

TO: BOARD OF DIRECTORS

FROM: MARIO IGLESIAS  
GENERAL MANAGER



DATE: SEPTEMBER 6, 2019

**AGENDA ITEM**  
**E-2**  
**SEPTEMBER 11, 2019**

**APPROVE AND ACCEPT AMENDED TEMPORARY EASEMENT  
AGREEMENT AND RIGHT OF ENTRY AGREEMENT WITH MURPHY  
SANTA MARIA 1, LLC, AS PART OF THE EUREKA WELL  
REPLACEMENT PROJECT**

**ITEM**

Approve and accept Amended Temporary Easement Agreement ("Easement") and the Right of Entry Agreement ("ROE") with Murphy Santa Maria 1, LLC, as part of the Eureka Well replacement project. [RECOMMEND ADOPT RESOLUTION APPROVING AMENDED RIGHT-OF-ENTRY AGREEMENT AND APPROVING AND ACCEPTING AMENDED TEMPORARY EASEMENT AGREEMENT WITH MURPHY SANTA MARIA 1, LLC.]

**BACKGROUND**

The Nipomo Community Services District ("District") is in planning to drill a well at the Eureka Well site to replace a well that failed in 2017. The District secured property from Murphy Santa Maria 1, LLC, ("Owner") to be used in this effort. On July 10, 2019, your Board authorized the District's General Manager to execute a Right-of-Entry Agreement ("ROE") with Owner for work necessary to the Eureka project planning process. On August 14, 2019, your Board approved and accepted a Temporary Easement Agreement ("Easement") with Owner to facilitate a spray field – necessary to dispose of well development water during the development of the Eureka Well.

The ROE spanned from July 10, 2019 to August 31, 2019. During that time the District conducted geo-hydraulic work related to the Eureka Well project. The Easement became effective September 1, 2019. Together, the ROE and the Easement provide the District with continued access to the property from July 10, 2019 to August 31, 2020 – providing a 13 month window for completing the project.

Owner has requested the District not exercise its rights under the Easement and wait to take control of the parcel until September 30, 2019. The previous lessee of the property is farming the parcel and has a crop in the ground that continues to be productive. Owner is willing to reimburse a month's rent (\$5,541.66) if the District is willing to comply with Owner's request.

The District's Director of Engineering and Operations has reviewed the request and is fully confident that the one-month delay would not hinder the District's ability to complete the project on schedule and at budget. Owner leases the land to farmers and the growing season (September to August) dictates the lease dates. The time period, October 2019 to August 2020, is sufficient time to complete the project and will reduce the District's cost of maintaining the parcel as required in the Easement by one month.

In order to comply with Owner's request, the Easement Agreement must be revised with an additional clause that allows for reduction in rent and a new date of property acquisition. In

addition, the District will need to accomplish some incidental work on the property between now and when the Easement would take effect under Owner's request. Therefore, the ROE needs to be revised to extend the date the District is allowed to work on the parcel to October 1, 2019, the proposed date the Easement would take effect.

**FISCAL IMPACT**

Reducing the cost of the Easement by reducing the number of months the District pays rent is beneficial and will not interfere with the project schedule. Also a positive to the prospect of reduced time renting the parcel is the cost reduction associated with maintaining the parcel – weed abatement and rodent control costs.

**STRATEGIC PLAN**

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

**RECOMMENDATION**

It is recommended your Board adopt a resolution to approve amendments and revisions to the Temporary Easement Agreement and Right-of-Entry Agreement as proposed.

**ATTACHMENTS**

- A. Amended Temporary Easement Agreement with Murphy Santa Maria 1, LLC (clean)
- B. Amended Temporary Easement Agreement with Murphy Santa Maria 1, LLC (red-line)
- C. Amended Right of Entry Agreement with Murphy Santa Maria 1, LLC (clean)
- D. Amended Right of Entry Agreement with Murphy Santa Maria 1, LLC (red-line)
- E. Resolution 2019-XXXX Approving Amended Right-of-Entry Agreement and Approving and Accepting Amended Temporary Easement Agreement with Murphy Santa Maria 1, LLC.

SEPTEMBER 11, 2019

ITEM E-2

ATTACHMENT A

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444-0326  
Attention: General Manager

APN: 091-192-044, 091-192-053

SPACE ABOVE FOR RECORDER'S USE

This Instrument is for the benefit of the Nipomo Community Services District and is exempt from Recording Fees (Govt. Code § 27383), Filing Fees (Govt. Code § 6103), and Documentary Transfer Tax (Rev & Tax Code § 11922).

### **AMENDED TEMPORARY EASEMENT AGREEMENT**

This Amended Temporary Easement Agreement ("Agreement") is entered into by and between Murphy Santa Maria 1, LLC, a California limited liability company ("Grantor") and the Nipomo Community Services District, a California special district ("NCSD" or "Grantee"), and is effective as of the date it is fully executed by the Parties.

This Agreement is based on the following facts, which are incorporated herein by this reference:

A. Grantor is the record fee owner of that certain real property located in the community of Nipomo, California, identified as San Luis Obispo County Tax Assessor's Parcel Numbers 091-192-044 and 091-192-053, more particularly described in the legal description attached hereto and incorporated herein as Exhibit A ("Parcel") and depicted in Exhibit B. The Parcel is approximately 14.76 acres in size and is used as cropland. It is located at the intersection of Willow Road and Highway 1 in Nipomo, California. Aside from any crops and improvements supporting crop production, the Parcel is unimproved.

B. NCSD intends to undertake a project to re-drill a groundwater well on an adjacent property located at 795 Guadalupe Road in Nipomo, California ("Project"). NCSD wishes to provide, and Grantor wishes to receive, groundwater produced during construction of the Project for use as irrigation water on the Parcel. This Agreement sets forth the terms by which the Parties will provide and receive said water.

C. NCSD and Grantor entered into that certain Temporary Easement Agreement approved and accepted by the NCSD Board of Directors on August 14, 2019, and recorded in the Official Records of the County of San Luis Obispo as Document No. 2019034726 ("Original Agreement"), providing for the NCSD's use of the Parcel for the Project for a term of one year beginning on September 1, 2019, at a total cost of \$66,500 to be paid to Grantor prior to commencement of the term. Pursuant to the terms of the Original Agreement, the NCSD paid Grantor \$66,500 prior to September 1, 2019. Following commencement of the term, however,

Grantor's prior tenant on the Parcel requested an additional month's extension on its lease with Grantor to allow harvesting of an existing crop on the Parcel. Grantor has requested that the NCSD accommodate this request, if possible, in exchange for Grantor returning \$5,542 to the NCSD as consideration for the delay of commencement of the Original Agreement. NCSD has determined that a one-month delay of the commencement of the term of the Original Agreement will not harm the Project and that the terms of this Amended Agreement are in the best interest of the NCSD.

NOW THEREFORE, for a valuable consideration receipt and sufficiency of which is hereby acknowledged, Grantor and NCSD agree to the following:

1. **Temporary Easement.** Grantor hereby grants to NCSD, its successors and assigns, for use by NCSD, its contractors, subcontractors, employees, and agents ("NCSD's Designees"), a Temporary Easement in, over, under, and across the Parcel for a term of one year, from October 1, 2019, through August 31, 2020 ("Term"), for the purpose of placing, depositing, and leaving groundwater produced during construction of the Project on the Parcel, including the placement of any and all temporary irrigation facilities necessary to enable use of the water to irrigate the entire Parcel.

2. **Payment.** NCSD has paid Grantor a total of \$66,500 as full and complete compensation for the use of the Temporary Easement during the Term of the Original Agreement. Grantor shall pay NCSD \$5,542 within thirty days of execution of this Agreement as repayment for the loss of one month of the term of the Original Agreement. No other compensation is owed to Grantor for the use of the Temporary Easement during the term of this Agreement.

3. **Obligations of Grantor.** Grantor shall remove from the Parcel all items in conflict with the Grantee's use of the Temporary Easement prior to commencement of the Term and shall ensure the Parcel is in a state of bare dirt at the time of commencement of the Term. If Grantor fails to remove any such items as provided herein, Grantor shall indemnify NCSD for any claims, damages, and costs incurred by NCSD in connection with NCSD's removal of such items, including reasonable attorneys' fees. Grantor shall mark all underground irrigation and utility lines at the request of NCSD.

4. **Maintenance and Use.** NCSD shall maintain the Parcel in a manner that is free of weeds, debris, and rodents, to the extent reasonably possible, during the Term and any Extension Term. NCSD's use of the Temporary Easement shall not disrupt neighboring properties and shall not interfere with the use of the groundwater well located on the Parcel by Grantor or by any party having a legal right to use or access the well. Grantor shall provide NCSD contact information for any party seeking access to the groundwater well or any associated irrigation lines in order to coordinate access during the Term of this Agreement. NCSD shall not damage the groundwater well or any properly marked irrigation or utility lines. In the event that NCSD or its contractors cause any damage to the groundwater well or any properly marked irrigation or utility lines, Grantor shall have the right to make immediate necessary repairs to restore the damage to its pre-existing condition, and NCSD shall be responsible for the reasonable costs of any such repairs. NCSD shall control dust caused by its use of the Temporary Easement.

5. **Prevention of Escape of Irrigation Water.** NCSD agrees to irrigate the Parcel in

such a manner as to prevent water from escaping onto lands of other adjoining land owners or upon public highways. In the event that NCSD's activities on the Parcel cause irrigation water to enter adjoining parcels and such water causes damage to those parcels, NCSD shall be deemed responsible for that damage in accordance with all applicable laws.

6. **No Liens.** NCSD agrees to keep the Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of NCSD's use of the Temporary Easement in connection with the construction of the Project. If any such lien is filed on the Parcel (or any portion thereof) in connection with NCSD's use of the Temporary Easement, NCSD will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Grantor within thirty (30) calendar days of receiving notice of the lien. If NCSD fails to remove the lien within such thirty (30) day period, Grantor will have the right to remove or bond over the lien, and NCSD, upon demand, will reimburse Grantor for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Grantor in connection with such removal or bond.

7. **Early Termination.** Upon completion of NCSD's Project and written notice thereof given to Grantor from NCSD, NCSD may choose to terminate the Temporary Easement and this Agreement prior to expiration of the Term. In the event of such unilateral termination by NCSD, NCSD shall not be entitled to repayment of any portion of the compensation paid to Grantor pursuant to Section 2 above. This Agreement and the Temporary Easement may also be terminated at the written request of Grantor if such termination is mutually agreeable to the NCSD, subject to NCSD's discretion and confirmed in writing from NCSD's General Manager. In the event of such termination requested by Grantor and mutually agreed upon by NCSD, Grantor shall repay NCSD \$5,542 per month for each month remaining in the term of this Agreement at the time of termination.

8. **NCSD's Obligations At End of Term or Early Termination.** NCSD's only obligations at the expiration or early termination of the Temporary Easement are to leave the Temporary Easement area in a condition at similar elevations and grades as existed in said Temporary Easement area prior to NCSD's use of said Temporary Easement, to remove any irrigation lines or equipment used by NCSD to irrigate the Parcel during the Term of the Temporary Easement, except for the irrigation line which will be installed on the Parcel running from the east side of Highway 1 to the west side of Highway 1 and will remain and become the property of Grantor. Further, upon the expiration of the Term or early termination of the Temporary Easement, NCSD agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the easement and the relinquishment of NCSD's rights and interests in the Temporary Easement pursuant to this Agreement, including, without limitation, NCSD will record, at the NCSD's expense, such termination or extinguishment as is in form and substance sufficient to remove this Agreement as an encumbrance against title.

9. **Warranties.** NCSD warrants that on the completion of its use of the Temporary Easement, and following any activity required by Section 7, it shall cause its contractor to leave the Temporary Easement area in a neat manner conforming to the appearance of the Temporary Easement area prior to NCSD's use of said area.

10. **Grantor's Obligations at End of Term.** Grantor expressly acknowledges and agrees that Grantor is solely responsible for replacing, in its sole discretion and at its sole cost, any improvements, landscaping, irrigation, and related items in the Temporary Easement area at the expiration or early termination of the Temporary Easement.

11. **Insurance.** Prior to entry onto the Temporary Easement area, NCS D will procure and maintain (and cause NCS D's contractor for the Project to procure and maintain) a policy of commercial general liability insurance covering the use by and activities of NCS D and NCS D's Designees with a single limit of liability (per occurrence and aggregate) of not less than \$2,000,000, and to deliver to Grantor a certificate of insurance and copy of additional insured endorsement naming Grantor as named additional insured, evidencing that such insurance is in force and effect, and evidencing that Grantor has been named as an additional insured thereunder with respect to the use by NCS D and NCS D's Designees of the Temporary Easement. Such insurance will be maintained in force throughout the Term of this Temporary Easement. Notwithstanding any other provision herein to the contrary, NCS D reserves the right to self-insure for the NCS D's insurance obligations under this Agreement.

12. **NCS D's Agreement to Indemnify.** NCS D will, and will cause its contractor for the proposed Project to, indemnify, defend, and hold Grantor harmless from any and all liability for loss, damages, costs, expenses, demands, causes of action, claims or judgments, arising from or arising out of or in any way connected with the entry, access and use of the Temporary Easement by said contractor and its designees in connection with the exercise of the rights of the contractor and its designees under this Agreement or any breach of NCS D's or NCS D's contractor's obligations under this Agreement, and will reimburse Grantor for all reasonable costs, expenses and losses, including reasonable attorneys' fees, incurred by Grantor in consequence of any claims, demands and causes of action that may be made or brought against Grantor arising out of the entry on and use of the area comprising the Temporary Easement by the said contractor and/or its designees in connection with the Project or any breach of NCS D's or its contractor's obligations under this Agreement.

13. **Notices.** All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Federal Express. Notices will be considered given upon the earlier of (a) personal delivery, (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one (1) business day following deposit with Federal Express. The Parties will address such notices as provided below or as may be amended by written notice:

GRANTEE: Nipomo Community Services District  
148 South Wilson Street  
Nipomo, California 93444  
Attention: General Manager

GRANTOR: Murphy Santa Maria 1, LLC  
135 North Halcyon, Suite D  
Arroyo Grande, CA 93420  
Attention: Tim Murphy

14. **Miscellaneous Provisions.**

a. *Governing Law and Venue.* This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of San Luis Obispo.

b. *Entire Agreement.* This Agreement contains the entire agreement between Grantor and Grantee regarding the Temporary Easement. No person is authorized to make, and by execution hereof Grantor and Grantee acknowledge that no person has made, any representation, warranty, guaranty or promise except as set forth herein; and no such agreement, statement, representation or promise not contained in this Agreement.

c. *Amendments.* Any amendments to this Agreement will be effective only by a writing executed by all Parties to this Agreement.

d. *Successors and Assigns.* This Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties hereto.

e. *Counterparts.* This Agreement may be executed in whole or in counterparts, which together shall constitute the entire Agreement.

f. *Legal Representation.* Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented. The Parties further acknowledge that, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of said Agreement.

g. *Attorneys' Fees.* If either of the Parties hereto incurs attorneys' fees in order to enforce, defend, or interpret any of the terms, provisions, or conditions of this Agreement or because of a breach of this Agreement by the other Party, the prevailing Party, whether by suit, negotiation, arbitration, or settlement will be entitled to recover reasonable attorneys' fees from the other Party.

h. *Severability.* If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and



enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.

IN WITNESS WHEREOF, Grantor and NCSD have entered into this Agreement as of the date it is fully executed by the Parties.

[Signatures on Following Page]

**GRANTOR:**

Murphy Santa Maria 1, LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Tim Murphy \_\_\_\_\_  
Title: Manager \_\_\_\_\_

**GRANTEE:**

NIPOMO COMMUNITY SERVICES  
DISTRICT, a California special district

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mario Iglesias, General Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Luis Obispo )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Luis Obispo )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## **Exhibit A**

### Temporary Easement Legal Description

The North half of Lot 24 in Division "A" of Pomeroy's Resubdivision of the Los Berros Tract, in the County of San Luis Obispo, State of California, according to map filed for record September 26, 1903 in Book A, Page 109 of Maps, in the Office of the County Recorder of said County.

Excepting therefrom that portion condemned by the State of California for State highway purposes in Final Order of Condemnation, a certified copy of which recorded September 27, 2004 as Document No. 2004-085055 of Official Records.

Together with any portion contained within the Vacation of Superseded State Highway in the County of San Luis Obispo, Road 05-SLO-1-PM 5.0 Request No. 11511 recorded February 7, 2012 as Instrument No. 2012007087 of Official Records.

A.P.N. 091-192-044 and 091-192-053

**Exhibit B**  
Depiction of Temporary Easement Area

# EXHIBIT "B"

FINAL ORDER OF CONDEMNATION PER  
DOC NUMBER: 2004-085055 OF OFFICIAL  
RECORDS

CENTERLINE

WILLOW RD

**EASEMENT  
AREA**

AREA = 3.51 ACRES

CENTERLINE

SOUTHWESTERLY  
LINE HWY 1 PER  
92-LS-78

**EASEMENT  
AREA**

AREA = 11.00 ACRES

STATE HWY 1

GUADALUPE RD

PARCEL 4  
24 PM 7

PTN. LOT 18  
A MAPS 109

NORTH HALF OF LOT 24 IN DIVISION 'A' OF  
POMEROY'S RESUBDIVISION OF THE LOS  
BERROS TRACT  
(BOOK A, AT PAGE 109 OF MAPS)



1 INCH = 250 FEET

**TEMPORARY CONSTRUCTION EASEMENT**  
A PORTION OF THE NORTH HALF OF LOT 24, MAP BK A, PG 109  
COUNTY OF SAN LUIS OBISPO, CALIFORNIA

DRAWN BY BVS	CHECKED BY DSH	SCALE 1" = 250'	DATE 04/23/19
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**CERTIFICATE OF ACCEPTANCE**

(Government Code §27281)

This is to certify that the interest in real property conveyed by Amended Temporary Easement Agreement dated \_\_\_\_\_, 2019, from Grantor Murphy Santa Maria 1, LLC, to Nipomo Community Services District, a political corporation (“District”) and Grantee herein, is hereby accepted by order of the District Board of Directors of the Nipomo Community Services District on \_\_\_\_\_, and Grantee consents to the recordation thereof by its duly authorized officer.

**NIPOMO COMMUNITY SERVICES DISTRICT**

By: \_\_\_\_\_

Name: Ed Eby

Title: President, Nipomo Community Services  
District Board of Directors

ATTEST:

By: \_\_\_\_\_

Mario Iglesias, District General Manager and  
Board Secretary

SEPTEMBER 11, 2019

ITEM E-2

ATTACHMENT B



RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Nipomo Community Services District  
P.O. Box 326  
Nipomo, CA 93444-0326  
Attention: General Manager

APN: 091-192-044, 091-192-053

SPACE ABOVE FOR RECORDER'S USE

This Instrument is for the benefit of the Nipomo Community Services District and is exempt from Recording Fees (Govt. Code § 27383), Filing Fees (Govt. Code § 6103), and Documentary Transfer Tax (Rev & Tax Code § 11922).

### **AMENDED TEMPORARY EASEMENT AGREEMENT**

This Amended Temporary Easement Agreement (“Agreement”) is entered into by and between Murphy Santa Maria 1, LLC, a California limited liability company (“Grantor”) and the Nipomo Community Services District, a California special district (“NCSD” or “Grantee”), and is effective as of the date it is fully executed by the Parties.

This Agreement is based on the following facts, which are incorporated herein by this reference:

A. Grantor is the record fee owner of that certain real property located in the community of Nipomo, California, identified as San Luis Obispo County Tax Assessor’s Parcel Numbers 091-192-044 and 091-192-053, more particularly described in the legal description attached hereto and incorporated herein as Exhibit A (“Parcel”) and depicted in Exhibit B. The Parcel is approximately 14.76 acres in size and is used as cropland. It is located at the intersection of Willow Road and Highway 1 in Nipomo, California. Aside from any crops and improvements supporting crop production, the Parcel is unimproved.

B. NCSD intends to undertake a project to re-drill a groundwater well on an adjacent property located at 795 Guadalupe Road in Nipomo, California (“Project”). NCSD wishes to provide, and Grantor wishes to receive, groundwater produced during construction of the Project for use as irrigation water on the Parcel. This Agreement sets forth the terms by which the Parties will provide and receive said water.

C. NCSD and Grantor entered into that certain Temporary Easement Agreement approved and accepted by the NCSD Board of Directors on August 14, 2019, and recorded in the Official Records of the County of San Luis Obispo as Document No. 2019034726 (“Original Agreement”), providing for the NCSD’s use of the Parcel for the Project for a term of one year beginning on September 1, 2019, at a total cost of \$66,500 to be paid to Grantor prior to commencement of the term. Pursuant to the terms of the Original Agreement, the NCSD paid Grantor \$66,500 prior to September 1, 2019. Following commencement of the term, however,

Grantor's prior tenant on the Parcel requested an additional month's extension on its lease with Grantor to allow harvesting of an existing crop on the property. Grantor has requested that the NCSD accommodate this request, if possible, in exchange for Grantor returning \$5,542 to the NCSD as consideration for the delay of commencement of the Original Agreement. NCSD has determined that a one-month delay of the commencement of the term of the Original Agreement will not harm the Project and that the terms of this Amended Agreement are in the best interest of the NCSD.

NOW THEREFORE, for a valuable consideration receipt and sufficiency of which is hereby acknowledged, Grantor and NCSD agree to the following:

1. **Temporary Easement.** Grantor hereby grants to NCSD, its successors and assigns, for use by NCSD, its contractors, subcontractors, employees, and agents ("NCSD's Designees"), a Temporary Easement in, over, under, and across the Parcel for a term of one year, from ~~October~~September 1, 2019, through August 31, 2020 ("Term"), for the purpose of placing, depositing, and leaving groundwater produced during construction of the Project on the Parcel, including the placement of any and all temporary irrigation facilities necessary to enable use of the water to irrigate the entire Parcel. ~~At the request of NCSD and upon the consent of Grantor, the Term may commence prior to September 1, 2019, in which case the Term will begin on the date agreed upon by the parties and will terminate on August 31, 2020.~~

2. **Payment.** NCSD ~~has will paid~~ Grantor a total of \$66,500 ~~no later than September 1, 2019,~~ as full and complete compensation for the use of the Temporary Easement during the Term of the Original Agreement. ~~Grantor shall pay NCSD, except that, if the Term commences prior to September 1, 2019, NCSD will pay Grantor an additional \$5,542 within thirty days of execution of this Agreement as repayment for the loss of one month of the term of the Original Agreement per month. No other compensation is owed to Grantor for the use of the Temporary Easement during the term of this Agreement.~~

3. **Obligations of Grantor.** Grantor shall remove from the Parcel all items in conflict with the Grantee's use of the Temporary Easement prior to commencement of the Term and shall ensure the Parcel is in a state of bare dirt at the time of commencement of the Term. If Grantor fails to remove any such items as provided herein, Grantor shall indemnify NCSD for any claims, damages, and costs incurred by NCSD in connection with NCSD's removal of such items, including reasonable attorneys' fees. Grantor shall mark all underground irrigation and utility lines at the request of NCSD.

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Grantor shall have the right to make immediate necessary repairs to restore the damage to its pre-existing condition, and NCSD shall be responsible for the reasonable costs of any such repairs. NCSD shall control dust caused by its use of the Temporary Easement.

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6. **No Liens.** NCSD agrees to keep the Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of NCSD's use of the Temporary Easement in connection with the construction of the Project. If any such lien is filed on the Parcel (or any portion thereof) in connection with NCSD's use of the Temporary Easement, NCSD will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Grantor within thirty (30) calendar days of receiving notice of the lien. If NCSD fails to remove the lien within such thirty (30) day period, Grantor will have the right to remove or bond over the lien, and NCSD, upon demand, will reimburse Grantor for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Grantor in connection with such removal or bond.

7. **Early Termination.** Upon completion of NCSD's Project and written notice thereof given to Grantor from NCSD, NCSD may choose to terminate the Temporary Easement and this Agreement prior to expiration of the Term. In the event of such unilateral termination by NCSD, NCSD shall not be entitled to repayment of any portion of the compensation paid to Grantor pursuant to Section 2 above. This Agreement and the Temporary Easement may also be terminated at the written request of Grantor if such termination is mutually agreeable to the NCSD, subject to NCSD's discretion and confirmed in writing from NCSD's General Manager. In the event of such termination requested by Grantor and mutually agreed upon by NCSD, Grantor shall repay NCSD \$5,542 per month for each month remaining in the term of this Agreement at the time of termination.

8. **NCSD's Obligations At End of Term or Early Termination.** NCSD's only obligations at the expiration or early termination of the Temporary Easement are to leave the Temporary Easement area in a condition at similar elevations and grades as existed in said Temporary Easement area prior to NCSD's use of said Temporary Easement, to remove any irrigation lines or equipment used by NCSD to irrigate the Parcel during the Term of the Temporary Easement, except for the irrigation line which will be installed on the Parcel running from the east side of Highway 1 to the west side of Highway 1 and will remain and become the property of Grantor. Further, upon the expiration of the Term or early termination of the Temporary Easement, NCSD agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the easement and the relinquishment of NCSD's rights and interests in the Temporary Easement pursuant to this Agreement, including, without limitation, NCSD will record, at the NCSD's expense, such termination or extinguishment as is in form and substance sufficient to remove this Agreement as an encumbrance against title.

9. **Warranties.** NCSD warrants that on the completion of its use of the Temporary Easement, and following any activity required by Section 7, it shall cause its contractor to leave the Temporary Easement area in a neat manner conforming to the appearance of the Temporary Easement area prior to NCSD's use of said area.

10. **Grantor's Obligations at End of Term.** Grantor expressly acknowledges and agrees that Grantor is solely responsible for replacing, in its sole discretion and at its sole cost, any improvements, landscaping, irrigation, and related items in the Temporary Easement area at the expiration or early termination of the Temporary Easement.

11. **Insurance.** Prior to entry onto the Temporary Easement area, NCSD will procure and maintain (and cause NCSD's contractor for the Project to procure and maintain) a policy of commercial general liability insurance covering the use by and activities of NCSD and NCSD's Designees with a single limit of liability (per occurrence and aggregate) of not less than \$2,000,000, and to deliver to Grantor a certificate of insurance and copy of additional insured endorsement naming Grantor as named additional insured, evidencing that such insurance is in force and effect, and evidencing that Grantor has been named as an additional insured thereunder with respect to the use by NCSD and NCSD's Designees of the Temporary Easement. Such insurance will be maintained in force throughout the Term of this Temporary Easement. Notwithstanding any other provision herein to the contrary, NCSD reserves the right to self-insure for the NCSD's insurance obligations under this Agreement.

12. **NCSD's Agreement to Indemnify.** NCSD will, and will cause its contractor for the proposed Project to, indemnify, defend, and hold Grantor harmless from any and all liability for loss, damages, costs, expenses, demands, causes of action, claims or judgments, arising from or arising out of or in any way connected with the entry, access and use of the Temporary Easement by said contractor and its designees in connection with the exercise of the rights of the contractor and its designees under this Agreement or any breach of NCSD's or NCSD's contractor's obligations under this Agreement, and will reimburse Grantor for all reasonable costs, expenses and losses, including reasonable attorneys' fees, incurred by Grantor in consequence of any claims, demands and causes of action that may be made or brought against Grantor arising out of the entry on and use of the area comprising the Temporary Easement by the said contractor and/or its designees in connection with the Project or any breach of NCSD's or its contractor's obligations under this Agreement.

13. **Notices.** All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Federal Express. Notices will be considered given upon the earlier of (a) personal delivery, (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one (1) business day following deposit with Federal Express. The Parties will address such notices as provided below or as may be amended by written notice:

GRANTEE: Nipomo Community Services District  
148 South Wilson Street  
Nipomo, California 93444  
Attention: General Manager

GRANTOR: Murphy Santa Maria 1, LLC  
135 North Halcyon, Suite D  
Arroyo Grande, CA 93420  
Attention: Tim Murphy

14. **Miscellaneous Provisions.**

a. *Governing Law and Venue.* This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of San Luis Obispo.

b. *Entire Agreement.* This Agreement contains the entire agreement between Grantor and Grantee regarding the Temporary Easement. No person is authorized to make, and by execution hereof Grantor and Grantee acknowledge that no person has made, any representation, warranty, guaranty or promise except as set forth herein; and no such agreement, statement, representation or promise not contained in this Agreement.

c. *Amendments.* Any amendments to this Agreement will be effective only by a writing executed by all Parties to this Agreement.

d. *Successors and Assigns.* This Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties hereto.

e. *Counterparts.* This Agreement may be executed in whole or in counterparts, which together shall constitute the entire Agreement.

f. *Legal Representation.* Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented. The Parties further acknowledge that, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of said Agreement.

g. *Attorneys' Fees.* If either of the Parties hereto incurs attorneys' fees in order to enforce, defend, or interpret any of the terms, provisions, or conditions of this Agreement or because of a breach of this Agreement by the other Party, the prevailing Party, whether by suit, negotiation, arbitration, or settlement will be entitled to recover reasonable attorneys' fees from the other Party.

h. *Severability.* If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.

IN WITNESS WHEREOF, Grantor and NCSD have entered into this Agreement as of the date it is fully executed by the Parties.

[Signatures on Following Page]

**GRANTOR:**

Murphy Santa Maria 1, LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: Tim Murphy \_\_\_\_\_  
Title Manager \_\_\_\_\_

**GRANTEE:**

NIPOMO COMMUNITY SERVICES  
DISTRICT, a California special district

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mario Iglesias, General Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Luis Obispo )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Luis Obispo )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



## **Exhibit A**

### **Temporary Easement Legal Description**

The North half of Lot 24 in Division "A" of Pomeroy's Resubdivision of the Los Berros Tract, in the County of San Luis Obispo, State of California, according to map filed for record September 26, 1903 in Book A, Page 109 of Maps, in the Office of the County Recorder of said County.

Excepting therefrom that portion condemned by the State of California for State highway purposes in Final Order of Condemnation, a certified copy of which recorded September 27, 2004 as Document No. 2004-085055 of Official Records.

Together with any portion contained within the Vacation of Superseded State Highway in the County of San Luis Obispo, Road 05-SLO-1-PM 5.0 Request No. 11511 recorded February 7, 2012 as Instrument No. 2012007087 of Official Records.

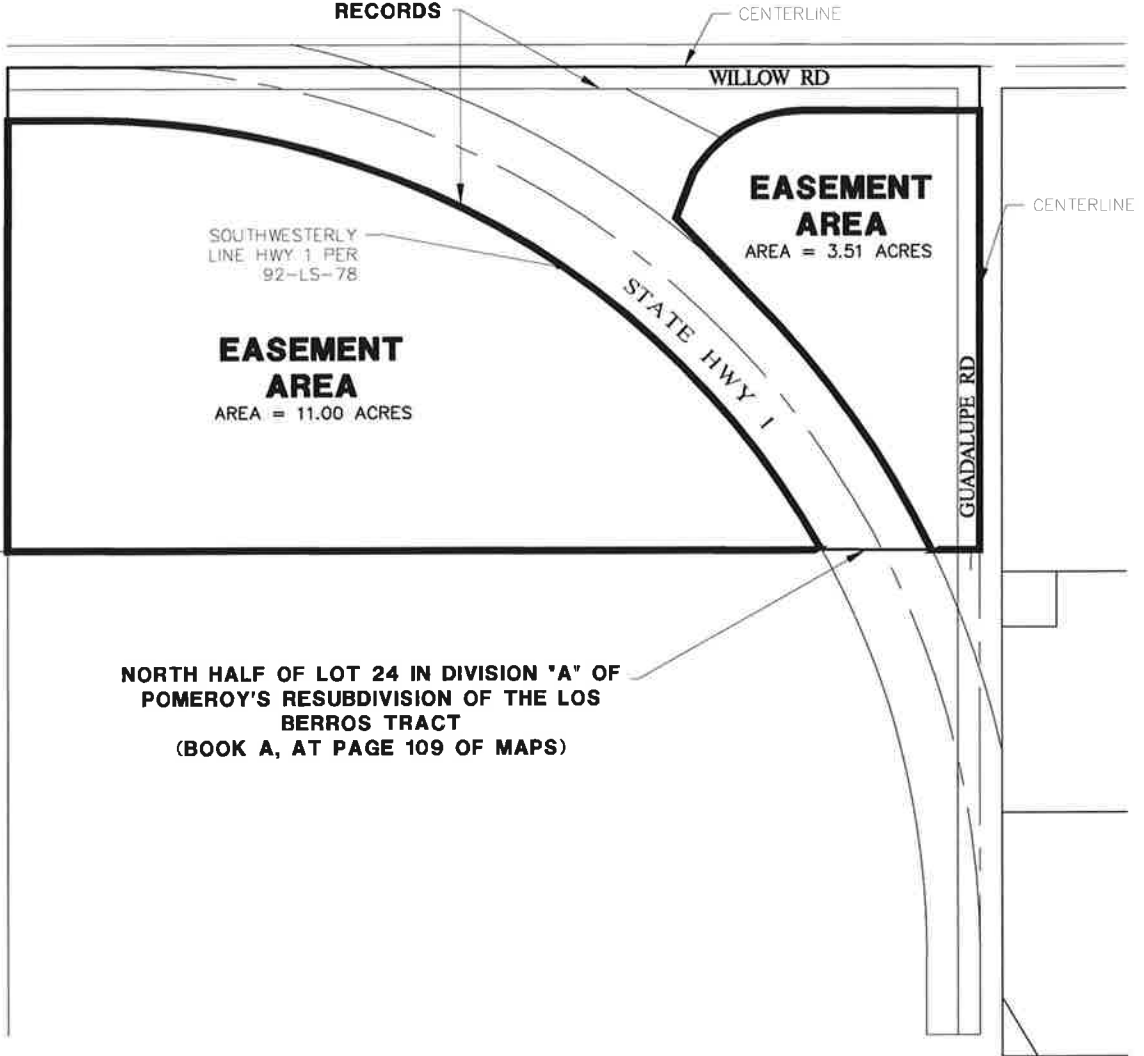
A.P.N. 091-192-044 and 091-192-053

**Exhibit B**  
Depiction of Temporary Easement Area

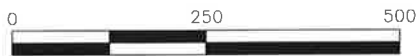
# EXHIBIT "B"

FINAL ORDER OF CONDEMNATION PER  
DOC NUMBER: 2004-085055 OF OFFICIAL  
RECORDS

PARCEL 4  
24 PM 7



NORTH HALF OF LOT 24 IN DIVISION 'A' OF  
POMEROY'S RESUBDIVISION OF THE LOS  
BERROS TRACT  
(BOOK A, AT PAGE 109 OF MAPS)



1 INCH = 250 FEET

**TEMPORARY CONSTRUCTION EASEMENT**  
A PORTION OF THE NORTH HALF OF LOT 24, MAP BK A, PG 109  
COUNTY OF SAN LUIS OBISPO, CALIFORNIA

DRAWN BY	CHECKED BY	SCALE	DATE
BVS	DSH	1" = 250'	04/23/19

**CERTIFICATE OF ACCEPTANCE**

(Government Code §27281)

This is to certify that the interest in real property conveyed by Amended Temporary Easement Agreement dated \_\_\_\_\_, 2019, from Grantor Murphy Santa Maria 1, LLC, to Nipomo Community Services District, a political corporation (“District”) and Grantee herein, is hereby accepted by order of the District Board of Directors of the Nipomo Community Services District on \_\_\_\_\_, and Grantee consents to the recordation thereof by its duly authorized officer.

NIPOMO COMMUNITY SERVICES DISTRICT

By: \_\_\_\_\_

Name: Ed Eby

Title: President, Nipomo Community Services  
District Board of Directors

ATTEST:

By: \_\_\_\_\_

Mario Iglesias, District General Manager and  
Board Secretary

SEPTEMBER 11, 2019

ITEM E-2

ATTACHMENT C

**AMENDED RIGHT OF ENTRY AND ACCESS AGREEMENT**

THIS AMENDED RIGHT OF ENTRY AND ACCESS AGREEMENT (herein called this “**Agreement**”) is dated as of \_\_\_\_\_, 2019, and is entered into by the Nipomo Community Services District, a California special district (“**NCSD**”), and Murphy Santa Maria 1, LLC, a California limited liability company (“**Owner**”).

**RECITALS**

A. Owner is the owner of the land described on Exhibit “A” and the improvements, if any, thereon (the “**Property**”).

B. NCSD has requested that NCSD and its contractor(s) be given access to Owner’s Property in order to perform the work described on Exhibit “B” (collectively, the “**Work**”), and Owner is willing to do so on the terms set forth below.

C. NCSD and Owner previously entered into that certain Right of Entry and Access Agreement dated July 2, 2019, allowing NCSD to access the Property and perform the Work through August 31, 2019. However, NCSD requires additional time to complete the Work and Owner wishes to facilitate this need by extending the right of entry and access by one month, through and including October 1, 2019.

D. The Property is currently used by Guadalupe Contreras, dba LC Farming Services, Inc., (“**Tenant**”) for the purpose of growing and harvesting strawberries (“**Farming Operations**”).

NOW, THEREFORE, for and in consideration of the foregoing premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, NCSD and Owner agree as follows:

1. Access. NCSD and its contractors shall have the right to enter upon the Property from July 2, 2019, through and including October 1, 2019, and to conduct the Work. NCSD shall coordinate such access to the Property with the Tenant so as to minimize any interference with the Farming Operations. Owner shall provide NCSD with current contact information for Tenant to facilitate this coordination.

2. Non-Interference with Tenant Farming Operations. To the extent reasonably possible, NCSD and its contractors shall conduct the Work in a manner so as to not disrupt the Farming Operations of the Tenant. In the event that it is necessary to disrupt the Farming Operations to complete the Work, NCSD shall reimburse the Tenant for the reasonable value of any damage to growing crops and/or loss of harvestable fruit.

3. Maintenance of Existing Irrigation System. The Tenant relies on improvements to the Property including the water well, pumping plant, underground distribution lines and above ground sprinklers (“**Irrigation System**”) to conduct Farming Operations. In the event that NCSD or its contractors cause any damage to the Irrigation System, the Tenant shall have the right to make immediate necessary repairs to restore the Irrigation System to its pre-existing condition. NCSD shall be responsible for the reasonable costs of any such repairs. In order to minimize the potential for damage to the Irrigation System, the Tenant or Owner shall, within a

reasonable time frame following receipt of a request from NCSD, mark any underground irrigation in the area of the Work.

4. Indemnity. NCSD shall indemnify, defend, and hold Owner harmless from and against any and all claims, liabilities, losses, damages, costs and expenses suffered, incurred or sustained by Owner as a result of, by reason of, or in connection with the Work.

5. Insurance. NCSD shall maintain reasonable liability insurance for the Work, naming Owner as additional insured.

6. Notices. Whenever any notice, demand, or request is required or permitted under this Agreement, such notice, demand, or request shall be in writing and shall be delivered by certified mail, postage prepaid, return receipt requested, or shall be sent by nationally recognized commercial courier for next business day delivery, to the addresses set forth below the respective executions of the parties hereof, or to such other addresses as are specified by written notice given in accordance herewith. All notices, demands, or requests given by mailing shall be deemed given on the date of delivery, or attempted delivery shown on the return receipt; and those given by commercial courier shall be deemed given one (1) business day after the date of deposit with the commercial courier for overnight delivery.

7. Assignment. This Agreement may not be assigned.

8. Governing Law. This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of San Luis Obispo.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

10. No Recording. This Agreement does not grant any interest in the Property. In no event shall this Agreement or any memorandum hereof be recorded.

11. Attorneys' Fees. In the event an action is filed by either party in connection with this Agreement, the prevailing party (as determined by the trier of fact) shall be entitled to receiving from the other party all of the prevailing party's attorney's fees and costs incurred in connection therewith.

12. Owner Representations. Owner represents and warrants that it is the owner of the Property, and that nothing recorded against the Property conflicts with the rights given hereunder.

IN WITNESS WHEREOF, NCSD and Owner have caused this Agreement to be executed on the day and year first written above.

**OWNER:**

**NCSD:**

Murphy Santa Maria 1, LLC, a California limited liability company

Nipomo Community Services District, a California special District

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Mario Iglesias, General Manager

Address for notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for notices:

148 South Wilson Street

Nipomo, CA 93444

Attn: General Manager

APPROVED AS TO FORM:

Richards, Watson & Gershon, APC

By: \_\_\_\_\_  
Whitney McDonald, District Counsel



**EXHIBIT "A"**

**DESCRIPTION OF LAND**

The North half of Lot 24 in Division "A" of Pomeroy's Resubdivision of the Los Berros Tract, in the County of San Luis Obispo, State of California, according to map filed for record September 26, 1903 in Book A, Page 109 of Maps, in the Office of the County Recorder of said County.

Excepting therefrom that portion condemned by the State of California for State highway purposes in Final Order of Condemnation, a certified copy of which recorded September 27, 2004 as Document No. 2004-085055 of Official Records.

Together with any portion contained within the Vacation of Superseded State Highway in the County of San Luis Obispo, Road 05-SLO-1-PM 5.0 Request No. 11511 recorded February 7, 2012 as Instrument No. 2012007087 of Official Records.

A.P.N. 091-192-044 AND 091-192-053

**EXHIBIT "B"**

**DESCRIPTION OF THE WORK**

The Right of Entry granted hereunder is for the purpose of allowing the District, its agents and employees, to enter upon the Property, to: take photographs, make studies, surveys, examinations, tests, soundings, borings, samplings, appraisals, or to engage in similar activities, related to the potential purchase of a temporary easement over the Property (or any part thereof) by the District.

SEPTEMBER 11, 2019

ITEM E-2

ATTACHMENT D

## AMENDED RIGHT OF ENTRY AND ACCESS AGREEMENT

THIS AMENDED RIGHT OF ENTRY AND ACCESS AGREEMENT (herein called this “**Agreement**”) is dated as of \_\_\_\_\_, 2019, and is entered into by the Nipomo Community Services District, a California special district (“**NCSD**”), and Murphy Santa Maria 1, LLC, a California limited liability company (“**Owner**”).

### **RECITALS**

A. Owner is the owner of the land described on Exhibit “A” and the improvements, if any, thereon (the “**Property**”).

B. NCSD has requested that NCSD and its contractor(s) be given access to Owner’s Property in order to perform the work described on Exhibit “B” (collectively, the “**Work**”), and Owner is willing to do so on the terms set forth below.

B.C. NCSD and Owner previously entered into that certain Right of Entry and Access Agreement dated July 2, 2019, allowing NCSD to access the Property and perform the Work through August 31, 2019. However, NCSD requires additional time to complete the Work and Owner wishes to facilitate this need by extending the right of entry and access by one month, through and including October 1, 2019.

C.D. The Property is currently used by leased to Guadalupe Contreras, dba LC Farming Services, Inc., (“Tenant”) for the purpose of growing and harvesting strawberries (“Farming Operations”). The lease terminates on August 31, 2019.

NOW, THEREFORE, for and in consideration of the foregoing premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, NCSD and Owner agree as follows:

1. Access. NCSD and its contractors shall have the right to enter upon the Property from July 2, 2019, through and including the date hereof until October~~September~~ 1, 2019, and to conduct the Work. NCSD shall coordinate such access to the Property with the Tenant so as to minimize any interference with the Farming Operations. Owner shall provide NCSD with current contact information for Tenant to facilitate this coordination.

2. Non-Interference with Tenant Farming Operations. To the extent reasonably possible, NCSD and its contractors shall conduct the Work in a manner so as to not disrupt the Farming Operations of the Tenant. In the event that it is necessary to disrupt the Farming Operations to complete the Work, NCSD shall reimburse the Tenant for the reasonable value of any damage to growing crops and/or loss of harvestable fruit.

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minimize the potential for damage to the Irrigation System, the Tenant or Owner shall, within a reasonable time frame following receipt of a request from NCS D, mark any underground irrigation in the area of the Work.

4. Indemnity. NCS D shall indemnify, defend, and hold Owner harmless from and against any and all claims, liabilities, losses, damages, costs and expenses suffered, incurred or sustained by Owner as a result of, by reason of, or in connection with the Work.

5. Insurance. NCS D shall maintain reasonable liability insurance for the Work, naming Owner as additional insured.

6. Notices. Whenever any notice, demand, or request is required or permitted under this Agreement, such notice, demand, or request shall be in writing and shall be delivered by certified mail, postage prepaid, return receipt requested, or shall be sent by nationally recognized commercial courier for next business day delivery, to the addresses set forth below the respective executions of the parties hereof, or to such other addresses as are specified by written notice given in accordance herewith. All notices, demands, or requests given by mailing shall be deemed given on the date of delivery, or attempted delivery shown on the return receipt; and those given by commercial courier shall be deemed given one (1) business day after the date of deposit with the commercial courier for overnight delivery.

7. Assignment. This Agreement may not be assigned.

8. Governing Law. This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of San Luis Obispo.

9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

10. No Recording. This Agreement does not grant any interest in the Property. In no event shall this Agreement or any memorandum hereof be recorded.

11. Attorneys' Fees. In the event an action is filed by either party in connection with this Agreement, the prevailing party (as determined by the trier of fact) shall be entitled to receiving from the other party all of the prevailing party's attorney's fees and costs incurred in connection therewith.

12. Owner Representations. Owner represents and warrants that it is the owner of the Property, and that nothing recorded against the Property conflicts with the rights given hereunder.

IN WITNESS WHEREOF, NCS D and Owner have caused this Agreement to be executed on the day and year first written above.

**OWNER:**

Murphy Santa Maria 1, LLC, a California limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NCSD:**

Nipomo Community Services District, a California special District

\_\_\_\_\_  
Mario Iglesias, General Manager

Address for notices:

148 South Wilson Street  
  
Nipomo, CA 93444  
Attn: General Manager

APPROVED AS TO FORM:

Richards, Watson & Gershon, APC

By: \_\_\_\_\_  
Whitney McDonald, District Counsel

**EXHIBIT "A"**

**DESCRIPTION OF LAND**

The North half of Lot 24 in Division "A" of Pomeroy's Resubdivision of the Los Berros Tract, in the County of San Luis Obispo, State of California, according to map filed for record September 26, 1903 in Book A, Page 109 of Maps, in the Office of the County Recorder of said County.

Excepting therefrom that portion condemned by the State of California for State highway purposes in Final Order of Condemnation, a certified copy of which recorded September 27, 2004 as Document No. 2004-085055 of Official Records.

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A.P.N. 091-192-044 AND 091-192-053

**EXHIBIT "B"**

**DESCRIPTION OF THE WORK**

The Right of Entry granted hereunder is for the purpose of allowing the District, its agents and employees, to enter upon the Property, to: take photographs, make studies, surveys, examinations, tests, soundings, borings, samplings, appraisals, or to engage in similar activities, related to the potential purchase of a temporary easement over the Property (or any part thereof) by the District.



SEPTEMBER 11, 2019

ITEM E-2

ATTACHMENT E

**RESOLUTION 2019-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
APPROVING AN AMENDED RIGHT-OF-ENTRY AGREEMENT WITH  
MURPHY SANTA MARIA 1, LLC, AND APPROVING AND ACCEPTING  
AN AMENDED TEMPORARY EASEMENT AGREEMENT WITH  
MURPHY SANTA MARIA 1, LLC**

**WHEREAS**, the Nipomo Community Services District ("District") intends to undertake a project to re-drill a groundwater well known as the Eureka Well located at 795 Guadalupe Road in Nipomo, California ("Project");

**WHEREAS**, as part of the Project, the District will require an irrigation spray field area to receive groundwater produced during reconstruction of the Eureka Well; and

**WHEREAS**, Murphy Santa Maria 1, LLC ("Murphy"), is the record fee owner of property located at the intersection of Willow Road and Highway 1 in Nipomo, identified as San Luis Obispo County Tax Assessor's Parcel Numbers 091-192-044 and 091-192-053 ("Property"), which is adjacent to the Eureka Well site; and

**WHEREAS**, the Property is used as cropland and, given its location, unimproved condition, and historic use as cropland, the District has determined that it is ideally suited to receive the groundwater produced during reconstruction of the Eureka Well; and

**WHEREAS**, on July 10, 2019, the District Board of Directors authorized the District's General Manager to execute a Right-of-Entry Agreement with Murphy to allow the District to conduct certain work on the Property between July 2, 2019, and August 31, 2019, to facilitate planning of the Project; and

**WHEREAS**, the District obtained a preliminary appraisal of the Property from Todd O Murphy, MAI, ARA, of Schenberger, Taylor, McCormick & Jecker, Inc., which concluded that the appraised value of the District's potential use of the Property for a period of one year as an irrigation spray field is \$66,500; and

**WHEREAS**, the District and Murphy entered into a Temporary Easement Agreement, approved and accepted by the District Board of Directors on August 14, 2019, and recorded in the Official Records of the County of San Luis Obispo as Document No. 2019034726 ("Original Easement"), providing for the District's use of the Property for the Project for a term of one year beginning on September 1, 2019, at a total cost of \$66,500 to be paid to Grantor prior to commencement of the term, which the District paid to Grantor consistent with the Original Easement; and

**WHEREAS**, following commencement of the term of the Original Easement, Murphy's prior tenant on the Property requested an additional month's extension on its lease to allow harvesting of an existing strawberry crop on the Property, which Murphy would like to accommodate if acceptable to the District; and

**WHEREAS**, the District has determined that a one-month delay of the commencement of the term of the Original Easement will not harm the Project, subject to the conditions that the Right-of-Entry Agreement be extended through September 30, 2019, and that Murphy repay the District \$5,542 as consideration for the delay of commencement of the Original Easement, as memorialized

and set forth in the Amended Right-of-Entry Agreement and the Amended Temporary Easement Agreement attached hereto as Exhibits A and B respectively; and

**WHEREAS**, in approving and accepting the Original Easement on August 14, 2019, the Board determined that its action was exempt from the California Environmental Quality Act pursuant to Sections 15061(b)(3), 15301, 15302, and 15304 of Title 14, Division 6, Chapter 3 of the California Code of Regulations, as further described in District Resolution 2019-1521; and

**WHEREAS**, the District Board of Directors has reviewed and desires to approve the Amended Right-of-Entry Agreement and to approve and accept the Amended Temporary Easement Agreement.

**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 recitals set forth above are true and correct and incorporated herein by reference.
2. That the General Manager is hereby authorized and directed to execute the Amended Right-of-Entry Agreement attached hereto and incorporated herein as Exhibit A.
3. That the Amended Temporary Easement Agreement, attached hereto as Exhibit B, is hereby approved and accepted.
4. That the General Manager is hereby authorized and directed to execute and record the Amended Temporary Easement Agreement, attached hereto as Exhibit B.

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 11th day of September, 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