Lessee, its trustees, officers, agents, employees, contractors, and/or consultants.

7.1.2 Lessor will indemnify, defend, and hold harmless Lessee, its elected and appointed officers, agents, and employees from and against any and all liability, loss, expense or claims for injury or damages arising out of the performance of this Lease, but only in proportion to and to the extent such liability, loss, expense, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Lessor, its trustees, officers, agents, employees, contractors, and/or consultants.

7.1.3 The indemnification provisions of this Article will survive the expiration or termination of this agreement.

7.2 Insurance. Without limiting Lessee's indemnification of Lessor and at its own expense, Lessee will provide and maintain the following programs of insurance.

7.2.1 General Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01) with limits of not less than the following:

General Aggregate: \$1 million
Each Occurrence: \$1 million

Such insurance will name Lessor, its officers, directors, employees, agents, and volunteers as additional insureds and it shall be primary and non-contributing with other insurance maintained by Lessor.

7.2.2 Workers Compensation and Employers' Liability insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident.

7.2.3 Lessee Contractors. Throughout the period of any construction, Lessee will require its contractors to provide and maintain, or Lessee will provide and maintain, types and limits of insurance coverage appropriate to the work, at no cost to Lessor. All Contractor insurance will be primary to and not contributing with any other insurance or self-insurance programs maintained by Lessee or Lessor. Lessor and Lessee also will be named as additional insureds under all Contractor general liability coverage.

7.2.4 Review of Insurance Requirements. The types and limits of coverage required under this Agreement may be reviewed annually by Lessor. Coverage types and limits will reflect the prevailing practice in the area for insuring similar property and casualty risks, and be subject to the mutual agreement of the parties. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements of this Article does not relieve Lessee from the indemnity requirements of this Article. The indemnity requirements of this Article shall apply whether or not the insurance policies have been determined to be applicable to any damages or claims for damages.

7.2.5 Self Insurance. Notwithstanding the provisions of this Article, either Lessee, at its sole option, may satisfy all or any part of the insurance requirement through the use of program of self-insurance. Certificate evidencing coverage or letter evidencing self-insurance will be provided by Lessee within sixty (60) days after the execution of this agreement.

7.3 Closure Assurance. Lessee shall provide and maintain at all times the closure assurance required by state law for the HHW Collection Site.

ARTICLE 8.

DEFAULT AND REMEDIES

8.1 Lessee's Default. Lessee will not be in default of any of its obligations under this Lease unless Lessee fails to perform such obligations within a reasonable time, but in no event less than thirty (30) days after written notice by Lessor to Lessee specifying wherein Lessee has failed to perform such obligations; provided however, that if the nature of Lessee's default is such that more than thirty (30) days are required for its cure, Lessee will not be in default if Lessee commences such cure within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

8.2 Lessor Remedies. In the event of any default by Lessee as described in Section 8.1 above, Lessor will have no rights as a result of any default by Lessee until

Lessor gives thirty (30) days' notice to Lessee, specifying the nature of the default. Lessee will then have the right to cure such default, and Lessee will not be deemed in default if Lessee cures such default within thirty (30) days after receipt of notice of the default, or within such longer period of time as may reasonably be necessary to cure the default, provided that Lessee commences such cure within such thirty (30) days and thereafter diligently prosecutes the same to completion.

ARTICLE 9. CONDEMNATION

9.1 Termination of Agreement. If all or a portion of the HHW Collection Site is condemned or is transferred in lieu of condemnation during the term of this Lease, Lessee or Lessor may, upon written notice given within sixty (60) days after the taking or transfer, terminate this Lease.

9.2 Allocation of Condemnation Award. In the event of a condemnation or taking, or any transfer in lieu of condemnation, of all or part of the HHW Collection Site at any point during the term of this Lease including any holdover period, Lessee shall not be entitled to share any portion of the award, and Lessee expressly waives any right or claim to any part of the award. Lessee shall, however, have the right to claim and recover, from the condemning authority only and not from Lessor, any allowable costs for the removal and/or relocation of the Facility.

ARTICLE 10. TERMINATION AND CLEAN UP

10.1 Termination by Lessor. This Lease may be terminated unilaterally by Lessor for convenience by providing prior written notice to Lessee one hundred and eighty (180) days prior to termination.

10.2 Termination by Lessee. In the event that IWMA does not appropriate the funds necessary to conduct the HHW collection program at the HHW Collection Site, Lessee may terminate this Lease unilaterally by providing prior written notice to Lessor thirty (30) days prior to termination.

10.3 Termination by Agreement of the Parties. Notwithstanding Sections 10.1 or 10.2, the Lease may be terminated by the mutual agreement of the parties at any time, upon terms and conditions agreed to by the parties.

10.4 Clean Up. Prior to termination of this Lease, Lessee shall, at its sole cost and expense, remove the Facility, including but not limited to Lessee's equipment, structures, storage tanks and drums, and all HHW from the HHW Collection Site. The only item remaining on the HHW Collection Site shall be the concrete pads which will become the property of Lessor, unless Lessor agrees or requests otherwise.

ARTICLE 11.
GENERAL PROVISIONS

11.1 Waiver and Modification. No provision of this Lease may be modified, amended or added to except by an agreement in writing signed by all parties hereto.

11.2 Applicable Law and Venue. This Lease and all rights and obligations arising out of it will be construed in accordance with the laws of the State of California, without regard to any conflict of laws provisions, and any action to enforce the provisions of this Lease shall be venued in the Superior Court of San Luis Obispo County.

11.3 Time. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

11.4 Authority to Execute Lease. Lessor and Lessee each acknowledge that it has all necessary right, title, and authority to enter into and perform its obligations under this Lease, that this Lease is a binding obligation of such party and has been authorized by all requisite action under the party's governing instruments, that the individuals executing this Lease on behalf of such party are duly authorized and designated to do so, and that no other signatories are required to bind such party.

11.5 Consents. Whenever consent or approval of either party is required hereunder, that party will not unreasonably withhold or delay such consent or approval, except as may be expressly set forth to the contrary.

11.6 Entire Agreement. The terms of this Lease are intended by the parties as a final expression of their agreement with respect to the terms as are included herein and may not be contradicted by evidence of any prior or contemporaneous agreement.

11.7 Severability. Any provision of this Lease which proves to be invalid, void, or illegal in no way affects, impairs, or invalidates any other provisions hereof, and such other provisions will remain in full force and effect.

11.8 Impartial Construction. The language in all parts of this Lease will be in all cases construed as a whole according to its fair meaning and not strictly for or against either Lessor or Lessee.

11.9 Notices. All notices, demands, and communications between Lessor and Lessee will be in writing and given by personal delivery, facsimile transmission, electronic mail, registered mail (return receipt requested with postage prepaid), Federal Express, or other reliable private express delivery, addressed to Lessor or Lessee at the addresses shown in Section 1.3 above. Either party may, by notice to the other given pursuant to this Section 11.9, specify additional or different addresses for notice purposes.

11.10 Counterparts. This Lease may be executed in one or more counterparts, each of which will constitute an original.

11.11 Lessee Approval. Whenever this Lease calls for approval by Lessee of an action implementing the provisions of this Lease, the Executive Director of IWMA, or his or her designee, will have authority to grant such approval, without necessity of further authorization or approval of the IWMA Board of Directors.

11.12 Lessor Approval. Whenever this Lease calls for approval by Lessor of an action implementing the provisions of this Lease, the General Manager of NCSD, or his or her designee, will have authority to grant such approval, without necessity of further authorization or approval of the NCSD Board of Directors.

11.13 Relationship of the Parties. The relationship of the parties hereto is that of landlord and tenant, and it is expressly understood and agreed that Lessor is not in any way or for any purpose to be considered a partner of IWMA or a joint venturer with IWMA in the conduct of IWMA's business under the terms of this Lease or otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written.

LESSOR:

NIPOMO COMMUNITY SERVICES DISTRICT, a California special district

By: Ed Eby, President

Date:

ATTEST:

Mario Iglesias
Board Secretary

APPROVED AS TO FORM:

By: Whitney G. McDonald
District Counsel

Date:

LESSEE:

SAN LUIS OBISPO COUNTY INTEGRATED WASTE MANAGEMENT AUTHORITY, a
California joint powers authority

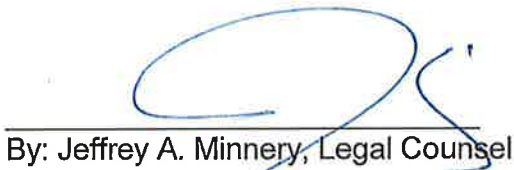

By: Aaron Gomez, President

7/10/19
Date:

ATTEST:


By: Patti Toews, Program Director

APPROVED AS TO FORM:


By: Jeffrey A. Minnery, Legal Counsel

7/10/19
Date:

EXHIBIT "A"

MAP DEPICTION OF HHW COLLECTION SITE

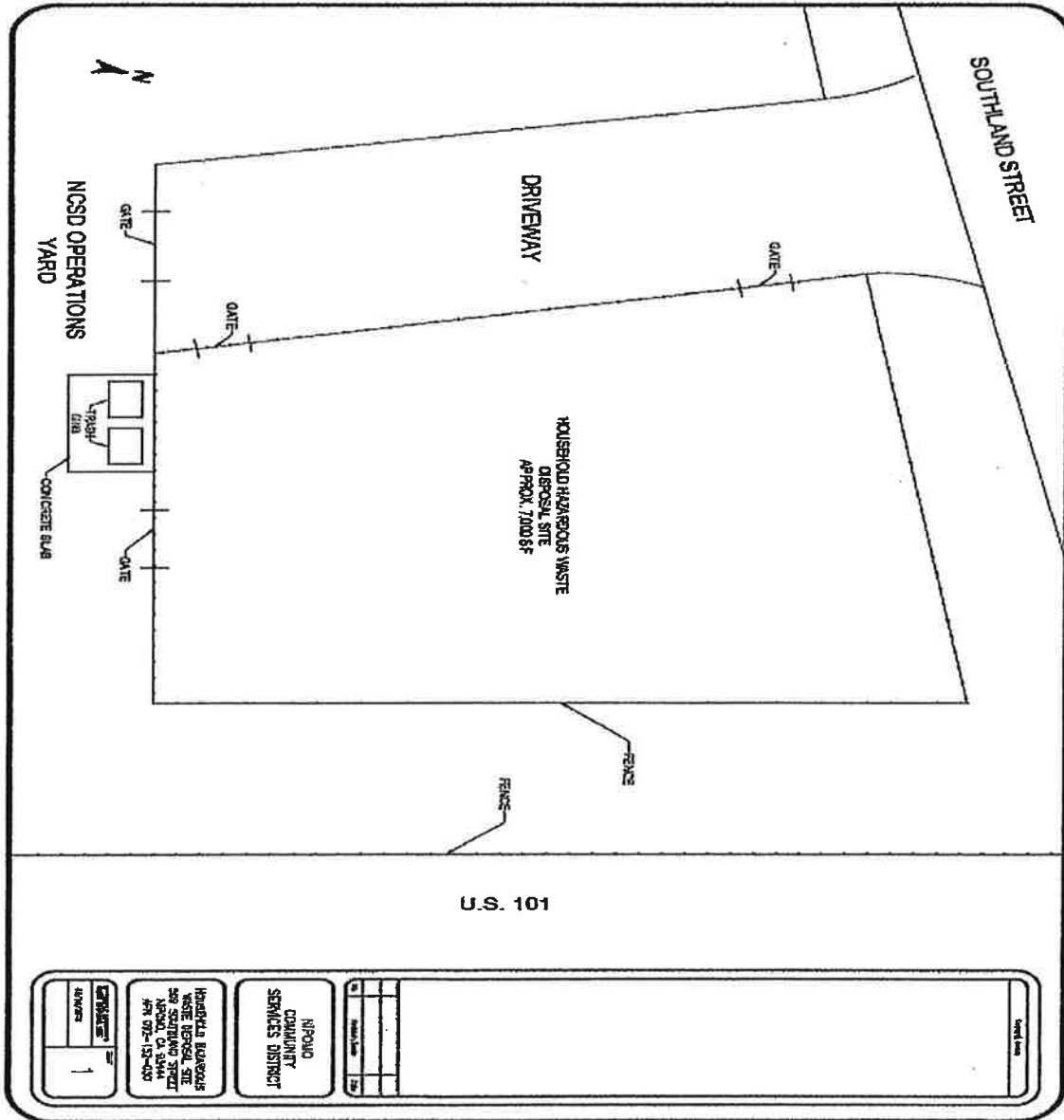


Exhibit "A"
Page 1 of 1

TO: BOARD OF DIRECTORS

FROM: MARIO E. IGLESIAS
GENERAL MANAGER

DATE: JULY 18, 2019

AGENDA ITEM
PUBLIC FACILITIES
CORPORATION

A
JULY 24, 2019

**NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION**

ITEM

Annual Meeting of the Nipomo Community Services District Public Facilities Corporation

BACKGROUND

The Nipomo Community Services District Public Facilities Corporation is required to meet annually in the month of July to review corporate activities, take action as needed, and review and approve the previous meeting's Board minutes. The only action needed at this time is to approve the meeting minutes of the July 25, 2018, meeting of the Nipomo Community Services District Public Facilities Corporation. These Board minutes were included in the regular NCSD meeting minutes but were not separately approved by the corporation. The minutes are being presented today for approval.

FISCAL IMPACT

Funds for staff time and effort to support the annual meeting of the Nipomo Community Services District Public Facilities Corporation are included in the Budget.

STRATEGIC PLAN

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

RECOMMENDATION

Staff recommends that your Honorable Board approve the Minutes of the Nipomo Community Services District Public Facilities Corporation meeting held on July 25, 2018.

ATTACHMENT

A. Minutes of July 25, 2018

NCS D PUBLIC FACILITIES CORPORATION

JULY 24, 2019

ITEM A

ATTACHMENT A

importation of supplemental water increases above current deliveries and the effect on the aquifer, propose accelerating supplemental water delivery schedule to accelerate new service connections .

- 5. Consider Financial Plan - effect on water rates for each option, assuming increased importation of water and how to build infrastructure needed for additional importation.
- 6. Develop a metric to evaluate the effectiveness of each option – existing and proposed – in the WSRMP and demonstrate each option’s effect on the groundwater supply in terms of positive, negative, or neutral impacts.

The Board President reopened public comment.

Pattea Torrence, a resident within the District boundaries, asked if existing homes would have priority over new construction.

Noel Heal, NCS D customer, asked if more supplemental water is available for purchase from the City of Santa Maria.

James Cabarra, Agent for property owner of 806 Honey Grove, suggested the Board consider a lottery system.

Staff agreed it should take no longer than six weeks to accumulate the information requested to provide to the Ad Hoc Committee.

President Eby adjourned the regular meeting.

0:58:38

NCS D PUBLIC FACILITIES CORPORATION ANNUAL MEETING

President Eby adjourned to the NCS D Public Facilities Corporation Annual Meeting.

ROLL CALL

At roll call, all Board members were present.

A. APPROVE MINUTES OF THE JULY 26, 2017 MEETING

There were no public comments.

Upon the motion of Director Armstrong and seconded, the Board unanimously approved the minutes of July 26, 2017.

Vote 5-0.

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

President Eby adjourned to NCS D Regular Board Meeting.

01:09:41

F. MANAGER’S REPORT

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

Noel Heal, NCS D customer, asked about the status of Rossi project based on briefing meeting held the previous day.

01:09:41

G. COMMITTEE REPORTS

TO: BOARD OF DIRECTORS
 FROM: MARIO IGLESIAS
 GENERAL MANAGER
 DATE: JULY 18, 2019



**AGENDA ITEM
 F
 JULY 24, 2019**

GENERAL MANAGER'S REPORT

ITEM

Standing report to your Honorable Board -- *Period covered by this report is July 7, 2019 through July 20, 2019.*

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 table below provides the June data and the cumulative data for these activities.

Office Activities

	June-19	Jul 18 - June 2019
Reports of water waste followed up on	1	5
Leak Adjustments	0	22
Leak Adjustment Amount	\$0	\$7,496
Late Fee Waivers (April through June)	7	16
Late Fee Waiver Adjustment Amount	\$146	\$514

Water Resources

Table 1. Total Production Acre Feet (AF)

	June-19	Jul 18 - June 2019
Groundwater Production	97.3	880.1
Supplemental Water Imported	<u>82.4</u>	<u>970.4</u>
Total Production	179.7	1,850.5

NCSD imported 82.4 AF of water over the 30 day period in June averaging 622 gallons per minute for an average total of 895,004 gallons per day. For fiscal year 2018-19 the District imported 970 AF of supplemental water, 170 AF more than the required 800 AF required through the City of Santa Maria water purchasing agreement. The District's total production, including groundwater wells and imported water measured at the Joshua Road Pump Station, registered 1,850.5 AF of water for the fiscal year.

On the following page, Table 2 compares the District's total water production for the month of June 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 June 2019, the community's water conservation effort reached approximately 34% compared to June 2013. The District's year-end conservation effort for each fiscal year will continue to be monitored.

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

	June-19	Jul 18 – June 2019
Total Production (AF) for FY 2018-19	179.7	1,850.5
Total Production (AF) for 2013	<u>272.1</u>	<u>2,529.1</u>
Reduction (AF)	<u>92.4</u>	<u>678.6</u>
Percentage Reduction	34.0%	26.8%

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 City of Santa Maria, 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)

	June-19	Jul 18 – June 2019
NCSD GW Well Production	97.3	880.1
Purveyor Customer Credit (33.3% of Import Water)	<u>27.5</u>	<u>323.8</u>
NCSD Total Calculated GW Production	124.8	1,203.9
Average GW Production for 2009-2013	<u>263.6</u>	<u>2,533.4</u>
NCSD Percentage of GW Reduction	53%	52%

Taking into consideration the above referenced purveyor customer credit, the District can claim a groundwater pumping reduction of 53% for the month of June compared to the 5-year average from 2009 to 2013 (NMMA-TG assigned comparator). For Fiscal Year 2019, the total groundwater pumping reduction for the District is 52%. At the current Stage IV level of NMMA's Water Shortage Condition and Response Plan, the District continues to achieve its targeted groundwater pumping reduction level of 50% for the year.

2019 Fiscal Year Groundwater Pumping

Table 4 on the following page is a summary of the District's groundwater pumping reduction efforts for Fiscal Year 2019. The targeted groundwater pumping reduction as stated above is 50%. The District reached its pumping reduction goals for the fiscal year as demonstrated with 63 acre-feet under the reduction target. Each year trends differ slightly depending upon the weather, a major factor that drives consumer water demand.

Table 4. Groundwater Pumping

	Jun-19	Jul 18-Jun 19	Target	Over_(Under)	
NCSD GW Well Production	97.3	880.1			
Purveyor Customer Credit (33.3% of Import Water)	27.5	323.8			
NCSD Total Calculated GW Production	124.8	1,203.9	1,266.7	63	AcFt
Average GW Production for 2009-2013	263.6	2,533.4	2,533.4		
NCSD Percentage of GW Reduction	53%	52%	50%		

Table 5. FY 2018 v. FY 2019 Groundwater Pumping

	Jun-19	Jul 18-June 19	Jun-18	Jul 17-June 18
NCSD GW Well Production	97.3	880.1	120.3	1,054.7
Purveyor Customer Credit (33.3% of Import Water)	27.5	323.8	25.3	322.0
NCSD Total Calculated GW Production	124.8	1,203.9	145.6	1,376.7
Average GW Production for 2009-2013	263.6	2,533.4	261.6	2,269.7
NCSD Percentage of GW Reduction	53%	52%	44%	39%

Table 5 compares the previous year’s groundwater pumping with the current year’s groundwater pumping. The District achieved the target groundwater pumping reduction level of 50% for the current fiscal year of 2018-19 as a result of an 8% reduction in customer demand from the previous fiscal year.

Rainfall Gauge

(Reported in inches)	Nipomo East (Dana Hills Reservoirs)	Nipomo South (Southland Plant)
May 2019 Total	1.93	1.49
July-2018 through June-2019 (Seasonal Total)	19.58	16.97
July 1, 2019 to July 18, 2019	0.00	0.00
Total Rainfall to date	19.58	16.97
Average Annual Year Rainfall	18.0 ¹	14.0 ²

Note 1: SLO County Website

https://wr.slocountywater.org/site.php?site_id=3&site=935e7af7-0e94-4042-bc11-e02906d5ba44

Note 2: SLO County Website

https://wr.slocountywater.org/site.php?site_id=2&site=878bfdbf-5c40-4398-8226-418372e4039b

Safety Program

No Items

Other Items and News of Interest

No Items

Supplemental Water Capacity Accounting

Summary Since January 25, 2008		Number of Equivalent Meters	AFY
Supplemental Water Available for Allocation		947	500
Supplemental Water Reserved (Will Serve Letter Issued)		116	-61.2
Subtotal Net Supplemental Water Available for Allocation		831	438.8
Supplemental Water Assigned (Intent-to-Serve Issued)		51.6	-27.2
Total Remaining Supplemental Water Available for Allocation		779.4	411.5

As of July 3, 2019

The District began to accept applications for new water services on May 9, 2019.

	June	May-June 2019	Allocated AFY	Meter Equiv.
Will-Serve Letters	0	1	.53	1.0
Intent-to-Serve Letters	3	6	<u>51.60</u>	<u>27.2</u>
Totals (May-June 2019)			52.13	28.2

For June 2019, no Will-Serve Letter for single lots were issued. 3 applications are pending from May and June. Once the applications are completed, Will-Serve Letters will be issued. Each lot is allocated .53 acre-feet of water and equals 1 "Equivalent Meter" as referenced in the table above.

For June 2019 there were no applications for service for projects larger than a single lot. There are 3 projects before the Board today and if approved, these projects require 27.6 Equivalent Meters. Applications of this nature require an engineering evaluation to determine the "Equivalent Meter" quantity and the projects must be approved by the Board. There is 1 applications in this category under review by the District Engineer.

Connection Report

Nipomo Community Services District
 Water and Sewer Connections

END OF MONTH REPORT

	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19
Water Connections (Total)	4434	4434	4437	4437	4437	4437	4438
Sewer Connections (Total)	3197	3197	3199	3199	3200	3201	3207
New Water Connections	0	0	3	0	0	0	1
New Sewer Connection	0	0	2	0	1	1	6
Galaxy & PSHH at Orchard and Division Sewer Connections billed to the County	475	475	475	475	475	475	472

The Connection Report is current through July 3, 2019.

Meetings (July 7, through July 20)

Meetings Attended (telephonically or in person):

- July 9, Eng./Admin Meeting
- July 9, Fairways HOA – Woodgreen LS Update
- July 10, Rotary
- July 10, Regular NCSD Board Meeting
- July 10, Exec. Team After Board Meeting
- July 11, Developer/Engineering Meeting
- July 11, Blacklake/NCSD Oversight Comm.
- July 15, Board Officer Meeting
- July 17, Rotary
- July 17, Chamber Presentation – Govern. Affairs Comm.
- July 17, NCSD Admin. Committee

Meetings Scheduled (July 21 through August 3):

Upcoming Meetings (telephonically or in person):

- July 23, Eng/Admin Mtg.
- July 23, Mr. Horton – SLO County
- July 24, Rotary
- July 24, Regular NCSD Board Meeting
- July 24, Exec. Team After Board Meeting
- July 25, NMMA Purveyor Managers

Upcoming Water Resource and Other Meetings

Upcoming Standing Meetings:

- NMMA-TG: August 15th (Thursday) @ 10:00 AM, NCSD Board Room
- RWMG: September 4th @ 10:00 AM, SLO Library
- WRAC: September 4th @ 1:30 PM, SLO Library
- NMMA Purveyor Meeting: July 25th @ 10:00 AM, NCSD Admin Office

RECOMMENDATION

Staff seeks direction and input from your Honorable Board

ATTACHMENTS

No Attachments