

NIPOMO COMMUNITY SERVICES DISTRICT

Serving the Community Since 1965

FRIDAY JANUARY 10, 2014
9:00 A.M.

SPECIAL MEETING OF THE BOARD OF DIRECTORS AGENDA AND NOTICE

BOARD ROOM 148 SOUTH WILSON STREET, NIPOMO, CA

BOARD of DIRECTORS

CRAIG ARMSTRONG, **PRESIDENT**
JAMES HARRISON, **VICE PRESIDENT**
LARRY VIERHEILIG, **DIRECTOR**
DAN GADDIS, **DIRECTOR**
BOB BLAIR, **DIRECTOR**

PRINCIPAL STAFF

MICHAEL S. LEBRUN, **GENERAL MANAGER**
LISA BOGNUDA, **FINANCE DIRECTOR**
MICHAEL W. SEITZ, **GENERAL COUNSEL**
PETER SEVCIK, **DIRECTOR OF ENG. & OPS.**
NITA WINDSOR, **BOARD CLERK**

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

The public has the right to comment on any item on the Special Meeting Agenda when the item is being considered.

A Special Meeting of the Nipomo Community Services District ("District") will be held on Friday January 10, 2014, 9 A.M. at the District Board Hearing Room located at 148 South Wilson Street, Nipomo, CA. The following items will be considered by the District Board of Directors as part of the Special Meeting Agenda.

NOTE:

- All comments concerning any item on the agenda are to be directed to the Board President.
- Consistent with the Americans with Disabilities Act and California Government Code §54954.2 requests for disability related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires the modification or accommodation in order to participate at the below referenced public meeting by contacting the District General Manager at 805-929-1133.
- District-prepared staff reports and documents are generally posted on the District's website {[NCSD.CA.GOV](http://www.ncsd.ca.gov)} on the same date the agenda is posted.
- Any writing or document pertaining to an open session item on this agenda which is distributed to the Board of Directors after the posting of this agenda will be available for public inspection at the time the subject writing or document is distributed. The writing or document will be available for public review at the District Secretary's Office, 148 S. Wilson Street, Nipomo, CA, during normal business hours, and may be posted on the District's web site at <http://www.ncsd.ca.gov>.
- Items may be taken out of order. The Board typically breaks for lunch at approximately 12 noon and conducts Closed Session at that time, reconvening to public session at approximately 1:00 p. m.
- Please silence all cell phones during the meeting, as a courtesy to others.

NEXT RESOLUTION 2014-1329

NEXT ORDINANCE 2014-120

1. CALL TO ORDER AND FLAG SALUTE AND ROLL CALL

2. CLOSED SESSION ANNOUNCEMENT

a. **CONFERENCE WITH LEGAL COUNSEL PURSUANT TO GOVT. CODE §54956.9(d)(2) &(e)(1):**

Significant Exposure to Litigation - 1 case.

3. PUBLIC COMMENT ON CLOSED SESSION ITEMS
4. ADJOURN TO CLOSED SESSION
5. OPEN SESSION
ANNOUNCEMENT OF ACTIONS, IF ANY, TAKEN IN CLOSED SESSION

NOTE: The Board is expected to consider the following item after Closed Session at approximately 10:00 AM

6. CONSIDER TERMINATION FOR CONVENIENCE OF THE CONSTRUCTION CONTRACT FOR SUPPLEMENTAL WATER PROJECT PHASE 1, BID PACKAGE 3 WITH SPECIALTY CONSTRUCTION INC. INCLUDING ALTERNATE BID ITEM GROUP A [RECOMMEND ADOPT RESOLUTION AUTHORIZING TERMINATION OF CONTRACT]

ADJOURN

TO: BOARD OF DIRECTORS
FROM: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER
DATE: JANUARY 9, 2014

AGENDA ITEM
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JANUARY 10, 2014

**CONSIDER TERMINATION FOR CONVENIENCE OF THE
CONSTRUCTION CONTRACT FOR SUPPLEMENTAL WATER
PROJECT PHASE 1, BID PACKAGE 3**

ITEM

Consider termination for convenience of the construction contract for Supplemental Water Project Phase 1, Bid Package 3 with Specialty Construction [RECOMMEND AUTHORIZE TERMINATION OF CONTRACT]

BACKGROUND

On June 20, 2013, your Board awarded construction contracts for a portion of the Supplemental Water Project Phase 1 to Specialty Construction Inc. Attachment A is an excerpt from the awarded contract, Specification Section 007200-15.3 Termination of Agreement by Owner for Convenience.

FISCAL IMPACT

The contract award for Supplemental Water Project Phase 1 was \$3,007,897. Approximately 5% of the contract value (materials and labor) have been completed by the contractor to date. The contractor has ordered and taken delivery of pipe and other miscellaneous materials required for the project. The District will pay for material that meets the contract requirements and store it until this scope of work is performed.

In accordance with the contract, the contractor may request payment for completed and acceptable work, reasonable expenses incurred prior to the effective date of contract termination, and costs arising from the termination.

The District will incur additional engineering, construction management and legal cost in connection with the termination, and to revise and rebid the contract.

The cost of continuing the project with the current contract documents is difficult to assess but could far exceed the more tangible costs outlined above.

RECOMMENDATION

Your Board, by motion and roll call vote, approve Resolution 2014-1329 Contract Termination, and direct staff to provide seven-day written notice of termination for convenience to the contractor and engineer in accordance with the contract requirements.

ATTACHMENTS

- A. Contract excerpt
- B. Resolution 2014-1329

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ITEM 6

ATTACHMENT A

Supplemental Water Project Phase 1, Bid Package 3

Specification Section 007200

15.3 TERMINATION OF AGREEMENT BY OWNER FOR CONVENIENCE

A. Upon seven days written notice to the CONTRACTOR and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy of the OWNER, elect to terminate the Agreement.

B. In such case, the CONTRACTOR shall be paid (without duplication of any items):

1. For completed and acceptable WORK executed in accordance with the Contract Documents, prior to the effective date of termination, including fair and reasonable sums for overhead and profit of on such WORK;

2. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted WORK, plus fair and reasonable sums for overhead and profit on such expenses;

3. For all reasonable claims, costs, losses, and damages incurred in settlement of terminated contracts with Subcontractors, CONTRACTOR'S, Suppliers, and others; and

4. For reasonable expenses directly attributable to termination.

OWNER may withhold the whole or any part of any payment to be made to CONTRACTOR following a termination for convenience in accordance with Section 14.5(C).

CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

C. The CONTRACTOR shall submit to the OWNER a claim for payment on account of a termination for convenience promptly following the termination, but in no event later than sixty (60) days from the effective date of the notice of termination. The claim shall be calculated as described in (B), above, and shall be certified under the California False Claims Act, Government Code Section 12650 et seq. If the Contractor fails to submit a termination claim within sixty (60) days, the OWNER may determine, on the basis of information available to it, the amount, if any, due to the Contractor and pay to the Contractor the amount so determined.

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ITEM 6

ATTACHMENT B

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2014-1329**

**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE NIPOMO COMMUNITY SERVICES DISTRICT
TERMINATING THE DISTRICT'S CONTRACT
WITH SPECIALTY CONSTRUCTION FOR CONVENIENCE**

WHEREAS, the Nipomo Community Services District ("District") is formed under the Community Services District Law (Govt. Code §61000 et seq.); and

WHEREAS, the District through action by the Board of Directors ("Board") contracted with the Specialty Construction Inc. to construct certain portions of the Supplemental Water Project Phase 1; and

WHEREAS, the contract's General Conditions Section 15.3 provides that the District may terminate the contract for convenience "without cause and without prejudice to any other right or remedy" upon seven days written notice; and

WHEREAS, the Board has determined that it is in the District's interest to terminate the contract for convenience to allow the District to modify the contract documents and project approvals, among other reasons.

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

1. That the above recitals are true and correct.
2. The Board orders that the contract with Specialty Construction be terminated for convenience.
3. The General Manager is directed to provide written notice of the termination to the contractor and engineer in accordance with the contract requirements, such termination to be made without prejudice to any other District right or remedy upon seven days written notice.
4. The Board directs that the contract documents and approvals be revised as directed by staff.

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

AYES:
NOES:
ABSENT:
CONFLICTS:

The foregoing resolution is hereby adopted this 10th day of January 2014.

CRAIG ARMSTRONG,
President, Board of Directors

ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN
Secretary to the Board

MICHAEL W. SEITZ
District Legal Counsel