

TO: BOARD OF DIRECTORS
FROM : RAY DIENZO, P.E. R.D.
GENERAL MANAGER
DATE: AUGUST 22, 2024

**AGENDA ITEM
E-1
AUGUST 28, 2024**

CONSIDER APPROVING NEGOTIATED PROPERTY TAX EXCHANGE WITH THE COUNTY OF SAN LUIS OBISPO, ANNEXATION AGREEMENT, AND THE LOCAL AGENCY FORMATION COMMISSION (LAFCO) PLAN FOR SERVICES, AND MAKING REQUIRED FINDINGS UNDER CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), RELATING TO THE DANA RESERVE PROJECT,

ITEM

Consider approving actions related to the Dana Reserve Specific Plan Project:

1. Negotiated Property Tax Exchange with the County of SLO [RECOMMEND ADOPT RESOLUTION ACCEPTING THE NEGOTIATED PROPERTY TAX EXCHANGE]
2. Annexation Agreement with NKT Development LLC and LAFCO Plan for Services, and Required findings under CEQA [RECOMMEND ADOPT RESOLUTION APPROVING THE ANNEXATION AGREEMENT, LAFCO PLAN FOR SERVICES, AND MAKING REQUIRED FINDINGS UNDER CEQA]

These actions will be voted on in the order shown.

BACKGROUND

The actions before your Board relate to the proposed annexation of the Dana Reserve Project (Project) into the District's service area. The Project is within the District's Sphere of Influence ("SOI"). The District does not have land use authority over this Project, which belongs to the County of San Luis Obispo. The County Board of Supervisors has approved the land use entitlements for the Project. The District provides water, wastewater, and solid waste services only. Whether to consent to annexation of the Project area in order to provide these services to the Project is the focus of the Board's consideration today.

For context, a summary is presented as follows:

- June 24, 2020 - The District received an annexation application from NKT Development LLC ("Developer"). The Developer requested the annexation of a 288-acre parcel in the District's SOI into the District's service area. As with all annexations, the District needed to thoroughly evaluate the impacts the proposed project would have on the District's water and sewer enterprises. Subsequently, the Developer also filed an application for annexation with San Luis Obispo ("SLO") Local Agency Formation Commission ("LAFCo" or "LAFCO") and elected to proceed under that application instead of the original application with the District. It is the LAFCO application that is under consideration.
- July 8, 2020 – At the Board meeting, the District entered into a deposit agreement with the Developer. The purpose of the deposit agreement was to secure funding from the Developer to finance the cost of engineering, legal, financial, and administrative reports

that evaluate the impact on the District's water and sewer enterprises. These reports were required to provide the District's Board of Directors with the information necessary for understanding the project's impact on the District infrastructure. All final reports the District and its consultants have prepared are available on the front page of the District's website, under the Dana Reserve Project section, at <https://ncsd.ca.gov/>. They have been available there throughout consideration of the Project. Those documents are a part of the record of the District's proceedings on this project

- August 26, 2020 – At the Board meeting, the District approved a contract with MKN & Associates to evaluate the engineering aspects of providing water and wastewater service for the Development. The proposal included the following main tasks:
 - Evaluation of water supply, storage, and distribution facilities (offsite and onsite)
 - Evaluation of wastewater collection facilities (offsite and onsite)
 - Evaluation of Southland Wastewater Treatment Facility capacity
- October 28, 2020 – At the Board meeting, the District approved a contract with MKN & Associates for the preparation of the 2020 Urban Water Management Plan Update (“UWMP”) and Water Shortage Contingency Plan. The California Urban Water Management Planning Act requires water suppliers that provide water to more than 3,000 customers to develop a UWMP. The UWMP provides a framework that ensures adequate water supplies for existing and future demands. This includes reporting on water delivery and uses; water supply sources; efficient water uses; demand management measures; and water shortage contingency planning. The water supply for the Dana Reserve Development was included in the analysis as an “annexation under review.” Following extensive public notice, the Board conducted a public hearing and approved the 2020 UWMP update in December 2021. As required by the Water Code, the UWMP forms the basis for the Water Supply Assessments that were prepared for the Project and incorporated into the Final Project EIR as certified by the County Board of Supervisors.
- March 2022 - MKN & Associates (“MKN”) completed the “Dana Reserve Development Water and Wastewater Service Evaluation”, which identified the water and wastewater infrastructure that would be required to be constructed for the District to provide service to the development. The information from this evaluation was incorporated in the County's draft Environmental Impact Report for the development, and is a critical piece of analysis to inform the District's phasing plan and the proposed Annexation Agreement.
- May 25, 2022 – At the Board meeting, the Board authorized MKN to perform a Water and Wastewater Service Phasing Study for the proposed Project. This study was a detailed analysis to determine when water and wastewater infrastructure projects are to be completed to serve the appropriate phase of the Project construction.
- May 25, 2022 – At the Board meeting, the Board received and considered the results of the Rate Impact Study done by the District's rate consultant Clayton Tuckfield, dated May 17, 2022. This was a financial impact study that analyzed the Project's potential impact on our water and wastewater rates for existing customers and future customers. Although it has been incorrectly stated that the District has not conducted this analysis, Mr. Tuckfield's report has been available to the public on the District's website under the

Dana Reserve Project section. Mr. Tuckfield's "Key Takeaways" regarding the impacts of the Project, at build-out, are on page 10 of 12 and are as follows:

1. 100 percent of current Single Family Residence ("SFR") water customers will receive a reduction in their water bill as shown in Chart 1, and 100 percent of current SFR wastewater customers will receive a reduction in their wastewater bill as shown in Table 9.
 2. Based on a legal opinion provided by the District's attorney, all of the water supplied to Project's customers will be from supplemental water. Table 4 shows that a higher water rate will be charged to consumption of the Project customers. Project customers will not be beneficiaries of the less expensive groundwater.
 3. No water or wastewater rate increases would be required in FY 2025-26 because of the addition of the Project.
 4. The cash balance will be increased in both the water and wastewater reserves with the addition of the Project.
 5. The District's water and wastewater debt service coverage ratios are improved with the addition of the Project because of the higher revenues received versus expenses incurred.
- June 22, 2022 – At the Board meeting, the Board received the Notice of Availability of the Draft Environmental Impact Report. The County of SLO Planning Department ("County") released this DEIR on June 16, 2022, and solicited public comment, which closed on August 1, 2022. The District provided extensive written comments on the Draft EIR, which were made a part of the Final EIR.
 - October 23 & 24, 2023 – The County Planning Commission recommended approval of the Project and certification of the EIR with some conditions to the County Board of Supervisors
 - February 8, 2024 - At the Board meeting, the Board received a presentation of MKN's updated Phasing Study incorporating the updated Project conditions.
 - March 13, 2024 – At the Board meeting, the Board approved an updated Water Supply Assessment ("WSA") for the Project, at the request of the County, to reflect the Planning Commission's recommended changes to the Project and respond to certain questions raised by Golden State Water Company. The District was required to respond to this request from the County by Water Code Section 10910(c) and did so. The updated WSA, based on the UWMP Plan as permitted by the Water Code, explicitly evaluated the Water Supply and Wastewater demand for the Project based on the Stage IV water severity condition that existed at the time of the evaluation. Golden State Water Company has incorrectly stated that the WSA did not take into account the Stage IV water shortage condition. Shortly after the updated report was prepared in March of 2024, at the determination of the NMMA Technical Group, the District's water severity condition was downgraded from a Stage IV condition to a Stage II condition. The

updated WSA continues to show that water is available to serve the Project, with changes to the Project recommended by the Planning Commission, and analyzed under a Water Shortage scenario that is more severe than current conditions. This availability takes into account the Supplemental Water that will be supplied starting in 2025, including the substantial amount of water Golden State Water Company and Woodlands Mutual Water Company must take, and pay for at that time.

- April 23 & 24, 2024 – The County of SLO Board of Supervisors approved the Project, certified the Final EIR, and adopted a Mitigation Monitoring and Reporting Plan (“MMRP”) by a 3-2 vote. The District is a “responsible agency” for purposes of the EIR and the District is required to consider the EIR as part of the Project actions. The District does not have land use authority, or the ability to change the EIR. The mitigation measures necessary to mitigate the environmental impacts of the Project are within the authority of the County Board of Supervisors, and have been imposed by that Board. The draft EIR was previously distributed to the Board, and the Board was notified of the final EIR which can be found at <https://www.slocounty.ca.gov/departments/planning-building/forms-documents/planning-projects/dana-reserve-specific-plan/final-environmental-impact-report>
- May 28, 2024 - The Nipomo Action Committee filed a lawsuit against the County challenging the adequacy of the final certified EIR. The Developer and the District were named as “real parties in interest.” The case is *Nipomo Action Committee, et al. v. County of San Luis Obispo, et al.* (San Luis Obispo County Superior Court Case No. 24CV-0351). The existence of litigation does not prevent the Developer from moving forward with the Project, as no injunction relief was requested or granted.
- July 9, 2024 – The County of SLO Board of Supervisors approved the Property Tax Share Exchange by Resolution 2024-169 by a 3-2 vote. The tax percentage negotiated by staff for both entities is 2.3679% post-ERAF.

This historical summary shows that this project has been vetted through various technical studies and public review. The supporting technical reports show that by following the phased infrastructure upgrades, the District will be able to provide the appropriate water, sewer, and solid waste services without subsidy by current rate payers. The financial analysis also shows that the expanded customer base will benefit all current rate payers within the District service area.

Property Tax Share Discussion

Before an annexation proposal can undergo review and consideration by SLO County LAFCO, there must be a Property Tax Exchange Agreement in place between the relevant local agencies. (Revenue & Taxation Code § 99.) The Property Tax Exchange Agreement specifies how the future increased property tax revenue from the area to be annexed will be distributed between the agencies post-annexation, and helps to ensure that new property tax revenue is divided equitably between the public agencies involved. A Tax Agreement approved by both the County and District is a statutory pre-condition to moving forward with the proposed annexation.

This property tax allocation is critical because, year after year, the District has committed these property tax revenues to important District-wide purposes that are not always covered by rate

revenue. Most significantly, the District has pledged the "Ad Valorem Tax Revenue" (property tax revenue) it receives each year to pay the debt service for the 2013 Certificates of Participation and the 2013 Refinancing of the bonds that financed the construction of the Nipomo Supplemental Water Project. Thus, with very few exceptions, the property owners in the District are paying for essential infrastructure needs, over time, with a relatively small share of their property tax payments. It would be inequitable for new property owners in future annexed land to not share that responsibility. When sufficient property tax revenue is available, the District also uses that revenue for other purposes, such as paying for infrastructure in support of the Nipomo Supplemental Water Project, a regional project that benefits all County residents within the Nipomo Mesa Water Conservation Area. In addition, some operations of the District are not entirely funded by water and sewer rate revenue. It is important to note, however, that property tax revenue does not pay for water or wastewater infrastructure that will be needed for the Project itself. That infrastructure is paid for completely by water and wastewater capacity charges the Developer must pay. Thus, property tax revenue, or a reduced percentage of property tax revenue, is not subsidizing the Project.

The County and District engaged in official negotiations on May 20, 2024, when the Auditor-Controller contacted the District. This started the 60-day period for the parties to negotiate in good faith. Pursuant to the Revenue and Taxation Code Section 99.01(a)(3), the District elected to negotiate on its own behalf.

Initial negotiations started with the District requesting the historical 3.72395%, as shown in the calculation from the County Auditor-Controller. County staff rejected this offer which resulted in County staff proposing a zero percent (0%) tax share, which they brought before the Board of Supervisors on June 18, 2024. After receiving comments from the District, the County Board pulled the item and directed County staff to continue good-faith negotiations with the District.

The subsequent round of negotiations restarted with the District, with County staff and District staff agreeing to a 2.36973%, which the County Board approved by Resolution 2024-169 on July 9, 2024. This percentage means the District would receive an estimated property tax share of \$270,599 at Project buildout. This amount would be consistent with the District's position that the new property owners would pay their equitable share since \$270,599 would be about 20-30% more property tax revenue at buildout. This Project would increase the population of the District service area by a similar percentage. It also bears emphasis that a reduction in property tax revenue going to the District is not a windfall to the developer or to future residents of the development. Rather, the approximately \$129,4010 difference in annual revenue between the historical exchange percentage and the proposed percentage at Project buildout will remain with the County to pay for services the County provides.

District Board policy in Resolution 2023-1658 states:

"To promote equity and fairness upon the annexation of customers into the District. It is the policy of the District that every proposed property tax revenue exchange agreement for an annexation shall allocate to the District a percentage of property tax revenue from the annexation that is consistent with the percentages the District has agreed to accept in previously approved annexations. Except where the Board makes express written findings that extenuating circumstances apply and that a variation from this Paragraph IV J will not establish a precedent for future annexations."

The property tax share agreement offers several advantages and a few considerations that staff believe constitute “extenuating circumstances”:

1. Based on the County’s fiscal analysis of the proposed annexation, the annual property tax revenue the District is projected to receive **at project build-out** at the agreed percentage of 2.36973% is approximately \$270,599.00. The projected amount of annual property tax revenue the District would have received at the historical average amount of 3.72% would have been approximately \$400,000, an estimated annual difference of \$129,401 at project buildout. The negotiated percentage, although lower than what the District previously accepted in annexations, aligns with the principle of equity and fairness. The increase in property tax share is proportional to the population growth that the Project would add. The revenue that does not come to the District will remain with the County for the provision of County services, and is not a benefit to the Developer.
2. The proposed annexation will provide additional customers to spread the costs of supplemental water the District is required to take and pay for at significantly higher rates than groundwater. Annexed customers will pay water rates that are based on the cost of supplemental water, which will help keep the water rates paid by existing customers lower.
3. The proposed annexation will pay capacity charges and other fees that will provide significant capital for necessary improvements to the District’s wastewater infrastructure.
4. Development on the site will increase property tax revenue to the District over current conditions.
5. The developer has committed to make a non-refundable payment to the District of \$4.5 million to be used for construction and improvement of District infrastructure that will benefit all customers, not just the new customers from the development.
6. The County's obligation to provide increased Fire and Sheriff services is noteworthy. Since the District does not directly fund these services, it is appropriate for the District to consider this in good faith negotiations.
7. While the lower percentage might set a precedent for future annexations, it is important to note that historical data shows variations in property tax percentages offered by the County, and the unique nature of this Project suggests that future annexations won't necessarily follow the terms of this agreement

In conclusion, the negotiated property tax percentage is consistent with equity and fairness, and staff believe that there are sufficient extenuating circumstances that are consistent with Board policy, pursuant to Resolution 2023-1658. Staff recommends the Board approve the resolution (Attachment A) to accept the negotiated County and District property tax share agreement.

Annexation Agreement

As shown from the summary timeline, this project has gone through a four year long approval process that has allowed the Project to be appropriately vetted through technical analysis and public review. The County approved the project in April 24, 2024. Annexation of the Project into the District service area is a condition of approval for this Project imposed by the

County. The Project will need to receive water, wastewater, and solid waste services from the District through an Annexation.

The Project proposes to annex approximately two hundred eighty eight (288) acres to be developed into residential, commercial, open space and park uses, with up to 1,370 residential units, up to approximately 154 accessory dwelling units, up to 203,000 square feet of commercial uses (including a hotel of up to 60,000 square feet and an educational/training facility of up to 30,000 square feet), and up to approximately 61.94 acres of active and passive open space uses all as specified in Resolution No. 2024-109 of the San Luis Obispo County Board of Supervisors ("Project").

The Project, located within the District's SOI, is proposed to be annexed into the District because that is what is required by the Stipulation and Judgment in the Santa Maria Valley Groundwater Adjudication. Section VI E.1 of the Stipulation (Exhibit A to the Judgment) provides as follows under the topic heading New Urban Uses: " 1. within the sphere of influence or service area. New Urban Uses shall obtain water service from the local public water supplier. The local public water supplier shall provide water service on a reasonable and non-discriminatory basis..." The District is the local public water supplier in this case. The District, the County, and various water purveyors and other entities who have and will comment on this Project are bound by the Stipulation. The purpose of this requirement is to ensure that new development not in existence at the time of the adjudication, like the Project, will not degrade the groundwater supply in the Nipomo Basin by using groundwater to supply the new residents and commercial uses. Without domestic service regulated by the adjudication, it can be anticipated that this Developer would seek a different source of water - perhaps pumped groundwater - that would not further the purposes of the Stipulation to protect the Basin.

The UWMP and WSA both show that sufficient water is available from the District, even in single and multiple dry years, to serve the Project. Beginning in July of 2025, the District must take, and pay for, 2,500 afy of supplemental water from the City of Santa Maria. Golden State Water and Woodlands Mutual must take and pay for their share of the additional water to be imported starting in 2025, a fact that Golden State did not disclose in their letters to the Board of Supervisors. All of the technical analysis prepared for the Project by the District shows the availability of adequate water into the future, as analyzed under the severe water shortage conditions that were in effect in Nipomo until recently, and taking into account the 833 afy of the 2025 Supplemental Water that Golden State and Woodlands must take and pay for. The UWMP and WSA find that the 2,500 afy of water is a stable source. Commenters have not presented any actual evidence or expert opinion to date to show that the District's technical analysis is incorrect. Golden State Water and other commenters have unfortunately not mentioned in their comments the requirements of the Stipulation that new urban users must take water from the nearest public purveyor.

In addition to the 2025 influx of Supplemental Water, the District has the ability to acquire an additional 3,200 afy once the County of Santa Barbara agrees, or is required, to release its arbitrary limit on the license agreement under which the District imports water to NCS D. The District acknowledges that the earlier Supplemental Water Project ("SWP") EIR noted the initial phases of the SWP would serve customers within the existing boundaries of the District. That represented plans and estimates at the time based on water use in the early 2000's, and not a legal restriction. But the UWMP and WSA both show that the District's customers have **dramatically decreased** groundwater pumping since that time, by approximately 2/3, furthering the purposes of the Stipulation and the SWP. Given the requirements of the Stipulation, new

urban users in the District's SOI must be annexed into the District and supplied by the SWP. In addition, outside commenters have failed to mention that the 2009 certified EIR for the SWP fully evaluated the environmental impacts of importing the full 6,200 afy of water into the Basin. The certified EIR for this Project completely evaluates the environmental impacts of serving additional customers in the District with Supplemental Water, and is a more recent analysis than the previous SWP EIR, in that that considers the 2020 UWMP and the 2024 WSA.

Some commenters on the Project have stated or implied that the purpose of the SWP was to protect groundwater levels and recharge the groundwater in the Nipomo Basin by somehow simply returning Supplemental Water, unused, back into the ground. This, of course, would be prohibitively expensive and a waste of water resources that would not be consistent with the Judgment and Stipulation in the Santa Maria Valley Groundwater Adjudication. The purpose of the SWP, as agreed by all parties to the adjudication, is to protect groundwater by reducing groundwater pumping in the Nipomo Basin. Table 4.4.1 of the WSA shows that through the efforts of NCSD customers to conserve water and the implementation of the SWP, NCSD's groundwater pumping has been reduced over the past 22 years from a high of 3,033 afy to 748 afy in 2022. Although the data was not included in the WSA, NCSD's groundwater pumping in 2023 was even less. Table 3-4 of the 2023 Annual Report from the Nipomo Mesa Management Area shows that NCSD's 2023 groundwater pumping was only 636 afy, and amount the District's Engineer reports is close to the minimum amount of pumping necessary to maintain the health of the District's wells. As to groundwater recharge, Section 4.3 of the WSA concludes that the "return flows" from the Project into the underlying groundwater basin will be 213 afy, resulting in a total return to the groundwater basin of 729 afy. Again, no expert evidence to the contrary has been presented as of this writing.

This project will require significant upgrades to the District's water and wastewater infrastructure. Notable elements in this annexation agreement are summarized below:

- The developer has committed to making a payment of \$4.5 million to NCSD as an "Infrastructure Enhancement Payment." This payment is intended to be used for the construction and improvement of NCSD infrastructure that will benefit all customers, not just the new customers from the development.
- The project will pay for **all** of the infrastructure required for its services. The current estimates of capacity charges for the Project are approximately \$41 million, with identified infrastructure needs of approximately the same amount. Exhibit C to the proposed Annexation Agreement shows the off-site infrastructure needs for the Project, the parties' responsibility for constructing, and the timing. To the extent that some of the off-site infrastructure is constructed by the District, the owner will pay for this cost through capacity charges for the Project. The Developer is responsible for paying for and constructing **all** on-site infrastructure.
- If the Project is not developed for any reason, NCSD will not be financially harmed.
- It is important to note that the existing customers will not be subsidizing this project. The annexation agreement and the District's Phasing Plan, which is available on the District's website and is a part of the record of the Project, detail how the required service upgrades will be funded by the Project. The current cost estimates in that document, which include inflation adjustments and additional contingency amounts, are that infrastructure improvements to serve the Project will cost approximately \$38 million, and capacity charges from the built-out project will provide approximately \$41 million in revenue. Additional staff and consultant costs to serve the Project will be reimbursed

from funds the developer deposits in advance. The District and the developer have agreed that the developer will pay an additional Infrastructure Enhancement Payment of \$4.5 million up-front for the benefit of the District's overall infrastructure. In addition, projected revenue from the Project will help the District to obtain financing for a new water storage facility at the District's Dana Foothills site; and that improvement will benefit all customers of the District.

The proposed Annexation Agreement is consistent with the District's Annexation policy, and structures the processing, implementation, and financing of the Project over time. It is relatively straightforward, and the basic points are:

- The Agreement would take effect after the Project receives final approvals from all government entities and any litigation is resolved to the satisfaction of the developer. The District is not required to do any work on the Project other than processing the Annexation under the existing agreement, or expend any funds, before the Annexation Agreement takes effect.
- The developer continues to reimburse the District's cost of processing the Annexation through LAFCO, and the costs of any litigation.
- The Agreement specifies Project details consistent with the District's technical analyses and the EIR.
- Pursuant to the District Code, the developer will deposit the District's annexation fee of \$144,000.00 with the District prior to LAFCO consideration, to be refunded if the annexation is not approved.
- The developer will pay \$4.5 million, non-refundable, within 90 days of the Agreement taking effect as an Infrastructure Enhancement Payment.
- The developer will deposit the water and wastewater capacity charges for the first 170 units at the recordation of the first subdivision map for residential construction. This deposit amount will provide the capital for the District to construct the off-site infrastructure the District is responsible for constructing prior to the first residential unit being served.
- The developer will pay then-current water and wastewater capacity charges and other fees at the time subsequent subdivision maps are recorded for development. Charges will be evaluated and the deposit amounts will be reconciled with current amounts due prior to setting water meters. This means that the District will always collect updated fee and charge amounts as time goes on and capacity charges and fees increase.
- Following annexation, new residents and businesses will be customers of the District, and will pay the District's "annexation water rate" based on the cost of supplying Supplemental Water.
- The developer must purchase all construction water from the District.
- The Agreement details all water and wastewater improvements for the Project that will be constructed by the developer, at their expense, and those that will be constructed by the District, with the costs paid through the developer's capacity charges. All construction must be completed to District standards, and improvements will be accepted after District inspection with a one-year construction warranty. Both parties will pay prevailing wages for the improvement projects, as required by law.
- The District's standard PCIA form provides insurance requirements, bond requirements and other requirements for the construction of improvements, and is included as an Exhibit.

- The District is never required to award a construction contract for improvements unless the developer has deposited enough money in capacity charges to pay for the contract. Prior to recording maps for the 500th and 800th units, the District and the developer will meet to ensure that sufficient funds have been deposited to pay for later improvements.
- The Developer is required to indemnify and defend the District and pay attorneys' fees for any litigation.
- The District is required to cooperate in processing the Project through SLO LAFCO.
- With the exception of the annexation fee and initial deposits that are not used by the District, most payments by the developer will be non-refundable pursuant to District Code.
- The term of the Agreement is twenty years.

As described above, the contents of the proposed Annexation Agreement are consistent with Section V of the District's Annexation Policy, Resolution No. 2020-1540. Specifically, that Resolution requires the Board to consider the following factors:

1. **The proposed annexation area has a need for the requested services.** The proposed Annexation has been approved by the County and there is no other agency that could feasibly provide services.
2. **The proposed annexation area boundaries are consistent with this Policy.** The proposed Annexation is in the District's Sphere of Influence and adjacent to District boundaries and complies with the Annexation Policy.
3. **There is no reasonable alternative manner of providing the requested services to the proposed annexation area.** The Stipulation requires the Project, as a new urban user, to take service from the District. There is no other water purveyor for the subject property.
4. **The annexation represents a logical and reasonable expansion of the District's boundaries.** The proposed Annexation is within the District's Sphere of Influence as determined by LAFCO.
5. **The proposed annexation is consistent with the District's plans and policies.** All improvements would be constructed to District specifications; water would be supplied from the SWP. All new customers would be required to comply with District policies.
6. **The District has the ability to meet the need for the requested services.** The 2020 UWMP and WSA for the Project show there is sufficient water supply to serve the Project, even in multiple dry years. With improvements funded entirely by the Project, the District has the ability to meet the Project's needs.
7. **The benefits of the proposed annexation outweigh the disadvantages of the proposed annexation to the District.** The "extenuating circumstances" identified in the discussion of property tax revenues outweigh the possible disadvantages of the Project.

LAFCO Plan for Services

On October 13, 2022, the San Luis Obispo Local Agency Formation Commission (LAFCO) officially received an application for annexation of the Project (Annexation #30) to the District, and the application has remained on information hold since then. This application superseded the application the Developer originally made to NCSD.

Items required to be finalized prior to LAFCO fully processing the annexation application included the following:

- County approval of the Project, including associated entitlements such as tentative tract map, general plan amendment(s), Conditional Use Permit, Developer Agreement
- County certification of the Final Environmental Impact Report
- Approval of a tax exchange agreement between the District and the County
- Completion of a Plan for Services prepared by the District
- Any other documents, studies or information that LAFCo deems to be required from the applicant or District upon review of the final project and entitlements noted above, and upon further processing of the annexation application request

The Plan for Services (“Plan”) is the District’s compilation of information that have been technically analyzed, publicly vetted, and approved by various agencies. This Plan, attached to this report, describes how the District will provide Water, Wastewater, and Solid Waste services and bases that analysis on the technical documents that have been prepared during the time the Annexation application has been pending.

As stated within the attached resolution (Attachment B), staff recommends that the Board approve the Plan and authorize the General Manager to submit the Plan for Services to SLO LAFCO, and to make technical changes to the Plan for Services in consultation with SLO LAFCO staff prior to the SLO LAFCO Board’s consideration of the proposed Annexation.

CEQA CONSIDERATIONS

The District is identified in the County’s certified EIR for the Project as a “responsible agency.” CEQA requires that the District consider the information in the certified EIR and make written findings regarding the significant environmental effects identified in the document. In this case, based on the final certification by the County, the Board can make the findings set forth below pursuant to CEQA Guidelines Section 15091(a)(1) and (2), which are included in the proposed resolution approving the Annexation Agreement and Plan for Service. It bears emphasis that the District has no land use authority over the Project and is responsible only for water, wastewater and solid waste services. The mitigation measures in the EIR are within the County’s area of authority and enforcement. The District participated in the drafting of the Sections of the EIR that relate to District services, as required by law. But the District is not charged with implementing or enforcing mitigation measures imposed by the County, but will cooperate with the County in doing so. In some cases, where the District constructs an improvement, the District will be subject to the mitigation measures required for construction of off-site improvements.

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects identified in the EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency (the County) and not the District. Such changes have been adopted by the County.

As the “lead agency” for CEQA purposes, the County of San Luis Obispo certified the final EIR and made the findings required by CEQA Guidelines Sections 15091, 15092, and 15093. Those findings include a “statement of overriding considerations,” in which the Board of Supervisors found that for every “significant unavoidable” impact identified in the EIR, the benefits

of the Project outweighed the adverse effects of the Project. Under CEQA Guidelines Section 15093(b), those findings are to be made by the “lead agency” before approval of the Project. For the District’s purposes, the proposed Resolution includes findings required by Section 15091. The substantial evidence on which those findings are based include all the evidence presented to the Board over the course of considering this Annexation, including the technical reports referenced in this staff report, the EIR, and this report itself.

Staff recommends the Board adopt the resolution (Attachment B) to approve the annexation agreement with NKT Development LLC, the LAFCO Plan for Services and making certain findings under CEQA through the adoption of the proposed resolution.

FISCAL IMPACT

The costs of the District’s staff and consultants in preparing for this Annexation were funded by the deposit agreement with the developer, and will continue to be. If approved and fully implemented, the Project will result in payments to the District of over \$45 million, which will fund infrastructure needed for the Project, as well as other improvements. In addition, the new customers associated with the Project would pay for the import water needed to serve the Project, helping to reduce the cost of Supplemental Water that would otherwise be paid by existing rate payers. Without the proposed Annexation, it is anticipated that the District’s rates for water and wastewater would increase significantly.

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.

- B.1 Seek to have the County implement sustainable water supply policies that match the level of development they approve, including all the features described in the Water Resources Policy Statement.
- B.2 Engage with other local and regional organizations to develop solutions to long-term water supply challenges such as providing emergency backup supplies, and ensuring long-term water supply reliability, etc.

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

- B.1 NCSD shall maintain long-range infrastructure management, upgrade and replacement planning.

Goal 5. OPERATIONS. Maintain a proactive program to ensure readiness of systems and cost-effectiveness of operations.

RECOMMENDATION

Staff recommends that the Board, by motion and roll call vote, adopt the proposed resolutions to approve the Property Tax Exchange Resolution, Annexation Agreement, Plan for Services and make the required findings under CEQA relating to the Dana Reserve Project.

ATTACHMENTS

- A. Resolution 2024-XXX – Approving Property Tax Exchange with County of SLO
- B. Resolution 2024-XXX – Approving Annexation Agreement and Plan For Services and CEQA Findings
- C. Annexation Agreement for Annexation No. 30
- D. Plan for Services, Dana Reserve Specific Plan, prepared by MKN & Associates

AUGUST 28, 2024

ITEM E-1

ATTACHMENT A

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2024-XXX**

A RESOLUTION OF THE BOARD OF DIRECTORS OF NIPOMO COMMUNITY SERVICES DISTRICT APPROVING AN EXCHANGE OF PROPERTY TAX REVENUE AND ANNUAL TAX INCREMENT BETWEEN THE COUNTY OF SAN LUIS OBISPO AND THE NIPOMO COMMUNITY SERVICES DISTRICT FOR ANNEXATION NO. 30

WHEREAS, in the case of a jurisdictional change other than a city incorporation or district formation which will alter the service area or responsibility of a local agency, Revenue and Taxation Code Section 99(a)(1) requires that a property tax exchange agreement be approved; and

WHEREAS, the property tax revenue to be exchanged, if any, and the amount of annual tax increment to be exchanged among the affected local agencies shall be determined by negotiation; and

WHEREAS, as a special district involved in the annexation, the Nipomo Community Services District ("NCSD") elected to negotiate the tax revenue exchange on its own behalf pursuant to Revenue and Taxation Code Section 99(b)(5); and

WHEREAS, Revenue and Taxation Code Section 99(b)(6) requires that the governing body of each local agency, upon completion of negotiations, adopt resolutions whereby said local agencies agree to accept the negotiated exchange of property tax revenues, if any, and transmit a copy of each resolution to the Executive Officer of the Local Agency Formation Commission; and

WHEREAS, negotiations have taken place concerning the transfer of property tax revenues and annual tax increment between staff of the County of San Luis Obispo and NCSD for the jurisdictional change designated as LAFCO File 4-R-22: Annexation No. 30 to the Nipomo Community Services District (Dana Reserve Specific Plan); and

WHEREAS, the County of San Luis Obispo Board of Supervisors has adopted a resolution agreeing to an exchange of property tax revenues with NCSD; and

WHEREAS, NCSD's General Manager has recommended that the Board accept the negotiated tax revenue exchange as set forth below.

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

1. That the recitals set forth above are true, correct and valid.
2. That the Nipomo Community Services District agrees to accept the following exchange of base property tax revenues and annual tax increments.

(a) No base property tax revenue shall be transferred from the County of San Luis Obispo to the Nipomo Community Services District.

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2024-xxxx**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF NIPOMO COMMUNITY SERVICES DISTRICT
APPROVING EXCHANGE OF PROPERTY TAX REVENUE AND ANNUAL TAX INCREMENT
BETWEEN THE COUNTY OF SAN LUIS OBISPO AND THE NIPOMO COMMUNITY SERVICES
DISTRICT FOR ANNEXATION NO. 30**

(b) Annual tax increments shall be transferred from the County of San Luis Obispo to the Nipomo Community Services District effective with the date the roll year specified by the California Board of Equalization, anticipated fiscal year 2025-2026, and each fiscal year thereafter in the amount of 2.36973% of the increment remaining after transfers to the Educational Revenue Augmentation Fund (ERAF).

3. The proposed percentage of property tax revenue to be exchanged, 2.36973%, is less than the average percentage the District has agreed to accept in prior annexations, which has averaged approximately 3.72%. Pursuant to Resolution No. 2023-1658, the Board hereby finds that the following extenuating circumstances apply, and that such circumstances are unique to this application and will not become precedent for future annexations.

a. Based on the County's fiscal analysis of the proposed annexation, the annual property tax revenue NCSD is projected to receive at project build-out at the agreed percentage of 2.36973% is approximately \$270,599.00. The projected amount of annual property tax revenue NCSD would have received at the historical average amount of 3.72% would have been approximately \$400,000, an estimated annual difference of \$129,401 at project buildout.

b. The proposed annexation will provide additional customers to spread the costs of supplemental water the District is required to take and pay for at significantly higher rates than groundwater, beginning in July 1, 2025. Annexed customers will pay water rates that are based on the cost of supplemental water, which will help keep the water rates paid by existing customers lower.

c. The proposed annexation will pay capacity charges and other fees that will provide significant capital for necessary improvements to NCSD's wastewater infrastructure.

d. Development on the site will increase property tax revenue to NCSD over current conditions.

e. The developer has committed to make a payment to NCSD of \$4.5 million to be used for construction and improvement of NCSD infrastructure that will benefit all customers, not just the new customers from the development.

4. The General Manager is authorized and directed to transmit a certified copy of the resolution to the Executive Officer of the San Luis Obispo Local Agency Formation Commission, who shall then distribute copies in the manner prescribed by law.

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2024-xxxx**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF NIPOMO COMMUNITY SERVICES DISTRICT
APPROVING EXCHANGE OF PROPERTY TAX REVENUE AND ANNUAL TAX INCREMENT
BETWEEN THE COUNTY OF SAN LUIS OBISPO AND THE NIPOMO COMMUNITY SERVICES
DISTRICT FOR ANNEXATION NO. 30**

PASSED AND ADOPTED by the Board of Directors of the Nipomo Community Services District at a regular meeting thereof held on the 14th day of August, 2024, by the following vote:

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

ED EBY, President
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM:

RAY DIENZO
Secretary to the Board

CRAIG A. STEELE
District Legal Counsel

AUGUST 28, 2024

ITEM E-1

ATTACHMENT B

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2024-XXX**

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT APPROVING THE ANNEXATION AGREEMENT WITH NKT DEVELOPMENT, LLC, APPROVING THE LAFCO PLAN FOR SERVICE AND DIRECTING THE GENERAL MANAGER TO FILE IT WITH SLO LAFCO, AND MAKING CERTAIN FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA")

WHEREAS, on June 24, 2020, the District received an annexation application from NKT Commercial, LLC ("Developer"). The Developer requested the annexation of a 288-acre parcel located in the District's sphere of influence ("SOI") into the District's service area. As with all annexations, the District needed to thoroughly evaluate the impacts the proposed project would have on the District's water and sewer enterprises;

WHEREAS, subsequently, the Developer also filed an application for annexation with SLO LAFCO, and has elected to proceed under that application instead of the original direct application with the District;

WHEREAS, the Developer proposes residential, commercial, open space and park uses, with up to 1370 residential units, up to approximately 154 accessory dwelling units, up to 203,000 square feet of commercial uses (including a hotel of up to 60,000 square feet and an educational/training facility of up to 30,000 square feet), and up to approximately 61.94 acres of active and passive open space uses all as specified in Resolution No. 2024-109 of the San Luis Obispo County Board of Supervisors ("Project");

WHEREAS, because the Project is proposed to be located within the District's SOI, the Developer applied for annexation to conform to the Stipulation and Judgment in the Santa Maria Valley Groundwater Adjudication. Section VI E.1 of the Stipulation (Exhibit A to the Judgment) provides as follows under the topic heading New Urban Uses: " 1. Within the sphere of influence or service area. New Urban Uses shall obtain water service from the local public water supplier. The local public water supplier shall provide water service on a reasonable and non-discriminatory basis..." The District is bound by the Stipulation and is the local public water supplier in this instance;

WHEREAS, to inform the NCSD Board's consideration of the proposed Annexation, and to contribute to the Environmental Impact Report ("EIR") for the Project, NCSD prepared a number of technical reports and fiscal analyses of the Project and the proposed services. Those reports and analyses are a part of the record of this proceeding and have been made available to the public on the District's website. They include, without limitation:

1. The District's 2020 Urban Water Management Plan ("UWMP"), which included the proposed Dana Reserve Annexation as an "annexation under review" as part of its analysis, posted on December 14, 2021.

2. The Final Dana Reserve Water and Wastewater Service Evaluation by MKN, dated March 30, 2022.

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2024-xxxx**

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT APPROVING THE ANNEXATION AGREEMENT WITH NKT DEVELOPMENT, LLC, APPROVING THE LAFCO PLAN FOR SERVICE AND DIRECTING THE GENERAL MANAGER TO FILE IT WITH SLO LAFCO, AND MAKING CERTAIN FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

3. The Dana Reserve Water and Wastewater Rate Impact Analysis by Tuckfield and Associates, Dated May 17, 2022.
4. The updated Dana Reserve Water Supply Assessment dated March 7, 2024, which was incorporated into the Final EIR for the Project.
5. The Final Dana Reserve Phasing Study dated March 5, 2024.

WHEREAS, San Luis Obispo County prepared and certified an Environmental Impact Report, State Clearing House #2021060558 (“EIR”), and adopted a mitigation monitoring and reporting program (“MMRP”) as required by the California Environmental Quality Act (“CEQA”). NCSO is identified in the EIR as a “responsible agency” for the Project with the responsibility only to provide water, wastewater, and solid waste collection services, and has no land use authority over the Project;

WHEREAS, the Final EIR identified significant environmental impacts subject to mitigation, and significant unavoidable impacts. The Board of Supervisors made multiple findings required by CEQA regarding the impacts and adopted a Statement of Overriding Considerations related to the significant unavoidable impacts identified in the EIR;

WHEREAS, on August 28, 2024, the NCSO Board considered the proposed annexation on a regular meeting agenda and accepted testimony, written and oral, regarding the Project;

WHEREAS, the record of this proceeding includes, but is not limited to, the technical reports and analyses listed in this Resolution, each of which has been available for public review on the District’s website, the EIR and MMRP, the NCSO staff reports, the presentation from the developer, and the testimony and evidence submitted at the August 28, 2024 meeting, and

WHEREAS, the custodian of records of this proceeding is the General Manager of the District at the District office, at 148 South Wilson Street in Nipomo;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Nipomo Community Services District as follows, to the best of the Board’s knowledge, based on substantial evidence in the record of the proceeding:

1. That the recitals set forth above are true, correct and valid.

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2024-xxxx**

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT APPROVING THE ANNEXATION AGREEMENT WITH NKT DEVELOPMENT, LLC, APPROVING THE LAFCO PLAN FOR SERVICE AND DIRECTING THE GENERAL MANAGER TO FILE IT WITH SLO LAFCO, AND MAKING CERTAIN FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

ANNEXATION AGREEMENT

2. The annexation and proposed Annexation Agreement meet the applicable requirements of the District’s application policy. In the event of any conflict between particular elements of the Annexation Policy and the Annexation Agreement, the Board specifically finds that the Annexation Agreement controls, given the unique nature and size of this specific project.

3. Pursuant to Section IV E of Resolution 2020-1540, substantial evidence shows that the proposed annexation application demonstrates all of the following:

(a) The proposed annexation area has a need for the requested services. The land proposed for annexation is vacant land proposed for residential and commercial uses. The EIR demonstrates that there are no water, wastewater, or other public services supplied to the proposed annexation area, and the uses approved by the County must receive these services from the District.

(b) The proposed annexation area boundaries are consistent with the Annexation Policy, in that the boundaries are located within the District’s Sphere of Influence as determined by SLO LAFCO, as required by Section IV A of the Policy.

(c) There is no reasonable alternative manner of providing the requested services to the proposed annexation area. The record demonstrates that there are no other public service providers to the proposed annexation area. Under the requirements of the Stipulation in the Santa Maria Valley Water Adjudication, included in the UWMP, the WSA, and the Final EIR, “new urban users” like the Project must take water service from the nearest public water supplier, which is the District. Forcing the Project into other methods of acquiring domestic water, such as through the formation of a private water entity, would not be consistent with the Stipulation. District Code and policies require new development to also take wastewater and solid waste collection services from the District, so there are no existing alternatives for those services.

(d) The annexation represents a logical and reasonable expansion of the District’s boundaries. SLO LAFCO has determined the District’s SOI, and the proposed annexation area is entirely within the SOI. The proposed annexation is logical, since District facilities are the closest water and wastewater services to the proposed annexation area, and would extend directly into the proposed annexation area at the developer’s expense. Such an expansion is also reasonable, in that it does not require the District to extend services to any distant or geographically remote properties.

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2024-xxxx**

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT APPROVING THE ANNEXATION AGREEMENT WITH NKT DEVELOPMENT, LLC, APPROVING THE LAFCO PLAN FOR SERVICE AND DIRECTING THE GENERAL MANAGER TO FILE IT WITH SLO LAFCO, AND MAKING CERTAIN FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

(e) The proposed annexation is consistent with the District's plans and policies. The proposed annexation will be constructed and operated in full compliance with the District's standard specifications, code requirements and policies. The proposed annexation can and will be served with water from the Nipomo Supplemental Water Project, pursuant to Section IV B, and the owners of the property are willing to accept all conditions for service, as demonstrated by the Annexation Agreement. All of the infrastructure necessary to serve the Project will be designed and constructed at the developer's expense, pursuant to the District policy.

(f) The District has the ability to meet the need for the requested services. The WSA and the proposed plan for service demonstrate that the District has sufficient available water to serve the Project at build-out and beyond, even in a multiple dry year scenario. Water system improvements to be constructed at the expense of the developer will be able to deliver the necessary water to the Project, without any negative impact on existing customers. The WSA further demonstrates that the District's wastewater system can accommodate the flows from the Project with the improvements to be constructed at the developer's expense. In fact, treated wastewater from the Project will improve the District's existing groundwater recharge efforts, by significantly increasing the amount of recharge water that is put back into the aquifer. The proposed Phasing Plan and Plan for Service demonstrate that the District has the ability to carry out the necessary work for the Project on a schedule, and the Annexation Agreement establishes how that work will be structured and funded by the Developer.

(g) The benefits of the proposed annexation outweigh the disadvantages of the proposed annexation to the District. The Board recognizes that disadvantages of the project have been identified as significant unavoidable environmental impacts in the certified EIR, including significant unavoidable impacts in the areas of Air Quality, Biological Resources, Greenhouse Gas Emissions, Land Use and Planning, Population and Housing, and Transportation, all as specifically described in the Final EIR for the Project. Further, a number of members of the community have identified aspects of the Project that they view as disadvantages or negative impacts of the Project. Those identified disadvantages include growth, traffic, the elimination of oak trees, public services impacts, and perceived water supply impacts. However, each of the significant benefits of the Project described below outweigh its significant unavoidable environmental impacts and its identified disadvantages for the following reasons:

i. The District providing water and wastewater service to the proposed area of annexation is consistent with the District's obligation under the Stipulation, which requires the “new urban user” to take water service from the District. This contributes to the orderly management of the Nipomo Basin, and ensures that this proposed

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2024-xxxx**

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT APPROVING THE ANNEXATION AGREEMENT WITH NKT DEVELOPMENT, LLC, APPROVING THE LAFCO PLAN FOR SERVICE AND DIRECTING THE GENERAL MANAGER TO FILE IT WITH SLO LAFCO, AND MAKING CERTAIN FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

development will not acquire water from some other, potentially unregulated, source that could detract from the stipulating parties efforts to protect and recharge the groundwater basin.

ii. The proposed Annexation will provide additional customers to spread the costs of supplemental water the District is required to take and pay for at significantly higher rates than groundwater, beginning in July 1, 2025. Annexed customers will pay water rates that are based on the cost of supplemental water, which the District’s rate study shows will help keep the water rates paid by existing customers lower as the Project builds out.

iii. The proposed Annexation will pay then-current capacity charges and other fees that will provide significant capital for necessary improvements to the District’s wastewater infrastructure. All infrastructure for the Project will be paid for by the Developer, and not by existing rate payers.

iv. Development on the site will increase property tax revenue to the District over current conditions, and provide additional tax and other revenue to the County for County services.

v. It is undeniable that San Luis Obispo County needs more housing units to meet the demand for housing, and the Project proposes units to help meet that need.

vi. The Project provides additional public benefits to the Nipomo Community, as detailed in the development agreement between the County and the Developer.

vii. The Developer has committed to make a non-refundable payment to the District of \$4.5 million to be used for construction and improvement of District infrastructure that will benefit all customers, not just the new customers from the development.

4. The Annexation Agreement is consistent with Section V of the District’s annexation policy, and the items specified in that section are hereby included in it. Based on the foregoing and the evidence presented to the Board, the Annexation Agreement between the District and NKT Development, LLC in the form presented to the Board on August 28, 2024, and as specified herein, is approved and the President of the Board is authorized to execute it on behalf of the District. Any prior Board policies or statements regarding the use of Supplemental Water within the boundaries of the District as they existed in the past are superseded as necessary to implement the Annexation Agreement. Upon annexation the Project will be located within the current boundaries of the District.

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2024-xxxx**

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT APPROVING THE ANNEXATION AGREEMENT WITH NKT DEVELOPMENT, LLC, APPROVING THE LAFCO PLAN FOR SERVICE AND DIRECTING THE GENERAL MANAGER TO FILE IT WITH SLO LAFCO, AND MAKING CERTAIN FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

5. The General Manager shall transmit an executed copy of the Annexation Agreement to SLO LAFCO along with this Resolution as verification that the elements specified in the Annexation Policy Section IV K have or, as applicable, will be satisfied through the Annexation process.

PLAN FOR SERVICES

6. The Board has considered the District’s Plan for Services for the Dana Reserve Specific Plan, dated August 21, 2024.

7. Based on its review and the evidence presented during the proceeding, the Board approves the Plan for Services as presented.

8. The General Manager is authorized to submit the Plan for Services to SLO LAFCO, and to make technical changes to the Plan for Services in consultation with SLO LAFCO staff prior to the SLO LAFCO Board’s consideration of the proposed Annexation.

9. The General Manager shall include a copy of this Resolution with the approved Plan For Services.

CEQA FINDINGS

10. The District is a “responsible agency” for the Project as defined under CEQA. San Luis Obispo County, as the “lead agency” under CEQA, prepared and certified an EIR for the Project, which fully and adequately analyzed the environmental impacts of the Project and the proposed annexation including, without limitation the District’s provision of water, wastewater, and solid waste services to the proposed annexation area. Included within the analysis, in the WSA the District prepared and submitted, is evidence of the availability of Supplemental Water to serve the Project in all scenarios required to be analyzed by the Water Code and by CEQA. The EIR thus analyzes, among other issues, the environmental impacts of the proposed Annexation and the use of Supplemental Water to serve the Project, and is the most recent analysis of water availability. Throughout the EIR process, substantial evidence was not submitted to controvert the analysis in the WSA and the EIR.

11. CEQA Guidelines Section 15091 requires a “responsible agency” to make certain written findings regarding the significant environmental impacts of the Project prior to approving the Project.

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2024-xxxx**

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT APPROVING THE ANNEXATION AGREEMENT WITH NKT DEVELOPMENT, LLC, APPROVING THE LAFCO PLAN FOR SERVICE AND DIRECTING THE GENERAL MANAGER TO FILE IT WITH SLO LAFCO, AND MAKING CERTAIN FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

12. The Final EIR identified significant environmental impacts of the Project. Pursuant to CEQA Guidelines Section 15091, and based (in part) on the Final EIR and the County’s certification of that document as being legally adequate, the Board makes the following written finding that applies to each of the significant impacts of the project the EIR identified:

i. According to the EIR and District staff, changes to the Project that avoid or substantially lessen the environmental impacts of the Project have been imposed and are within the responsibility or jurisdiction of another public agency (namely the County of San Luis Obispo) and not the Nipomo Community Services District. Such changes have already been adopted by the County in the Final EIR and the Mitigation Monitoring and Reporting Program. The District has no land use authority for the Project and has no ability to impose additional mitigation measures on a Project that is already the subject of a certified EIR by another agency. The County’s mitigation measures have already been adopted, and the District will be required to comply with applicable mitigation measures in the course of improvements the District constructs. The District’s standard specifications for improvements were incorporated into the Project by the County as conditions of approval.

INDEMNIFICATION

13. Pursuant to Section IV N of the District’s Annexation Policy, the developer shall agree to indemnify and defend, with counsel of the District’s choice, the District, its officers, agents and employees, from and against from and against any and all claims, actions, or proceeding to attack, set aside, void or annul, enjoin, or seek damages arising out of, an approval of the District, County or LAFCO concerning the Annexation or the associated land use project. Such indemnification shall include damages, judgments, settlements, penalties, fines, defensive costs or expenses (including, but not limited to, interest, attorneys’ fees and expert witness fees), or liability of any kind related to or arising from such claim, action, or proceeding. This indemnification requirement is incorporated into the Annexation Agreement.

PASSED AND ADOPTED by the Board of Directors of the Nipomo Community Services District at a regular meeting thereof held on the 28th day of August, 2024, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2024-xxxx

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT APPROVING THE ANNEXATION AGREEMENT WITH NKT DEVELOPMENT, LLC, APPROVING THE LAFCO PLAN FOR SERVICE AND DIRECTING THE GENERAL MANAGER TO FILE IT WITH SLO LAFCO, AND MAKING CERTAIN FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”)

ED EBY, President
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM:

RAY DIENZO
Secretary to the Board

CRAIG A. STEELE
District Legal Counsel

AUGUST 28, 2024

ITEM E-1

ATTACHMENT C

RECORDING REQUEST BY AND
WHEN RECORDED RETURN TO:
NIPOMO COMMUNITY SERVICES DISTRICT
P.O. Box 326
Nipomo, CA 93444

APN# []
[]
[]

ANNEXATION AGREEMENT

THIS agreement regarding the annexation of property (“Agreement”), is made this ____ day of _____, 2024, by and between the Nipomo Community Services District, (“District”), and NKT Development, LLC, a California Limited Liability Company (“Developer”), with reference to the following recitals:

RECITALS

A. Developer represents and warrants that Developer is the fee title owner of approximately 288 acres of real property depicted and described in **Exhibits A and B**, attached hereto and incorporated herein by this reference (the “Property” or the “Area of Annexation”). The Property is generally located at _____, Nipomo, California, also known as Tract 3159.

B. The Property is located inside the District’s Sphere of Influence as established by the San Luis Obispo County Local Agency Formation Commission (“LAFCo”) and adjacent to the current District service boundary.

C. Developer has applied to annex the Property into boundaries of the District. The annexation process is referred to herein as the “Annexation”.

D. The Annexation has been processed in accordance with the District’s Annexation Policy and applicable provisions of the District’s Code and is subject to the approval of LAFCo.

E. The Property has been approved for development by the County of San Luis Obispo and designated as the Dana Reserve Specific Plan (“DRSP”) area.

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

1. Annexation Description:

The Annexation shall consist of the Annexation of approximately two hundred eighty eight (288) acres to be developed into residential, commercial, open space and park uses, with up to 1370 residential units, up to approximately 154 accessory

dwelling units, up to 203,000 square feet of commercial uses (including a hotel of up to 60,000 square feet and an educational/training facility of up to 30,000 square feet), and up to approximately 61.94 acres of active and passive open space uses all as specified in Resolution No. 2024-169 of the San Luis Obispo County Board of Supervisors (“Project”). The conditions imposed by the County in said Resolution 2024-169 and the Mitigation Monitoring and Review Plan, as the same may be duly-amended from time to time, are referred to collectively herein as “Conditions of Approval.” The description of the Project in this Agreement is for context only. The District has no land use authority over the proposed uses proposed for the subject property.

2. Proposed District Services:

The District services proposed to be provided to the Area of Annexation include water, wastewater, and solid waste collection. The District will consider applications for District services from the Developer or the Developer’s successors in interest pursuant to the then-current terms of the District Code and District policies and payment of all then current fees and charges as provided in this Agreement. This Agreement is **not** to be deemed an “Intent to Serve” or “Verification of Service” or any other commitment to provide any District service prior to the Developer making application for services and payment of all applicable District fees and charges. District warrants and agrees that it will not unreasonably withhold, condition, deny, or delay the issuance of “Intent to Serve” or “Verification of Service” or similar commitments to provide District services consistent with the development contemplated hereunder so long as (1) the annexation has been completed and is no longer subject to legal challenge and (2) Developer is not in breach of its obligations under this Agreement.

3. Term.

This Agreement shall be effective immediately following its approval by the Board and execution by both parties (“Effective Date”). The Term of this Agreement shall be twenty (20) calendar years from the Effective Date.

4. Service Limitations:

The District’s approval of the Annexation is expressly limited to the density and intensity of development specified in the County’s land use approvals for the Project as described in Section 1, above. Any proposed increase to the number of residential units to be developed in the Project, or any change in proposed non-residential uses in the Project that would materially change the District’s analysis of water and wastewater services available from the District may, at the discretion of the General Manager, require an amendment to this Agreement approved by Developer and the District’s Board.

5. Annexation Processing Costs:

A. At the time of execution of this Agreement, Developer has on deposit with the District the sum of \$37,375.91 for District services in processing the Annexation. The Developer authorizes the District to continue to withdraw from the deposit payment

for the costs of processing the Annexation as they are incurred by District, through and including the date of approval of the Annexation by LAFCO.

District will notify Developer whenever the deposit is reduced to ten thousand dollars (\$10,000) or less. Within fifteen 15 calendar days after such notification is e-mailed to Developer, Developer shall make an additional deposit in an amount reasonably estimated by District to be necessary to reimburse District's remaining costs.

B. Following LAFCo's action on the Annexation application and final resolution of the litigation referenced in Section 5C, any funds deposited by Developer in excess of the District's processing costs shall, at the Developer's option, either be refunded to the Developer or retained by District as a credit toward payments Developer is required to make to District pursuant to this Agreement. Conversely, any costs incurred by the District over and above the amount deposited by Developer shall be paid by Developer within fifteen (15) calendar days of notification by District.

C. District's costs of processing the Annexation subject to reimbursement by Developer under this Section 5 shall include all of District's reasonable attorneys' fees and costs for the litigation titled *Nipomo Action Committee, et al. v. County of San Luis Obispo, et al.* (San Luis Obispo County Superior Court Case No. 24CV-0351), in which the District was named as a real party in interest.

6. Developer's Payment of District's Fees and Charges:

A. Annexation Fees: Prior to final LAFCo consideration of the proposed Annexation, Developer shall deposit with District the sum of one hundred forty-four thousand dollars (\$144,000.00) representing the District's Annexation fees of \$500 per acre. This Annexation fee deposit shall be refunded to Developer if the Annexation is denied by LAFCo.

B. Infrastructure Enhancement Payment: Developer has agreed to pay to District a non-refundable lump sum payment of Four Million, Five Hundred Thousand Dollars (\$4,500,000) (the "Infrastructure Enhancement Payment") to be used at the discretion of the District in connection with the improvement and construction of District infrastructure. The Infrastructure Enhancement Payment shall be remitted to the District within ninety (90) days of the obtaining of Final Land Use Entitlements. For purposes of this Agreement, the Land Use Entitlements shall be deemed "Final" upon the latest date upon which all of the Land Use Entitlements required for the Project have approved by all applicable governmental agencies, including, without limitation, the County, District, and the County Local Area Formation Commission, plus any time period during which any administrative appeal, referendum, and/or judicial challenge related to any of the Land Use Entitlements as they affect the Property or the Project having been filed ("Challenge") is pending until such Challenge has been finally resolved in a manner that is acceptable to Developer in its sole discretion.

C. District Connection and Capacity Charges: For all water and wastewater connections to District services, Developer shall make non-refundable payments to the District as follows:

1) The then-current District application fee adopted pursuant to the District Code shall be paid with each Application for an “Intent to Serve” Letter for Water and/or Sewer, or the equivalent;

2) Prior to recordation of the first Final Map in the Project that creates a developable lot upon which a dwelling unit may be constructed (a “Neighborhood Map”), Developer shall deposit with the District the District’s 100% estimate of District’s then-current applicable water capacity charges (including supplemental water capacity charges), sewer capacity charges, and all applicable connection fees, reimbursement charges (if applicable), meter fee and account set-up fee, and any other costs or fees due to the District for connection charges for District services pursuant to Chapter 2.04 of the District Code or any successor ordinance or resolution (collectively, “Connection Charges”) equal to 170 residential dwelling units (the “Phase 1 Deposit”). At the time Developer requests that individual water meters be installed for residential or commercial service, a final determination of the District’s then-current Connection Charges will be assigned and due and the proportionate share of the Phase 1 Deposit that was paid for such development will be credited.

Prior to recordation of a Neighborhood Map that contains development (residential or commercial) that will result in full crediting of the Phase 1 Deposit, and for each subsequent Neighborhood Map, Developer shall deposit with the District the District’s 100% estimate of District’s then-current Connection Charges (each a “Subsequent Phase Deposit”) for the permitted development associated with such Neighborhood Map. At the time Developer requests that individual water meters be installed for residential or commercial service within such Neighborhood Map, a final determination of the District’s then-current Connection Charges will be assigned and due and the proportionate share of any Subsequent Deposit that was paid for such development will be credited.

Prior to recordation of Neighborhood Maps that create the 500th and 850th residential lots, District and Developer shall meet and confer to confirm that the Connection Charges that have been generated by the Project are sufficient to fund design and construction of the District Improvements that are to be constructed prior to the 689th and 1009th residential units, respectively, and whether any additional advance deposits may be necessary to ensure that the District has sufficient funds to complete the required design and construction.

D. Intent to Serve Payments Run With the Land: Pursuant to the District’s Code, Developer acknowledges and agrees that if an Intent to Serve letter is approved by the District, all payments made by the Developer under Section 6(C) shall be non-refundable and shall run with the land, be retained by the District and shall be credited against any future computation of fees and charges for the same property.

E. Service Rates: Following annexation, new customers in the Area of Annexation shall pay the then-current rates for service, duly-approved by the Board of Directors. Developer agrees, on behalf of itself and its successors in interest, not to protest or challenge the initial rates for service for the Area of Annexation adopted by the Board of Directors including, without limitation, differential rates for service for annexed properties served only by imported water, if such rates are established according to applicable law including, without limitation, the requirements of California's Proposition 218.

7. Obligations of Developer:

In addition to the fiscal obligations of Developer referenced in Section 6 of this Agreement, the Developer shall have the following additional obligations:

A. At Developer's sole cost, Developer shall promptly and diligently process the Annexation through LAFCo. If annexation has not been completed within eighteen (18) months from the date of this Agreement, the District shall have the right to terminate this Agreement at any time thereafter, unless such time for completion is extended by written agreement. Such extension must be requested in writing by the Developer two (2) months prior to the expiration of said period. If the Agreement is terminated the District shall have no further obligation under this Agreement. Upon termination the District shall refund the Annexation Fee paid under Section 6(A) and any deposits made by Developer under Section 5 which have not been used by the District prior to the date of termination but District shall not be required to refund any payments made under Sections 6(B) and 6(C).

B. Promptly provide any information, plans, designs, and studies, as reasonably requested by District for analysis, processing and/or approvals.

C. Purchase all construction water exclusively from the District, at the District's then-current rates.

D. Enter into the District's standard plan check and inspection agreement ("PCIA") in a form substantially similar to the example attached as Exhibit D, attached hereto and incorporated herein by this reference, for each phase, sub-phase or other portion of the Project to be constructed by Developer.

E. At Developer's sole cost, design construct, and dedicate to the District upon District's approval, the off-site water and wastewater and other infrastructure improvements required to provide District water and wastewater services to the Area of Annexation and the Project in Exhibit C, attached hereto and incorporated herein by this reference, where the Developer is listed as the "Responsible Entity." All infrastructure improvements shall be constructed in accordance with District's standard, then-current, specifications for water and wastewater system improvements and District policy and Code. The "timeframe for completion" for Developer's construction of the off-site improvements in relation to Developer's construction of residential units is specified in Exhibit C. For clarity, and without limiting the foregoing, Developer shall complete

construction of **off-site** improvements labeled as “Water Distribution and Storage Project Nos. 3 and 4,” “Wastewater Collection Projects Numbers 1, 2A and 2B” on Exhibit C prior to occupancy of any residential unit in the Project.

F. At Developer’s sole cost, design and construct, and dedicate to the District upon District’s approval, the **on-site** water and sewer and other infrastructure improvements, and real property interests, required to provide District services to the Area of Annexation and the development contained therein, all as specified in the adopted Conditions of Approval. All such infrastructure improvements shall be constructed in accordance with District’s standard, then-current, specifications for water and wastewater system improvements and District policy and Code. The timeframe for completion of Developer’s construction of the on-site improvements is as specified in the Conditions of Approval.

G. Developer acknowledges that, at a minimum, the construction of the off-site infrastructure identified in Section 7(E) and Exhibit C are “public works” as defined in Labor Code Section 1770 and, as such, require the payment of prevailing wages, To the extent required by the Labor Code, Developer and Developer’s contractors shall pay no less than the applicable prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the wage determinations are on file at the District’s office or are otherwise available on the internet at www.cslb.ca.gov.

H. Comply with all conditions placed on the Annexation by LAFCo.

8. Obligations of District:

A. Developer and the District understand and agree that processing the Annexation by the District and the LAFCo will require many discretionary approvals. Therefore, there are no promises or guarantees that the Annexation will be successfully processed/approved by the District and/or LAFCo. The District will respond in a timely manner to LAFCo’s requests for information.

B. The District shall use reasonable best efforts to timely process the applications for service made by Developer or Developer’s successors in interest, pursuant to the District Code and applicable policies. At Developer’s expense, District shall retain temporary staff and/or consultants to more expeditiously process Developer’s applications.

C. Upon payment of the Infrastructure Improvement Payment specified in Section 6(B), District shall commence the design and engineering of the **off-site** infrastructure improvements described in Exhibit C where the District is designated as the “Responsible Entity,” at District’s expense. District shall not be required to expend more than the amount of the Infrastructure Improvement Payment for design and engineering, or to commence construction, unless and until Developer has made the Phase 1 Deposit.

D. District shall construct, to District's then-current standard specifications, the off-site infrastructure improvements described on Exhibit C where the District is specified as the "Responsible Entity," within the "timeframe for completion" specified in Exhibit C, subject to availability of funds. Notwithstanding the foregoing, the District shall not be required to award any contract for construction or commence construction on any such improvement unless and until the Developer has paid the full amount of the water and sewer capacity charges due to the District necessary to fund the water and sewer service to be served by that off-site improvement. Developer may pre-pay any applicable capacity charge to permit commencement of construction. In the case of any such pre-payment, District shall enter into a reimbursement agreement with Developer as provided in the District Code or, alternately, shall credit the amount pre-paid against future capacity charges if directed in writing to do so by the Developer.

E. The General Manager shall have the authority to approve and issue "Intent to Serve" letters that comply with the District's standards and Code, upon payment of all fees and charges specified herein.

9. Dedications and Covenants:

Prior to District's approval of the improvement plans for the improvements that will be dedicated to the District, the Developer shall offer for dedication to the District easements and other property interests required for such improvements in a form acceptable to the District Engineer and Legal Counsel.

10. Customers of the District:

Upon annexation the property owners, residents, and commercial users within the Area of Annexation shall become "regular customers" of the District with no greater entitlements to service than any other District customer, shall take all water, wastewater and solid waste services from the District, and shall be subject to the District's Code.

11. Indemnification and Hold Harmless:

To the extent allowable by law, Developer agrees to defend, indemnify and hold the District, its directors, officers, employees, agents harmless from costs and expenses, including reasonable attorneys' fees of attorneys chosen by the District, and defense costs, incurred by District or held to be the liability of District in connection with District's defense of its actions in any proceeding brought in any State or Federal court, or administrative tribunal, challenging the District's actions or decisions with respect to any aspect of the Annexation. Developer understands and acknowledges that District is under no obligation to defend any legal actions challenging the District's actions with respect to the Annexation.

The Developer recognizes and hereby agrees that the District and its directors, officers, employees and agents shall not be liable for any injury or death to any person or damage to any property arising from the performance of any work required hereunder by the Developer, its officers, employees, independent contractors or agents.

The Developer shall defend, indemnify and hold the District harmless from any and all claims, causes of actions, demands or charges and from any loss or liability, including all costs, penalties, expenses, attorney's fees, litigation costs, and other fees arising out of or in any way connected with the performance or with the failure to perform under this Agreement by Developer, its officers, employees, independent contractors or agents, including, but not limited to, the construction of the Project or any improvements associated with the Annexation. In addition, if the District, its directors, officers, employees or agents should be sued as a result of such performance, the District may notify the Developer which then shall have the duty to defend the District, its directors, officers, employees or agents, or, at the District's option, pay for such defense by attorneys of the District's choice including, but not limited to, payment of all reasonable attorney's fees and expenses incurred by the District, its directors, officers, employees or agents.

Developer and District hereby agree that District would not enter into this Agreement or agree to annex the Area of Annexation into the District if the District would be liable to Developer or any of Developer's successors in interest, assignees, contractors, subcontractors, or partners if District would be subject to monetary damages (including, without limitation, consequential damages) for any breach of this Agreement. The remedy of Specific Performance is adequate to remedy any breach by the District and, therefore, Developer's sole remedy against the District for any breach hereof shall be limited to the remedy of Specific Performance.

Developer may transfer the Property, or any portion thereof, to another entity (a "Transferee"). Developer shall not be released from any obligations under this Agreement unless the Transferee enters into an Assumption and Assignment Agreement that expressly includes the obligations under this Section 11, subject to District's reasonable approval. Developer shall be released from the obligations under this Agreement if, and only if, (i) Developer has transferred all interests in the Property to one or more Transferees and (ii) each Transferee has entered into an Assumption and Assignment Agreement in accordance with this Section 11.

12. Termination:

Prior to LAFCo 's final approval of the Annexation, Developer may terminate this Agreement with fifteen (15) days written notice to District. Termination shall not relieve Developer of its responsibility for payment of costs incurred by District to the date of termination; however, upon termination the District shall refund the Annexation Fee paid under Section 6(A) and deposits made by Developer under Section 5 which have not been used by the District prior to the date of termination.

13. Waiver of Rights:

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

14. Entire Agreement:

This Agreement is the complete and fully integrated agreement between the parties as to its subject, and is freely and voluntarily entered into by the parties after having the opportunity to consult with their respective attorneys. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. The parties, in entering into this Agreement, do not rely on any inducements, promises, or representations made by each other, their representatives, or any other person, other than those inducements, promises, and representations contained in this Agreement. Any amendment to this Agreement shall be of no force and effect unless it is in writing, duly approved, and signed by the Developer and the District.

15. Notices:

All notices, statements, reports, approvals, requests, bills or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or via email, or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

NIPOMO COMMUNITY SERVICES DISTRICT:

General Manager
Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444

DEVELOPER:

Nick Tompkins, Manager
NKT Development, LLC
110 S. Mary Ave.
Ste 2 PMB 128
Nipomo, CA 93444

16. Successors and Assigns:

The District and Developer agree that Developer's Obligations, Agreements and Covenants contained in this Agreement shall run with the land and shall be binding upon Developer, its heirs, successors, executors, administrators, and assigns and shall inure to the benefit of District and its successors and assigns.

17. Headings:

The paragraph headings used in this Agreement are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, not shall they enter into the interpretation of this Agreement.

18. Cooperation:

Each party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

19. Interpretation of this Agreement:

The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

20. Venue:

This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

21. Agreement to be Recorded:

Developer and District intend and consent to the recordation of this Annexation Agreement in the Office of the County Recorder of the County of San Luis Obispo.

22. Recitals:

The recitals of this Agreement are incorporated herein by this reference and made a part hereof.

23. Authority to Execute Agreement:

A. Developer represents and warrants that: (i) this Agreement will constitute legal, valid, and binding obligations of Developer enforceable in accordance with its terms; and (ii) the execution and delivery of this Agreement is within Developer's power and authority without the joinder or consent of any other party.

B. Indemnity Developer and any assignee or successor in interest jointly and severally agree to defend, indemnify and hold the District harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) arising out of the representations and warranties of Subsection A, above.

(Next Page)

In Witness Whereof, District and Developer have executed this Agreement the day and year first above written.

DEVELOPER:

By: _____
(Note: Signature must be notarized)
[Name]

By: _____
(Note: Signature must be notarized)
[Name]

DISTRICT:

By: _____
Ed Eby
President

Attest:

Approved as to Form:

Ray Dienzo
Secretary to the Board

Craig A. Steele
General Counsel

EXHIBIT "A"

DANA RESERVE PROPERTY DEPICTION

N:\2017\17-153 Hetrick-Cherokee - Rancho Nipomo\C3D 2019\17-153 Ro Nipomo - DANA RESERVE PROPERTY DEPICTION.dwg, 8.5X11 PROPERTY DEPICTION, May 01, 2024 3:08pm, MStanton

HIGHWAY 101

WILLOW RD.

SANDYDALE

AREA 288.35 AC

PARCEL 1
49 PM 25

15 PM 26 A B C D
15 PM 27 A B C D



SCALE 1"=600'

HETRICK RD.

HETRICK RD.

POMEROY RD.



MICHAEL B. STANTON, PLS 5702
3559 S. HIGUERA STREET
SAN LUIS OBISPO, CA 93401
805-594-1960

DANA RESERVE, NIPOMO

May 1, 2024 JOB #17-153

Exhibit B

**ANNEXATION No. 30 TO
THE NIPOMO COMMUNITY
SERVICES DISTRICT
Legal Description**

A portion of Parcel 1 of Parcel Map CO 89-389 as shown on the Parcel Map filed on February 28, 1992 in Book 49 of Maps at page 25, Parcel B of Parcel Map CO 73-436 as shown on the Parcel Map filed on August 15, 1974 in Book 15 of Parcel Maps at page 26 and Parcel C of Parcel Map Co 74-55 as shown on the Parcel Map filed on August 15, 1974 in Book 15 of Parcel Maps at page 27 in the Recorder's Office of San Luis Obispo County, California described as follows:

Beginning at the most westerly corner of Parcel 1 of said Parcel Map CO 89-389, said point being a 3/4" iron pipe with nail as shown on the Record of Survey filed in Book 115 of Records of Survey at Pages 92-93 in said County Recorder's Office having the following NAD83, Zone 5 coordinates, 1991.35 epoch

 Northing 2,211,652.621

 Easting 5,809,950.699, said point being on the existing NCSD boundary;

thence,

- 1) North 49°20'41" East along the Northwest Line of said Parcel 1 of Parcel Map CO 89-389 a distance of 1498.13 feet to the Southerly corner of Parcel A of Parcel Map No. CO 73-436 as shown on Parcel Map filed on August 15, 1974 in Book 15 of Parcel Maps at page 26; thence,
- 2) North 49°19'51" East along the Northwest Line of said Parcel 1 of Parcel Map CO 89-389 a distance of 336.32 feet to the Southerly corner of Parcel B of said Parcel Map CO 73-436; thence,
- 3) North 40°02'04" West along the Southwest line of said Parcel B of said Parcel Map CO 73-436 a distance of 882.61 feet to the west corner thereof; thence,
- 4) North 49°14'28" East along the Northwest line of said Parcel B of said Parcel Map CO 73-436 a distance of 347.48 feet to the north corner thereof; thence,
- 5) South 39°19'38" East along the Northeast line of said Parcel B of said Parcel Map CO 73-436 a distance of 883.34 feet to the east corner thereof; thence,
- 6) North 49°19'51" East along the Southeast lines of Parcel C and D as shown on Parcel Map Co 74-55 filed on August 15, 1974 in Book 15 of Parcel Maps at page 27, records of said County a distance of 671.68 feet to the Southerly corner of Parcel A of Parcel Map No. CO 74-55; thence,
- 7) North 49°18'14" East along the Southerly line of Parcels A and B of said Parcel Map No. CO 74-55 a distance of 336.58 feet to the South corner of Parcel B of said Parcel Map Co 74-55; thence,

Exhibit B

- 8) North 37°10'31" West along the Southwest line of said Parcel B of Parcel Map CO 74-55 ad distance of 886.46 feet to the West corner of said Parcel B; thence,
- 9) North 49°21'55" East along the Northwest line of said Parcel B a distance of 347.32 feet to the north corner of said Parcel B; thence,
- 10) South 36°20'10" East along the Northeast line of said Parcel B a distance of 886.98 feet to the East corner of said Parcel B and Northwest line of said Parcel 1 of Parcel Map CO 89-389; thence,
- 11) North 49°18'14" East along the northwest line of said Parcel 1 a distance of 1340.17 feet to the Southwest line of State Highway 101 as shown on Cal Trans right-of-way map for District 5, at Post Mile 6.44, Route 101 Sheet 1 of 2 sheets; thence Southeasterly along said State Highway right-of-way line the following four courses:
 - 12) South 48°44'21" East a distance of 137.60 feet; thence,
 - 13) South 41°06'48" East a distance of 298.30 feet; thence,
 - 14) South 36°07'11" East a distance of 900.78 feet; thence,
 - 15) South 34°57'51" East a distance of 1310.28 feet to the East corner of said Parcel 1 of Parcel Map CO 89-389 and to the existing NCSD boundary; thence along the existing NCSD boundary for the following five courses:
 - 16) South 49°30'41" West along the Southeast line of said Parcel 1 of Parcel Map CO 89-389 distance of 4321.50 feet; thence,
 - 17) North 74°15'57" West along the south line of Parcel 1 of Parcel Map CO 89-389 and north line of Pomeroy Road a distance of 385.21 feet; thence,
 - 18) North 16°32'50" West along the west line of Parcel 1 of Parcel Map CO 89-389 and East line of Hetrick Road a distance of 1160.41 feet; thence,
 - 19) South 88°18'05" West along the South line of Parcel 1 of Parcel Map CO 89-389 and North line of Hetrick Road a distance of 731.47 feet; thence,
 - 20) North 43°56'00" West along the Southwest line of Parcel 1 of Parcel Map CO 89-389 and Northeast line of Hetrick Road a distance of 783.35 to the point of beginning.

Excepting therefrom that portion of said Parcel 1 conveyed to the County of San Luis Obispo by Board of Supervisors Resolution No. 89-93 recorded March 13, 1989 in Volume 3281, page 601 of Official Records in the office of the County Recorder of said County.

The above described parcel containing 288.30 acres is graphically shown on Exhibit B attached hereto and made a part hereof.

Exhibit B

Bearings and distances herein are on the State Plane Coordinate System, NAD83, Zone 0405.

To obtain true bearings, rotate bearings herein by $-1^{\circ}25'26''$.

To obtain ground distances, multiply distances herein by 1.00007610

* * *



EXHIBIT C
Offsite Water and Wastewater Improvements

Project Type	Project Number	Project Description ¹	Responsible Entity	Timeframe for Completion
Water Distribution and Storage	Project 1	New 16-inch Main on North Oak Glen Drive	District	Prior to First Unit
	Project 2	New 16-inch HWY 101 Crossing at Sandydale Drive	District	Prior to First Unit
	Project 3	Frontage Road Extension	Developer	Prior to First Unit
	Project 4	Willow Road End of Line Project	Developer	Prior to First Unit
	Project 5	16-inch Main Replacement on Tefft Street	District	Prior to Unit 689
	Project 6	Foothill Tank Improvements	District	Prior to First Unit
	Project 7	Joshua Road Pump Station Reservoir	District	Prior to Unit 1,009
Wastewater Collection	Project 1	Frontage Road Sewer Extension	Developer	Prior to First Unit
	Project 2A	Proposed Sanitary Sewer Lift Station, Force Main, and Wastewater Collection System Connection for Dana Reserve Development	Developer	Prior to First Unit
	Project 2B	Dana Reserve Lift Station Pump #3	Developer	Prior to First Unit
	Project 3	Sanitary Sewer Replacement	District	In Progress
Wastewater Treatment	Project 4	Influent Lift Station	District	Prior to First Unit
	Project 5	Grit Removal	District	Prior to Unit 1,009
	Project 6A	Extended Aeration Basin No. 2	District	Prior to First Unit
	Project 6B	Extended Aeration Basin No. 3	District	Prior to Unit 1,009
	Project 7	Secondary Clarifier	District	Prior to Unit 1,009
	Project 8	Gravity Belt Thickener	District	Prior to Unit 1,009
	Project 9	Dewatering Screw Press	District	Prior to Unit 1,009

¹ The requirements of each project are more fully described in the District’s approved “Final Dana Reserve Development Phasing Plan” dated March 5, 2024 or a successor document duly-adopted by the District Board., incorporated herein by this reference.

EXHIBIT D

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

NIPOMO COMMUNITY SERVICES DISTRICT
P.O. Box 326
Nipomo, CA 93444

Space above this line for Recorder's use
NO RECORDING FEE PER GOVERNMENT CODE § 6103

APN NO. XXX-XXX-XXX

**PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
[DEVELOPER/APPLICANT]**

Exhibits Incorporated by Reference:

- A. Legal Description of the Property Subject to this Agreement

Incorporated by reference:

- 1. The District Codes
- 2. The District Standard Specifications for Water & Sewer Improvements
- 3. District approved Plans
- 4. Owner's performance securities
- 5. Local, County and California State Standards and Requirements

THIS PLAN CHECK AND INSPECTION AGREEMENT ("Agreement") is made this ____ day of _____, 2024, in San Luis Obispo County, California, by and between the Nipomo Community Services District, State of California, hereinafter referred to as "District," and [DEVELOPER/APPLICANT], hereinafter referred to as collectively as "Owner" with reference to the following Recitals.

RECITALS

A. Owner represents and warrants that Owner is the fee title owner to certain real property in San Luis Obispo County, California, located at [ADDRESS], in Nipomo and more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("Property"); and

B. Owner is proposing to design and construct the following water and sewer improvements (herein "Improvements" or the "Project") to serve the Property and to be dedicated to the District :

[TO BE INSERTED ON PROJECT BY PROJECT BASIS]

C. If constructed pursuant to District standard specifications and dedicated, the District is willing to accept the transfer, operation, and maintenance of the improvements in order to provide water and/or wastewater service to the Property on the terms and conditions hereinafter provided.

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

1. Deposit for District Services.

At the time of execution of this Agreement, Owner shall deposit with the District the initial sum of fifty thousand dollars (\$50,000) [or alternate amount determined by the General Manager] as an advance payment for District's costs for engineering, inspection, legal, and administrative services in connection with plan checking, inspection of construction, and other costs incurred by the District prior to accepting the Improvements and charged to Owner. Owner hereby authorizes District to withdraw from the deposit to pay for services pursuant to this Agreement as they are incurred by District.

District will notify Owner whenever the deposit is reduced to ten thousand dollars (\$10,000) or less. Within fifteen (15) calendar days after the date such notification is provided, by email or mail, Owner shall make an additional deposit in the same amount as the initial deposit. Any costs incurred by the District over and above the amounts advanced by the Owner shall be paid by the Owner within fifteen (15) calendar days of such notification and before the District records a Notice of Acceptance of the Improvements.

Any funds so advanced by the Owner that exceed the District's total actual costs shall be refunded to the property owner(s) recorded on title to the Property on the refunding date set by the District. The District's refunding date shall be one (1) calendar year following the District's acceptance of all completed Improvements by the District's Board of Directors, or, if a resolution of acceptance is not adopted, the date the District sets the last water meter for the Project as defined in this Agreement.

2. Owner's Engineer of Record.

Owner hereby designates the following firm/individual as Owner's Engineer of Record:

Firm's Name

Engineer to Contract RE No.

Street Address

City, State, and Zip Code

Phone Number

Owner shall notify the District immediately in writing if the Engineer of Record is replaced during the course of design or construction of the Improvements. Unless otherwise agreed to in writing at the time of replacement, the replacement Engineer of Record shall certify the Improvements as required herein.

3. District Specifications.

The District's "Standard Specifications for Water and Sewer Improvements", hereinafter called District Specifications, current at the time this Agreement is executed, are made a part of this Agreement by reference as though set forth at length herein. Receipt of District Specifications is hereby acknowledged by Owner. (District Specifications are found at the District's web page at www.ncsd.ca.gov.)

4. Conflicts with District Specifications.

In the event of a direct conflict between any of the requirements in the District's Specifications and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control.

5. Plans and Specifications.

Owner's Engineer of Record shall design and prepare engineering plans for the construction of the Improvements ("Plans"). Said Plans shall meet all District Specifications and District Code requirements, in the sole discretion of the District Engineer, as well as all other local, County and State standards and requirements, whichever are most stringent. The Plans shall be approved in writing by the District, and the District shall have reviewed and adopted CEQA findings, if required, prior to District issuing the Notice to Proceed. Both the approved Plans and CEQA findings, if required, shall become a part of this Agreement.

6. Easements, Permits and Licenses.

Owner shall, at its sole cost and expense:

A. Obtain all necessary local, County, and State permits and approvals, for the construction of the Improvements prior to the commencement of any construction.

B. To the satisfaction of District, obtain all encroachment permits, real property interests, permanent and temporary easements, and/or rights-of-way (herein collectively "Rights-of-Way"), and make such offers of dedication to the District as are necessary for the construction, installation, operation, maintenance, repair, removal and replacement of the

Improvements. Said Rights-of-Way and offers of dedication shall be approved by the District prior to the District's final approval of the Plans.

C. Give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the construction of the Improvements.

7. Plan Check Procedures.

A. Preliminary Plan Check.

The Owner shall provide to the District three (3) copies of the proposed Plans for the construction of the Improvements in a form acceptable to the District Engineer.

The District will return one set of the proposed Plans to Owner with comments or corrections noted on the documents within approximately twenty (20) working days after the date of receipt of the proposed Plans.

B. Second Submittal of Plans

After making the changes and corrections noted on the returned set of the proposed Plans, the Owner will deliver three (3) copies of the corrected proposed Plans to the District for review.

C. Final Review and Approval of the Plans and Delivery of Rights-of-Way .

Within approximately twenty (20) working days after the date of delivery of the corrected final Plans, proof of permits, and delivery of Rights-of-Way, if any, District will review the documents and notify the Owner of any additional changes or corrections that may be required.

D. Additional Plan Check Services.

At the reasonable discretion of the District Engineer, and with the concurrence of Owner, the District may retain additional qualified consultants at the Owner's expense to expedite the Plan Check process. Said consultants shall work at the direction of the District.

8. Estimated Cost of Improvements.

Prior to District issuing its Notice to Proceed, Owner's Engineer of Record shall provide a written estimate of the cost for construction of the Improvements in accordance with the approved Plan, for approval by the District Engineer. The estimated amounts will be used to calculate the amounts for performance securities to be provided by Owner.

9. Licensed Contractor.

A. The person or entity constructing the Improvements ("Contractor") shall be licensed under the provisions of the Business and Professions Code of the State of California to do the type of work called for in the approved Plans.

B. No construction may be made except by a Contractor approved by the District. Owner shall require in its construction contract with a Contractor that such Contractor shall indemnify, protect, defend and hold the District harmless as required by the Indemnity provision of Section 25, below. The District may request evidence that the Contractor has satisfactorily installed other Improvements of like magnitude or comparable difficulty. It is the intent of the District that the construction of Improvements be performed by a Contractor who furnishes satisfactory evidence of qualification.

C. All contractors and subcontractors shall have and maintain in effect all necessary licenses and permits including, without limitation, applicable business licenses.

10. Prevailing Wages.

To the extent required by applicable law, the Owner and the Contractor shall comply with the California Labor Code provisions concerning payment of prevailing wages, wage rates, employment of apprentices, hours of work and overtime, keeping and retention of payroll records, and other requirements applicable to public works projects within the meaning of the Labor Code. (See California Labor Code, Division 2, Part 7, Chapter 1 (Sections 1720-1861).) Copies of the prevailing rate of per diem wages as established and published by the California Department of Industrial Relations are available for inspection at the office of the District or at the following website www.dir.ca.gov/dlsr.

11. Faithful Performance Securities.

Prior to District issuing the Notice to Proceed, Owner or their contractor shall provide a Payment Bond, Performance bond, and/or Guarantee bond, secured from a surety company or companies, satisfactory to the Nipomo Community Services District and whose name is on file with the County Clerk of San Luis Obispo County as an approved and financially sound surety company, authorized to transact business in the State of California.

The bond(s) shall be maintained in full force and effect through the end of the guarantee period, which shall extend at least through the District's acceptance of the Improvements.

The bonds shall also warrant all work performed under this Agreement to be free from defects in material and/or workmanship for a period of at least one year from the date of Final Acceptance by the District.

A. **Performance Bond.** The Owner shall furnish a performance bond in the amount of one hundred percent (100%) of the District's approved estimated Improvement construction cost to the benefit of the District, as security for the faithful performance of the Improvements in compliance with the District Codes, Policies, and District Specifications.

B. **Payment Bond.** The Owner shall furnish a separate bond in an amount at least equal to fifty percent (50%) of the District's approved estimated Improvement construction cost to the benefit of the District, as security for the payment of all persons performing labor and furnishing materials in connection with the Improvement.

The securities required by this Section shall be kept on file with the District. The terms of the security documents are incorporated into this Agreement by this reference. If any security is replaced by another approved security, the replacement shall be filed with the District and, upon filing, shall be deemed to have been made part of and incorporated into this Agreement. Upon filing of a replacement security with the District, the former security may be released.

In the event that the County seeks to attempt to require bonding of any of the Improvements that are subject to the District's bonding requirements under this Section 11, District agrees to cooperate with and support Developer in having such Improvements omitted from any County bonding requirements.

12. Notice to Proceed.

After the District's final approval of the Plans, Rights-of-Way, and upon receipt from Owner of two (2) sets of all required construction securities and insurance forms, and a copy of the Contractors' licenses and insurance policies, the District will issue its Notice to Proceed.

13. Construction of Improvements.

Owner shall, at its sole cost and expense, and after the District issues the Notice to Proceed, construct the Improvements in accordance with this Agreement, the approved Plans, applicable permits, and the District Specifications. During construction, a complete set of approved Plans shall remain at the job-site at all times.

If Owner proposes to change the approved Plans for the Improvements, Owner shall first obtain the written approval of the District Engineer for such change. Requests for change may be denied at the District's discretion or approved on such terms and conditions, as required by the District.

14. Inspections.

A. Owner's Engineer of Record: The Owner shall employ an Engineer of Record to perform regular inspections of the construction and installation of Improvements to ensure that the Improvements are constructed in accordance with the approved Plans and District Specifications. Records of such inspections shall be promptly delivered to the District upon request.

B. The District and its employees and agents are hereby granted a Right-of-Entry onto the job-site at any time for the purposes of performing inspections. The District's inspections are for administrative and regulatory purposes only. The inspection of the Improvements by District shall not relieve the Owner of Owner's obligation and/or the Owner's Engineer of Record's obligation to ensure that the Improvements are constructed in accordance with this Agreement, the approved Plans, and District Specifications. Defective work shall be made good and substandard materials may be rejected, notwithstanding that such work and materials have been previously overlooked or inspected by the District.

15. Maintenance of Improvements.

The District assumes no obligation as to maintenance, operation, and repair of the Improvements until such time as the Notice of Acceptance is approved by the District Board of Directors and the expiration of a warranty period, if applicable.

16. Construction Manager.

A. Owner shall employ a qualified Construction Manager. The Construction Manager shall:

1. Be the person to contact on behalf of the Owner during construction of the Improvements.
2. Perform shop drawing review of all materials and equipment for the Improvements, as necessary;
3. Maintain and ensure completion of the record drawings for the Improvements;
4. Obtain District approval prior to the release of any revised Plans or Specifications; and
5. Ensure that the Contractor incorporates the District's comments on all submittals, plans and specifications.

B. Owner hereby designates the following firm/individual as Owner's Construction Manager:

Firm's Name

Person to Contract

RE No.

Street Address

City, State, and Zip Code

Phone Number

If the Construction Manager is replaced during the course of construction, Owner shall notify the District Engineer or their designee in writing within five (5) business days, providing updated contact information.

17. Damage to Property.

Owner shall promptly replace or have replaced, or repair or have repaired, as the case may be, all public and private improvements, public utilities facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement. Owner shall bear the entire cost of replacement or repairs of any and all

public or private property damaged or destroyed by reason of any work performed or constructed under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by a private owner, District or any public or private utility corporation, or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the District Engineer.

18. Construction Safety.

Owner shall be responsible for site safety and security during the construction of the Improvements. Until final acceptance of the Improvements, Owner shall give good and adequate warning to the public of each and every dangerous condition existent in the construction of said Improvements, and will take all reasonable actions to protect the public from such dangerous condition.

19. District's Acceptance of Improvements.

The District Board of Directors may accept the Improvements by Resolution (a "Notice of Acceptance"). The date that the District Board of Directors adopts a resolution approving the Notice of Acceptance shall be deemed to be the date of the Notice of Acceptance regardless of when it is executed by the District General Manager or recorded in the County Records. The Board of Directors shall not consider a Resolution approving the Notice of Acceptance until the Owner has satisfied all of the following conditions:

A. Final Inspection and Testing.

Upon completion of construction of the Improvements, Owner shall notify the District thereof and request a final inspection of the Improvements. All Improvements shall be tested to meet District requirements as required by District Specifications and the approved Plans. Owner shall supply and pay for the necessary equipment, services, and devices to inspect and test the Improvements installed. This shall include TV inspection of sewer lines, pressure testing equipment, cleaning devices, etc.

B. Submittals

Owner shall provide to the District, as a condition precedent to the District's acceptance of the Improvements:

(1) Reproducible mylar of "as-built drawings" of the completed Improvements, satisfactory to the District, and any contract documents used for the construction of the Improvements;

(2) Certification from the Owner's Engineer of Record, on a form approved by the District, that the Improvements have been regularly inspected by Owner's Engineer of Record during construction and are constructed in compliance with the approved Plans and District's Specifications and this Agreement;

(3) A detailed accounting, satisfactory to the District, of the amounts expended for the construction and installation of the Improvements, with values applicable to the various components thereof, together with a list of any other materials and equipment, and their values, being transferred;

(4) Operating manuals and other operating instructions, and warranties received by Owner or its Contractor for the operation and maintenance of the Improvements and/or facilities included in the Improvements;

(5) Provide in electronic format, acceptable to District, as-built drawings of the completed Improvements; and

(6) Full and unconditional releases of any construction "Stop Notices" filed or recorded against the Property.

C. Maintenance Guarantee.

Owner shall provide the District with a maintenance bond, letter of credit, cash deposit, or other financial security satisfactory to the District ("Maintenance Guarantee") in a sum equal to ten percent (10%) of the cost of the Improvements, or such agreement satisfactory to the District whereby the Contractor's one-year warranty for all material and workmanship in the Improvements is assigned to the District and fully binding between the Contractor and the District, for the purpose of warranting all materials and workmanship furnished pursuant to this Agreement for one (1) year from the date of the District Notice of Acceptance of the Improvements. This guarantee does not excuse the Owner from breaches of contract causing defects that occur or are discovered more than one year after the Notice of Acceptance.

The Owner and/or its surety under the Maintenance Guarantee shall repair or replace to the satisfaction of the District any or all such work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work which may be damaged or displaced in so doing.

In the event of failure to comply with the above-stated conditions within a reasonable time, the District is authorized to have the defect repaired and made good. The Owner and its surety under the Maintenance Guarantee shall be jointly and severally liable to the District for such costs of repair, including, but not limited to, those costs above the security or retained funds held by the District in the project's Plan Check and Inspection Agreement for management and administrative costs, and engineering, legal and other costs incurred relating to the repair. The District may make claims or withdrawals against such security or remaining deposits without further notice to Owner. The District shall bill the Owner and the surety for such costs, which bill shall be paid within thirty (30) days of its date. Interest shall accrue on any late payment at the legal rate then prevailing.

D. Payment of Inspection Fees.

All funds to be advanced and paid to the District by Owner have been so advanced and paid.

E. Offer of Dedication.

Submittal of Owner's Offer of Dedication of the Improvements to the District, if required, on a form acceptable to the District transferring absolute and unencumbered ownership of the completed Improvements to the District. The District may require any other information as part of the Offer of Dedication such as current title reports.

20. Ownership.

After final inspection and acceptance by the District, the Improvements shall become the property of the District on the date that the District's Board of Directors adopts a resolution approving the Notice of Acceptance. The District shall own and be free in every respect to operate, manage, and improve the Improvements as it deems appropriate.

21. District Approvals and Acceptance.

The District's review or approval of the Plans and subsequent inspections and review of record drawings are for administrative purposes only. It is Owner's sole responsibility to properly plan, design, and construct the Improvements consistent with applicable laws and standards.

22. Owner Assistance.

Owner shall both before and after the Notice of Acceptance secure and provide any information or data reasonably needed by the District to accept ownership, operation, and maintenance of the Improvements, and obtain, execute, and provide any and all documents needed to expeditiously complete or implement the transfer of the Improvements.

23. District Service.

The District shall not set water meters or otherwise provide service to the Property until all of the following have occurred:

- A. The District has adopted a Resolution approving the Notice of Acceptance of the Improvements as provided herein;
- B. Owner has paid the District all applicable fees and charges of the District, including connection fees and capacity charges, all in accordance with the Ordinances, Rules and Regulations of the District and made provided all necessary securities and/or deposits; and
- C. Building permits have been issued by the County of San Luis Obispo for the residential or commercial units to be served by such meters.

24. Construction Water.

Prior to acceptance the Owner shall acquire construction water from the District at Owner's expense for construction of related improvements pursuant to a separate agreement.

25. Indemnification and Hold Harmless.

A. To the fullest extent permitted by law, the Owner, its heirs, and assigns, shall indemnify and hold harmless the District, the District's Engineer, and their consultants, and the District's directors, officers, agents and employees from and against all claims, damages, losses, expenses and other costs, including costs of defense and attorney's fees, arising out of or resulting from or in connection with the performance of

the Work, both on and off the jobsite, provided that any of the foregoing (1) is attributable to personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom and (2) is caused in whole or in part by any act or omission of the Owner, Owner's Contractor, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable, but only to the extent that such liability it is not caused by any act or omission of a party indemnified hereunder.

B. Without limiting the generality of the foregoing indemnity, Owner's indemnity obligation expressly extends to and includes any and all claims, demands, damages, costs, expenses, fines, penalties, or liability occasioned as a result of:

1. Damages to adjacent property related to the construction of the Improvements;

2. The violation by the Owner, the Owner's agents, employees, or independent contractors or subcontractors, of any provisions of this Agreement, and/or federal, state, or local law, including applicable administrative regulations or permit conditions;

3. Injury to or death of any person, or any damage to property owned by any person, while on or about the Property or as a result of the construction of the Improvements, whether such persons are on or about the Property by right or not, whenever the construction of the Improvements is alleged to have been a contributing cause in any degree whatsoever;

4. The design or construction of the Improvements pursuant to the approved Plans; and

5. Any challenge by any third party to the validity of this Agreement or the District's approval of any construction, plans or specifications.

C. Omitted.

D. Owner shall promptly reimburse the District and the District's Engineer for all costs and expenses, (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court costs including all costs of appeals) incurred by District and District's Engineer in enforcing the provisions of this Section 25.

E. The indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of insurance carried by Owner or by the amount or type of damages, compensation, or benefits payable by or for the Owner or any Subcontractor or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts.

F. Owner shall also indemnify and hold harmless the District, the District's Engineer and their consultants, and each of their directors, officers, employees and agents from and against all losses, expenses, damages (including damages to the Improvements itself), attorney's fees and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of Owner to faithfully complete the

construction of the Improvements and all of the Owner's obligations under the Agreement. Such costs, expenses and damages shall include all cost, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

G. Nothing contained in the foregoing indemnity provisions shall be construed to require Owner to indemnify the District, against any responsibility or liability in contravention of Civil Code §2782.

H. Neither termination nor expiration of this Agreement or District's Acceptance of the Improvements shall release Owner from its obligations to indemnify and defend as provided herein, as to any claim so long as the event upon which such claims is predicated shall have occurred prior to the effective of any such termination or Acceptance and arose out of or was in any way connected with performance or operations under this Agreement by Owner, its employees, agents or consultants, or the employees, agents or consultants of any one of them.

26. Insurance Requirements.

A. General.

Construction shall not commence or continue until or unless there is in full force and effect all policies of insurance required herein. Owner shall not permit any Contractor or subcontractor to perform work on this project unless the worker's compensation, performance and payment bond, and liability insurance requirements have been complied with.

Owner, Contractor and subcontractors shall obtain and maintain in effect Workers' Compensation Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance policies, all as set forth herein.

All policies of insurance shall be maintained in effect for the full guarantee period.

Insurers shall be authorized to do business in California, have an agent for service of process in California, and have at least an "A:VII" rating in with the most current A.M. Best's rating.

As evidence of specified insurance coverage, the Owner shall provide certificates of insurance and endorsements to the District on the forms approved by the District Counsel.

B. Worker's Compensation Insurance.

Owner shall maintain for the period of the Contract full Workers' Compensation Insurance coverage for all persons whom they employ or may employ in carrying out the work under this Agreement. This insurance shall comply with the requirements and policy limits of the most current and applicable California Workers' Compensation Insurance Laws.

C. Commercial General And Automobile Liability Insurance.

Owner or any Contractor carrying out the construction of the Improvements shall also carry commercial general liability insurance and automobile liability insurance. The insurance shall include but shall not be limited to protection against claims arising from death, bodily or personal injury, or damage to property resulting from operations, equipment or products of Owner or its Contractor or by their employees, agents, consultants, or anyone directly or indirectly employed by any of the foregoing. The amount of insurance for each type of policy shall not be less than two million dollars (\$2,000,000.00) single limit coverage applying to bodily and personal injury and property damage, or a combination of both.

Such insurance shall be primary insurance as respects the interest of the District, and any other insurance maintained by the District is excess and not contributing insurance with the insurance required hereunder. The insurance shall specifically name the District, its directors, officers, employees and District Engineer as additional insureds, and shall contain an endorsement providing that written notice shall be given to the District at least thirty (30) days prior to termination, cancellation, or reduction of coverage in the policies. The commercial general liability and automobile liability insurance coverage shall also include the following:

- (1) "Cross Liability" or "Severability of Interest" clause.
- (2) Commercial General Liability coverage (Insurance Services Office Commercial General Liability coverage - occurrence form CG 0001) shall include:
 - (a) Comprehensive Form
 - (b) Premises-Operations
 - (c) Explosion and Collapse Hazard
 - (d) Underground Hazard
 - (e) Products/Completed Operations Hazard
 - (f) Contractual Insurance
 - (g) Broad Form Property Damage Including Completed Operations
 - (h) Independent Contractors
 - (i) Personal Injury
- (3) Automobile Liability coverage (Insurance Services Office form number CA 0001 (Ed. 1/87) covering automobile liability, Code 1) shall include:
 - (a) Comprehensive Form Coverage Including Loading and Unloading
 - (b) Owned

(c) Hired

(d) Non-owned

Included in such insurance shall be contractual coverage sufficiently broad to insure the matter set forth in the Indemnity provisions of this Agreement. Owner and Contractors shall provide certificates of insurance, with required endorsements, to the District prior to commencing any work on the Improvements.

27. Term of Agreement and Termination.

A. This Agreement shall become effective on the date first above written and shall remain in effect until terminated by the mutual consent of the parties or as provided in subsections (B and C) below.

B. Owner agrees to promptly design and construct the Improvements and to transfer the same to the District in accordance with the terms hereof within one (1) year of the District's Notice to Proceed.

C. If the Owner refuses or fails to construct the Project/Improvements or any separable part thereof with such diligence as will insure its completion within the time specified in this subsection B, above, or any extension thereof, or fails to complete the Project/Improvements within such time, or if the Owner should be adjudged bankrupt, or if Owner should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of Owner's insolvency, or if Owner or any of its subcontractors should violate any of the provisions of the Agreement, the District may serve written notice upon the Owner and its Surety of its intention to terminate the Agreement, and said notice to contain the reasons for such intention to terminate the Agreement, and unless within ten (10) days after the service of such notice such violations shall cease, or if such corrections cannot be completed within such ten (10) day period, that corrective measures have been commenced within such ten (10) day period and diligently and continuously pursued until completed, the Agreement shall, upon the expiration of said ten (10) days, be terminated.

In the event of any such termination, the District shall immediately serve written notice thereof upon the Surety, and the Owner. The Surety shall have the right to take over and perform the Agreement, providing, however, that if the Surety within fifteen (15) days after the serving upon it of a notice of termination does not give the District written notice of its intention to take over and perform the work, or does not commence performance thereof within thirty (30) days from the date of serving said notice, the District may take over the Project/Improvements and prosecute the same to completion by contract or by any other method it may deem advisable for the account of and at the expense of the Owner, and its Surety shall be liable to the District for any excess cost or other damage occasioned the District hereby, and in such event the District may, without liability for so doing, take possession of and utilize in completing the Project /Improvements such materials, appliances, plants and other property belonging to the Owner that may be on the site of the Project/Improvements and be necessary therefor.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the District.

28. Non Discrimination.

A. Owner and/or Owner's Contractor shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with, or related to construction of the Improvements.

B. Owner and/or Owner's Contractor shall comply with all provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§1101, et seq., as amended, and in connection with therewith, shall not employ unauthorized aliens as defined therein with regards to the construction of the Improvements. Should Owner's and/or Owner's Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against District for such use of unauthorized aliens, Owner hereby agrees that it shall reimburse District for the cost of such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees incurred by District. Owner shall comply with all provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101 et seq. as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein.

29. Ineligible Contractors.

Owner shall not employ a contractor who is ineligible pursuant to California Labor Code §§1777.1 or 1777.7. The California Division of Labor Standards Enforcement publishes a list of debarred contractors and sub-contractors on the Internet at www.dir.ca.gov/DLSE/debar.html.

30. Assignment.

The provisions of this Agreement shall apply to and bind the successors, grantees, and assigns of the respective parties, but no assignment or transfer of this Agreement, or any part hereof, or interest herein by the Owner shall be valid until and unless approved by the District in writing. Such approval shall not be unreasonably withheld, delayed, or conditioned, and shall be conditioned on the agreement by the assignee, grantee, successor or transferee to be bound by the terms and conditions of this Agreement.

31. Owner Not An Agent of District.

Neither Owner nor any of Owner's agents or contractors are or shall be considered to be agents of the District in connection of the performance of Owner's obligations under this Agreement.

32. Sale or Disposition of the Property.

Sale or other disposition of the Property will not relieve Owner from its obligations set forth herein. Owner agrees to notify District in writing at least thirty (30) days in advance of any actual or pending sale or other disposition of the Property. If Owner sells the Property or any portion of the Property to any other person, Owner may request a novation of this Agreement and a substitution of security. Nothing in the novation shall relieve Owner of the obligations in the indemnification clauses contained in this Agreement for work

or Improvements actually constructed by Owner. All District's costs in processing a novation pursuant to this Agreement shall be borne by Owner.

33. No Vesting of Rights.

Performance by Owner of this Agreement shall not be construed to vest Owner's rights with respect to the approved Plans, any changes to the District's Specifications during construction and/or the request of District to alter or modify the construction of Improvements prior to District acceptance.

34. Covenants and Conditions.

The obligations of Owner pursuant to this Agreement are both covenants and conditions.

35. Risk of Loss.

Until the date of the District's Acceptance of the Improvements, all risk of loss or injury or destruction to the Improvements shall be upon the Owner. Except as provided herein, on or after the date of the District's Acceptance of the Improvements, all risk of loss or injury or destruction to the Improvements shall be upon the District.

36. Attorney's Fees.

In the event that any arbitration, litigation, or other proceeding of any nature between the District and Owner becomes necessary to enforce or interpret all or any portion of this Agreement, it is mutually agreed that the prevailing party therein shall receive from the other, in addition to such sums as may be awarded, an amount sufficient to reimburse such prevailing party for reasonable attorney's fees and costs paid or owing as a result of such proceeding.

37. Waiver of Rights.

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default, or matter.

38. Remedies Not Exclusive.

The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

39. Entire Agreement.

This Agreement is freely and voluntarily entered into by the parties after having the opportunity to consult with their respective attorneys. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. The parties, in entering into this Agreement, do not rely on any inducements, promises, or representations made by each other, their representatives, or any other person, other than those inducements, promises, and representations contained in this Agreement.

Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the Owner and the District.

40. Notices.

All notices, statements, reports, approvals, requests, bills, or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

District:

Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444
Attn: General Manager

Owner:

NKT Development, LLC
P. O. Box 13160
San Luis Obispo, CA 93406-3160
Attn: Nick Tompkins, Manager

41. Headings.

The paragraph headings used in this Agreement are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Agreement.

42. Cooperation.

Each party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

43. Interpretation of this Agreement.

The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

44. Successors and Assigns.

It is understood and agreed that between the parties hereto that this Agreement shall bind on the heirs, executors, administrators, successors and assigns of the respective parties to this Agreement.

45. Recitals.

The Recitals of this Agreement are incorporated herein by reference and made a part hereof.

46. Time of the Essence.

Time is of the essence in this Agreement.

47. Survival.

The obligations, representations, and warranties, and the remedies for breach of obligations, representations, and warranties, in this Agreement shall survive District's Acceptance of the Improvements.

48. Counterparts.

This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

49. Severability.

If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.

50. Representations and Warranties of Owner.

Owner represents and warrants that: (a) if an entity, it is duly organized and legally existing under the laws of the State of California and is duly qualified to do business in the State of California; (b) this Agreement will constitute, legal, valid and binding obligations of Owner enforceable in accordance with its terms; and (c) the execution and delivery of this Agreement is within Owner's power and authority without the joinder or consent of any other party and have been duly authorized by all requisite action and are not in contravention of Owner's contracts, charter, bylaws and/or other organizational documents.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Nipomo Community Services District

By: _____
Ray Dienzo, General Manager

Owner:

By: _____
[Signatures must be notarized]

Owner:

By: _____
[Signatures must be notarized]

EXHIBIT A
Legal Description

[INSERT LEGAL DESCRIPTION]

APN: XXX-XXX-XXX

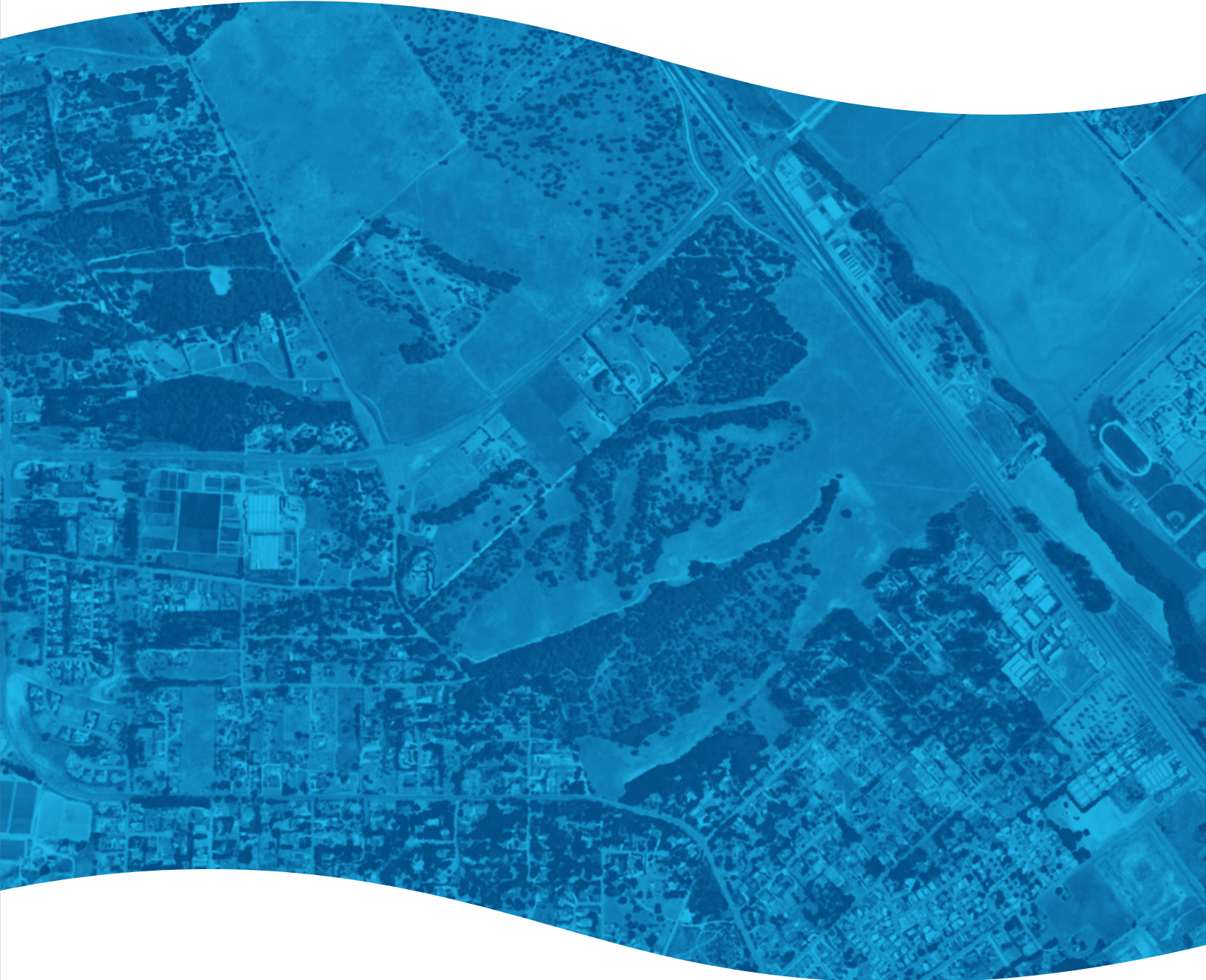
AUGUST 28, 2024

ITEM E-1

ATTACHMENT D



Nipomo Community Services District



Plan for Services Dana Reserve Specific Plan



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Nipomo Community Services District
Plan for Services Dana Reserve Specific Plan
Final August 21, 2024

Board of Directors

Ed Eby – President

Dan Allen Gaddis – Vice-President

Gary Hansen – Director

Phil Henry – Director

Mario Iglesias – Director

District Staff

Ray Dienzo, P.E – General Manager

Peter V. Sevcik, PE – Director of Engineering and Operations

Elizabeth Villanueva, EIT – Assistant Engineer

MKN Staff

Michael K. Nunley, PE

Robert Lepore, GISP

Prepared by:

MKN & Associates, Inc.

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TABLE OF CONTENTS, LIST OF TABLES, AND FIGURES

Table of Contents

TABLE OF CONTENTS, LIST OF TABLES, AND FIGURES.....	i
1.0 INTRODUCTION AND OVERVIEW.....	1-1
1.1 Project Overview.....	1-1
1.2 Purpose of Plan for Services Report.....	1-1
1.3 California Law.....	1-3
1.4 Project Phasing and Proposed Improvements.....	1-3
2.0 PLAN FOR SERVICES.....	2-1
2.1 Services to be Extended.....	2-1
2.2 Level and Range of Services.....	2-1
2.2.1 Solid Waste and Recycling.....	2-1
2.2.2 Water Supply and Distribution.....	2-1
2.2.3 Wastewater Collection and Treatment.....	2-8
2.3 Timing to Extend Services.....	2-11
2.4 Improvements Required.....	2-14
2.4.1 Water Distribution System, Wastewater Collection, and Treatment Improvements.....	2-14
2.5 Services Financing.....	2-17
2.5.1 Water Improvements.....	2-17
2.5.2 Wastewater Improvements.....	2-18



List of Tables

Table 1-1: Required Water and Wastewater Improvements for the Project 1-4

Table 2-1: Phased Annual Demand Increases for Dana Reserve..... 2-2

Table 2-2: District and Project Future Water Demand 2-3

Table 2-3: Wholesale Water Agreement Delivery Schedule..... 2-4

Table 2-4: NSWP Replenishment Agreement Allocation (AFY)..... 2-5

Table 2-5: NMMA TG Water Shortage Response Stages 2-6

Table 2-6: Multiple Dry Years Supply and Demand Comparison..... 2-7

Table 2-7: Phased Annual Flow Increases for Dana Reserve 2-9

Table 2-8: District and Project Future Wastewater Flow 2-9

Table 2-9: Summary of Southland WWTF Evaluation..... 2-11

Table 2-10: Anticipated Dana Reserve Specific Plan Construction Schedule 2-13

Table 2-11: Correlation Between Residential Development and Anticipated Demands/Flows for the Project 2-14

Table 2-12: Required Water and Wastewater Improvements for the Project..... 2-15

List of Figures

Figure 1-1: Project Location Map..... 1-2

Figure 2-1: Project Phasing Plan (2024 Specific Plan) 2-12

Figure 2-2: Required Water and Wastewater Improvements Map 2-16

Appendices

- Appendix A: South County Sanitary Services Will Serve Letter
- Appendix B: Wholesale Water Supply Agreement
- Appendix C: Supplemental Water Management and Groundwater Replenishment Agreement
- Appendix D: Final Santa Maria River Valley Groundwater Basin Judgement
- Appendix E: Implementation Phasing Schedule

Previous Studies and Reports

The following reports, studies, and other resources were reviewed and utilized during the preparation of this Plan for Services report:

1. Dana Reserve Development Phasing Study – Revised Figures for Annexation Agreement, dated May 22, 2024, prepared by Michael K. Nunley & Associates, Inc. (MKN)
2. Final Dana Reserve Specific Plan Environmental Impact Report (EIR), dated April 2024, prepared by Steven W. Carothers and Associates Environmental Consultants
3. Final Dana Reserve Specific Plan, dated April 2024
4. Dana Reserve Water Supply Assessment, dated March 6, 2024, prepared by Richard G Sweet and RRM Design Group
5. Dana Reserve Development Phasing Study, dated March 5, 2024, prepared by MKN
6. Dana Reserve Development Water and Wastewater Service Evaluation, dated March 30, 2022, prepared by MKN
7. Water and Wastewater Rate Impact Analysis Study, dated May 17, 2022, prepared by Tuckfield & Associates
8. 2020 Urban Water Management Plan (UWMP), dated December 2021, prepare by MKN
9. Sphere of Influence Update Municipal Service Review, dated March 15, 2018, prepared by San Luis Obispo Local Agency Formation Commission

List of Acronyms

Abbreviation	Description
ADU	Accessory Dwelling Unit
AF	Acre-Feet
AFY	Acre-Feet Per Year
DR	Density Residential
EIR	Environmental Impact Report
EOL	End of Line
FC	Flex Commercial
GBT	Gravity Belt Thickener
GPD	Gallons per Day
gpm	Gallons per Minute
GSWC	Golden State Water Company
GSWCCR	Golden State Water Company Cypress Ridge
LAFCO	Local Agency Formation Commission
LF	Linear Feet
MF	Multi-Family
MKN	Michael K. Nunley & Associates, Inc.
NBD	Neighborhood
NCSD	Nipomo Community Services District
NMMA TG	Nipomo Mesa Management Area Technical Group
NSWP	Nipomo Supplemental Water Project
PSH	People's Self Help
PVC	Polyvinyl Chloride
RAS	Return Activated Sludge
RWQCB	Regional Water Quality Control Board
SF1	Single Family 1
SF2	Single Family 2
URL	Urban Reserve Line
UWMP	Urban Water Management Plan
WMWC	Woodlands Mutual Water Company
WRF	Water Reclamation Facility
WWTF	Wastewater Treatment Facility

1.0 INTRODUCTION AND OVERVIEW

This section provides an overview of the Dana Reserve Specific Plan Project (Project) and overall requirements for preparing the Plan for Services for the Project.

1.1 Project Overview

The proposed Project is located adjacent to the northern boundary of the unincorporated community of Nipomo in San Luis Obispo County (County) and will include phased development of a 288-acre master-planned community with the following elements:

- Up to 1,370 residential units and ADU's as allowed by state law
- 110,000–203,000 square feet (floor area) of commercial and non-residential (visitor serving/hotel, education) uses
- A minimum of 55.6 acres of open space and recreation areas, and related circulation and infrastructure

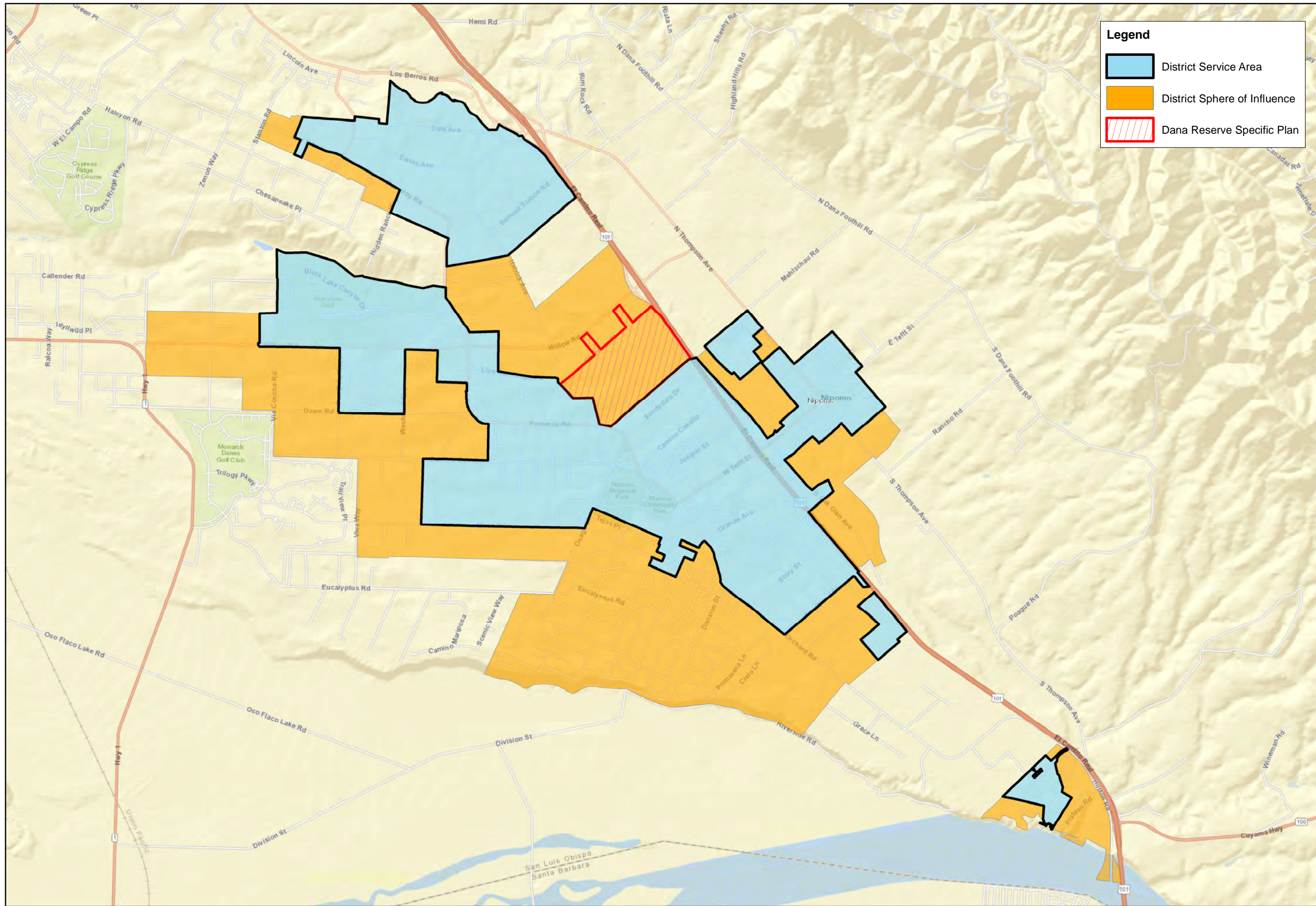
The Project includes a County-initiated General Plan and Ordinance Amendment to change the land use categories within the specific plan area and to incorporate the property into the Nipomo Urban Reserve Line (URL). The Project requires annexation into the Nipomo Community Services District (District) service area to receive solid waste, water, and wastewater services. The project site is located in the Residential Rural land use category, west of US 101, east of Hetrick Avenue, and adjacent to the Nipomo URL. The project is located within the South County Inland Sub Area of the South County Planning Area. **Figure 1-1** provides an overview of the proposed project location.

1.2 Purpose of Plan for Services Report

On October 13, 2022, San Luis Obispo Local Agency Formation Commission (LAFCO) officially received an application for annexation of the Project (Annexation #30) to the District and the application has remained on information hold since that time. Items required to be finalized prior to LAFCO fully processing the annexation application include the following:

- County approval of the Project, including associated entitlements such as tentative tract map, general plan amendment(s), Conditional Use Permit, Developer Agreement
- County certification of the Final Environmental Impact Report
- Approval of a tax exchange agreement between the District and the County
- Completion of a Plan for Services prepared by the District
- Any other documents, studies or information that LAFCO deems to be required from the applicant or District upon review of the final project and entitlements noted above, and upon further processing of the annexation application request

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Legend

- District Service Area
- District Sphere of Influence
- Dana Reserve Specific Plan



Nipomo Community Services District
Plan for Services Dana Reserve Specific Plan

Figure 1-1:
 Project Location Map

1 inch = 3,600 feet



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INTRODUCTION AND OVERVIEW

On April 24, 2024, the Project was approved (Resolution No. 2024-108) by the County and the Environmental Impact Report was certified (Resolution No. 2024-109).

1.3 California Law

This Plan for Services Report addresses the requirements set forth in the Government Code (described below) that LAFCO will evaluate as part of their review process with respect to the Project annexation to the District.

Government Code 56653

(a) If an application for a change of organization or reorganization is submitted pursuant to this part, the applicant shall submit a plan for providing services within the affected territory.

(b) The plan for providing services shall include all of the following information and any additional information required by the commission or the executive officer:

(1) An enumeration and description of the services currently provided or to be extended to the affected territory.

(2) The level and range of those services.

(3) An indication of when those services can feasibly be extended to the affected territory, if new services are proposed.

(4) An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.

(5) Information with respect to how those services will be financed.

1.4 Project Phasing and Proposed Improvements

Table 1-1 provides an overview of the water distribution system, wastewater collection, and wastewater treatment improvements required to serve the Project, the entity responsible for financing/construction of the necessary improvements, and approximate timeframe for completion.

Table 1-1: Required Water and Wastewater Improvements for the Project				
Project Type	Project Number	Project Description	Reponsible Entity	Timeframe for Completion
Water Distribution and Storage	Project 1	New 16-inch Main on North Oak Glen Drive	District	Prior to First Unit
	Project 2	New 16-inch US 101 Crossing at Sandysdale Drive	District	Prior to First Unit
	Project 3	Frontage Road Extension	Developer	Prior to First Unit
	Project 4	Willow Road End of Line Project	Developer	Prior to First Unit
	Project 5	16-inch Main Replacement on Tefft Street	District	Prior to Unit 689
	Project 6	Foothill Tank Improvements	District	Prior to First Unit
	Project 7	Joshua Road Pump Station Reservoir	District	Prior to Unit 1,000
Wastewater Collection	Project 1	Frontage Road Sewer Extension	Developer	Prior to First Unit
	Project 2A	Proposed Sanitary Sewer Lift Station, Force Main, and Wastewater Collection System Connection for Dana Reserve Development	Developer	Prior to First Unit
	Project 2B	Dana Reserve Lift Station Pump #3	Developer	Prior to First Unit
	Project 3	Sanitary Sewer Replacement	District	In Progress
Wastewater Treatment	Project 4	Influent Lift Station	District	Prior to First Unit
	Project 5	Grit Removal	District	Prior to Unit 1,009
	Project 6A	Extended Aeration Basin No. 2	District	Prior to First Unit
	Project 6B	Extended Aeration Basin No. 3	District	Prior to Unit 1,009
	Project 7	Secondary Clarifier	District	Prior to Unit 1,009
	Project 8	Gravity Belt Thickener	District	Prior to Unit 1,009
	Project 9	Dewatering Screw Press	District	Prior to Unit 1,009

Figure 2-2 identifies the location and extent of the required water distribution, wastewater collection, and wastewater treatment improvement projects.

2.0 PLAN FOR SERVICES

Per Government Code 56653, the following Plan for Services has been prepared for the Project, located west of US 101 and east of Hetrick Avenue, in anticipation of its annexation into the District.

2.1 Services to be Extended

The District will provide the following services to the annexation site:

- Solid Waste and Recycling
- Water Supply and Distribution
- Wastewater Collection and Treatment

2.2 Level and Range of Services

The following sections identify the level and range of solid waste/recycling, water supply, and wastewater collection/treatment services to be provided to the Project. The following sections summarize discussions from the Dana Reserve Specific Plan (Final April 2024), Dana Reserve Development Phasing Study (Michael K. Nunley & Associates, Inc. (MKN), March 2024), Dana Reserve Development Water and Wastewater Service Evaluation (MKN, March 2022; Dana W&WW Evaluation), and 2020 Urban Water Management Plan (MKN, December 2021; UWMP).

2.2.1 Solid Waste and Recycling

The District has a franchise service agreement with South County Sanitary Services for garbage, green waste, and recycling services. South County Sanitary Services disposes collected solid waste at the Cold Canyon Landfill, which is a regional facility. Based on current disposal rates, this facility has the capacity to accept solid waste until at least the year 2040. South County Sanitary Services has reviewed the conceptual plans and will provide solid waste, recycling, and green waste pick-up service to the Project (Dana Reserve Specific Plan, April 2024). The District's franchise agreement includes all areas that are annexed into the District. The level of service provided to the annexed territory will be the same as that provided to the remainder of the District service area.

Appendix A includes a copy of a will serve letter from South County Sanitary Services to provide garbage, green waste, and recycling services to the Project upon annexation to the District.

2.2.2 Water Supply and Distribution

The following section provides an overview of the Project water demands, District water supply availability, and potential impacts to the District's existing water distribution system.

Project Water Demands

To estimate proposed water demand increases per year from the Project, duty factors developed in the Dana W&WW Evaluation were applied to the proposed phasing plan above. **Table 2-1** below presents the anticipated increase in water demand by year and the total anticipated demand for the development. All demands include a 10% contingency factor as described in the Dana W&WW Evaluation. As noted in the 2024 Water Supply Assessment (WSA), through the planning process and change to the Project, water demand increased to 376 AFY. However, this remains within the available supply.

Table 2-1: Phased Annual Demand Increases for Dana Reserve									
Land Use Type	Acreage ¹	Phased Water Demand Increase by Year (AF ²)							Total
		2024	2025	2026	2027	2028	2029	2030	
Single Family	149.5	26.9	38.5	53.5	48.2	44.1	19.1	-	230.3
Multi-Family	23.5	5.3	23.6	7.4	20.4	7.2	-	-	63.9
Commercial	22.3	2.70	2.70	18.0	7.74	2.7	2.70	-	36.5
Recreation/Park	11	-	-	-	9.56	-	-	-	9.6
Total	206.3	34.9	64.8	78.9	85.9	54.0	21.8	-	340
Notes:									
1. Acreage from Final Environmental Impact Report (EIR) Table 2-3 Land Use Acreage Summary and excludes existing Residential Rural, Open Space, and Primary Roads land uses									
2. AF = acre-feet									

Table 2-2 presents the projected combined water demand per year for the existing District service area, District interconnections, future District demands (infill development and accessory dwelling units (ADUs)), and the Project.

Table 2-2: District and Project Future Water Demand							
Land Use Type	Projected Water Demand (AF)						
	2024	2025	2026	2027	2028	2029	2030
Single Family	1,397	1,406	1,415	1,424	1,433	1,441	1,450
Multi-Family	135	136	136	137	138	139	140
Commercial	97	97	98	99	99	100	100
Landscape	263	265	267	268	270	272	273
Other	7	7	7	7	7	7	7
Agricultural Irrigation	18	18	18	18	18	18	18
Losses	189	190	191	192	194	195	196
Subtotal	2,106	2,119	2,132	2,145	2,159	2,172	2,184
District Interconnections							
WMWC ¹	0	417	417	417	417	417	417
GSWC ²	0	208	208	208	208	208	208
GSWCCR ³	0	208	208	208	208	208	208
Subtotal	0	833	833	833	833	833	833
Dana Reserve Project							
Single Family	26.9	65.4	118.9	167	211	230	230
Multi-Family	5.3	28.9	36.2	56.6	63.8	63.8	63.8
Commercial	2.7	5.4	23.4	31.1	33.8	36.5	36.5
Recreation/ Park	-	-	-	9.6	9.6	9.6	9.6
Subtotal	34.9	99.7	179	264	318	340	340
Total	2,141	3,051	3,144	3,242	3,310	3,345	3,357
Notes:							
1. WMWC = Woodlands Mutual Water Company							
2. GSWC = Golden State Water Company							
3. GSWCCR = Golden State Water Company Cypress Ridge							

Project Water Distribution System

The Project will include four proposed connection points to the District’s existing water distribution system and the onsite backbone of the onsite distribution system will include 12-inch diameter pipelines for maintaining District-recommended pressures and velocities.

Water Supply

The current water service area boundary encompasses approximately 3,907 acres (parcel acreage only and excludes right-of-way) in the Nipomo area of southern San Luis Obispo County and serves water to an estimated current population of 13,771 people (2020 Census data). The District service area is primarily residential land uses, with some light commercial and suburban residential. The District is comprised of one water system with three pressure zones; one zone serves the Blacklake Specific Plan area, one zone serves the Maria Vista Pressure Zone, and the third zone serves the rest of the District’s service area.

Actual total demand in the FY 2023/24 fiscal year was 1,820 AFY, which consisted of 1,140 AF of imported NSWP water and 680 AF of groundwater.

Imported Water

Groundwater was the sole source of the District’s water supply until 2015, when the District began importing water from the City of Santa Maria (City) as part of the Nipomo Supplemental Water Project (NSWP). The NSWP included the design and construction of the following infrastructure to deliver supplemental water to the District from the City’s existing water distribution system:

- Approximately 5,000 feet of 24-inch transmission pipeline located within the City
- Flow control and meter station located within the City
- Santa Maria River crossing including 2,600 feet of 24-inch pipeline
- Joshua Road Pump Station with four 800-gallon per minute (gpm) pumps with onsite generator and 0.5-million gallon storage tank
- Approximately 1,700 feet of 24-inch transmission pipeline from the Joshua Road Pump Station to the District’s existing distribution system
- Approximately 12,000 feet of 16-inch transmission pipeline located within the District’s service area

The District executed the Wholesale Water Supply Agreement (Wholesale Agreement) with the City on May 7, 2013, which is included as **Appendix B**. Supplemental water consists of a “municipal mix” of both surface water from the State Water Project and groundwater from the City. The Wholesale Agreement dictates a minimum water delivery to the District of 2,500 acre-feet per year (AFY) by fiscal year 2025-26 with a maximum allowable delivery of 6,200 AFY. It should be noted that the existing Santa Maria River crossing, pump station, and portion of transmission pipeline were designed to deliver 6,200 AFY. However, pump replacements and additional pipelines would be required to deliver the full 6,200 AFY to the District service area. While the District is obligated to meet the minimum delivery from the Wholesale Agreement, the District will continue operating the groundwater wells to serve existing and future demands. **Table 2-3** outlines the required Wholesale Agreement water delivery schedule.

Table 2-3: Wholesale Water Agreement Delivery Schedule	
AFY	Effective Delivery Date
645	7/1/2015
800	7/1/2016
1,000	7/1/2020
2,500	7/1/2025
6,200	Maximum Capacity

These deliveries also include delivery to WMWC, GSWC, and GSWCCR. **Table 2-4** summarizes the required NSWP purchase allocations for the District, GSWC, and WMWC per the Supplemental Water Management and Groundwater Replenishment Agreement (Replenishment Agreement) as of October 16, 2015. The Replenishment Agreement is included as **Appendix C**.

Table 2-4: NSWP Replenishment Agreement Allocation (AFY)		
Water Purveyor	Percent Allocation	NSWP (2,500 AFY)
NCSD ¹	66.68	1,667
NCSD (as needed)	-	500
GSWC	8.33	208
GSWCCR	8.33	208
WMWC	16.66	417
Total	100.00	3,000
Note:		
1. NCSD = Nipomo Community Services District		

Groundwater

The District extracts groundwater from the Santa Maria River Valley Groundwater Basin. The Nipomo Mesa Management Area Technical Group (NMMA TG), which is the court-assigned entity responsible for assessment of groundwater within the Nipomo Mesa Management Area of the Santa Maria River Valley Groundwater Basin, declared a Stage II water severity condition for subbasin purveyors. This condition results in a voluntary groundwater reduction goal of 506 AFY for the District. The District owns five wells, four of which are active and one currently being rehabilitated. These five wells have a combined pumping capacity of 3,100 gpm or 5,000 AFY. However, for planning purposes 2,100 gpm is available assuming the largest well is out of service.

Water Supply Availability

Through the NSWP, the District has a maximum supply capacity of 2,167 AFY (including the remaining 500 AFY of NSWP water to serve new development demands). This excludes the 833 AFY allocation for WMWC and GSWC. Based on the existing infrastructure of the NSWP and contractual obligations, between the District and the City, this water supply source is considered 100% reliable and available during normal, single, and multiple dry year conditions.

The Santa Maria River Valley Groundwater Basin has been the subject of ongoing litigation since 1997 and is an adjudicated basin. The District signed a June 30, 2005, Stipulation in the case that was ultimately approved by the Court and incorporated into the final judgment (“Final Judgment”) that was filed on January 25, 2008. The Judgement is included in **Appendix D**. As part of the Final Judgment, the District has a voluntary pumping limit from the basin depending on the NMMA TG-defined drought levels. **Table 2-5** summarizes the District’s voluntary groundwater reduction goals per NMMA TG-defined drought levels.

Table 2-5: NMMA TG Water Shortage Response Stages		
NMMA TG-Defined Drought Levels	Groundwater Reduction Goal (%)	Available Groundwater (AF)
Stage 1	0	2,533
Stage 2	20	2,027
Stage 3	30	1,733
Stage 4	50	1,267
Stage 5	60	1,013

The District’s UWMP evaluated supply availability for five consecutive dry years for existing and future demand conditions (including the Project). To analyze worst-case supply conditions, the evaluation assumed that NMMA TG would declare a Stage 2 drought level for the first year and increase the voluntary groundwater reduction goals in subsequent years up to 60% (1,013 AFY from groundwater). **Table 2-6** provides a summary of the District’s projected supply and demand through 2045 for multiple dry years.

Table 2-6: Multiple Dry Years Supply and Demand Comparison

		2025	2030	2035	2040	2045
First Year (NMMA TG Stage 2)	Groundwater Supply	2,027	2,027	2,027	2,027	2,027
	Imported Water Supply	3,000	3,000	3,000	3,000	3,000
	Total	5,027	5,027	5,027	5,027	5,027
	District (Existing and Infill)	2,118	2,186	2,253	2,320	2,388
	Annexations Under Review	176	352	352	352	352
	Sales to Other Agencies	833	833	833	833	833
	Total	3,127	3,371	3,438	3,505	3,573
	Difference (AF)	1,900	1,656	1,589	1,522	1,454
Second Year (NMMA TG Stage 3)	Groundwater Supply	1,733	1,733	1,733	1,733	1,733
	Imported Water Supply	3,000	3,000	3,000	3,000	3,000
	Total	4,733	4,733	4,733	4,733	4,733
	District (Existing and Infill)	2,118	2,186	2,253	2,320	2,388
	Annexations Under Review	176	352	352	352	352
	Sales to Other Agencies	833	833	833	833	833
	Total	3,127	3,371	3,438	3,505	3,573
	Difference (AF)	1,606	1,362	1,295	1,228	1,160
Third Year (NMMA TG Stage 4)	Groundwater Supply	1,267	1,267	1,267	1,267	1,267
	Imported Water Supply	3,000	3,000	3,000	3,000	3,000
	Total	4,267	4,267	4,267	4,267	4,267
	District (Existing and Infill)	2,118	2,186	2,253	2,320	2,388
	Annexations Under Review	176	352	352	352	352
	Sales to Other Agencies	833	833	833	833	833
	Total	3,127	3,371	3,438	3,505	3,573
	Difference (AF)	1,140	896	829	762	694
Fourth Year (NMMA TG Stage 5)	Groundwater Supply	1,013	1,013	1,013	1,013	1,013
	Imported Water Supply	3,000	3,000	3,000	3,000	3,000
	Total	4,013	4,013	4,013	4,013	4,013
	District (Existing and Infill)	2,118	2,186	2,253	2,320	2,388
	Annexations Under Review	176	352	352	352	352
	Sales to Other Agencies	833	833	833	833	833
	Total	3,127	3,371	3,438	3,505	3,573
	Difference (AF)	886	642	575	508	440
Fifth Year (NMMA TG Stage 5)	Groundwater Supply	1,013	1,013	1,013	1,013	1,013
	Imported Water Supply	3,000	3,000	3,000	3,000	3,000
	Total	4,013	4,013	4,013	4,013	4,013
	District (Existing and Infill)	2,118	2,186	2,253	2,320	2,388
	Annexations Under Review	176	352	352	352	352
	Sales to Other Agencies	833	833	833	833	833
	Total	3,127	3,371	3,438	3,505	3,573
	Difference (AF)	886	642	575	508	440
Notes:						
1. Based on Table 7-4 Retail: Multiple Dry Years Supply and Demand Comparison from District's UWMP						
2. At the time the UWMP was prepared, the Project's demand estimate was 352 AFY as opposed to the currently estimated 340 AFY						

PLAN FOR SERVICES

Based on this evaluation and the District's ongoing management of current water supplies, there are sufficient resources to serve future demands (including the Project) during multiple dry years.

Water Distribution

The Dana W&WW Evaluation concluded that the District has sufficient supply sources to serve existing and future demand conditions, including the Project. However, through hydraulic evaluation of the existing water distribution and storage facilities it was determined that the Project will have a significant impact on those facilities. Based on the hydraulic evaluations, the following improvements were identified to address the observed system deficiencies.

- New 16-inch pipeline on North Oak Glen Avenue and Tefft Street
- North Frontage Road pipeline extension
- Willow Road end of line pipeline
- Foothill Tank site improvements
- Joshua Road Reservoir site improvements

2.2.3 Wastewater Collection and Treatment

The following section provides an overview of the Project wastewater flows, potential impacts to the District's existing wastewater collection, and treatment facilities.

Project Wastewater Flows

Projected wastewater flows for the existing District service area and Project were developed and presented in the Dana W&WW Evaluation. In that analysis, water billing records by parcel were adjusted using average 10-year water production records. These were used to develop water demand factors for each land use category, and wastewater return factors were then applied to each land use to estimate existing and future wastewater flows. All flows include a 10% contingency factor as described in the Dana W&WW Evaluation. **Table 2-7** provides an overview of the anticipated wastewater flows for the Project. As with water demand, through the planning process and change to the Project, wastewater flow increased to 267 AFY. However, this remains within the capacity evaluated.

Table 2-7: Phased Annual Flow Increases for Dana Reserve

Land Use Type	Acreage ¹	Phased Wastewater Flow Increase by Year (GPD ²)							Total
		2024	2025	2026	2027	2028	2029	2030	
Single Family	149.5	14,351	20,565	28,554	25,743	23,524	10,208	-	122,945
Multi-Family	23.5	4,243	18,872	5,918	16,303	5,807	-	-	51,143
Commercial	22.3	2,163	2,163	14,422	6,201	2,163	2,163	-	29,275
Recreation/ Park	11	-	-	-	5,530	-	-	-	5,530
Total	206.3	21,000	42,000	49,000	54,000	31,000	12,000	-	209,000

Notes:

1. Acreage from Final EIR Table 2-3 Land Use Acreage Summary and excludes existing Residential Rural, Open Space, and Primary Roads land uses
2. GPD = gallons per day

Table 2-8 presents the projected combined wastewater flow per year for the existing District service area, future District flows (infill development and ADUs), Blacklake Service Area, and the Project.

Table 2-8: District and Project Future Wastewater Flow

Land Use Type	Projected Cumulative District Wastewater Flows (GPD)						
	2024	2025	2026	2027	2028	2029	2030
Existing District and County Service Area Flows	591,246	591,246	591,246	591,246	591,246	591,246	591,246
Future District Service Area Flows	-	67,736	81,283	94,831	108,378	121,925	135,472
Future Blacklake Service Area	-	58,000	58,000	58,000	58,000	58,000	58,000
ADUs	-	5,232	6,279	7,325	8,372	9,418	10,464
Subtotal	592,000	723,000	737,000	752,000	766,000	781,000	796,000
Dana Reserve Project							
Single Family	14,351	34,915	63,469	89,212	112,735	122,944	122,944
Multi-Family	4,243	23,115	29,034	45,337	51,144	51,144	51,144
Commercial	2,163	4,327	18,748	24,950	27,113	29,277	29,277
Recreation/ Park	-	-	-	5,530	5,530	5,530	5,530
Subtotal	21,000	63,000	112,000	166,000	197,000	209,000	209,000
Total	613,000	786,000	849,000	918,000	963,000	990,000	1,005,000

Project Wastewater Collection System

The Project will include an onsite wastewater collection system that will convey project flows to a proposed connection point at Frontage Road. Pipeline sizes are not currently identified but it is assumed all gravity pipelines will be designed and constructed in accordance with District standards. In addition, two onsite lift stations were identified to convey flow from neighborhoods 8 and 9 (near Hetrick Avenue) to the onsite collection system.

District Wastewater Collection System

The District's wastewater collection system includes two separate service areas including the Town Sewer System and the Blacklake Sewer System. The District's wastewater collection system consists of ten lift stations in the Town Sewer System, three lift stations in the Blacklake Sewer System, gravity sewer mains, and the Blacklake Water Reclamation Facility (WRF) and Southland Wastewater Treatment Facility (WWTF). However, the District is currently in the process of consolidating the two systems through the Blacklake Sewer Consolidation Project to regionalize wastewater treatment at the District's Southland WWTF. The Blacklake Sewer System will be connected to the Town Sewer System through a new lift station and force main. In addition to the ten District lift stations within the Town Sewer System, flow from two County lift stations (Galaxy and People's Self Help (PSH)) discharge to the collection system. The Town Sewer System includes 30 miles of gravity collection system pipeline ranging in diameter from 6-inch to 24-inch. Based on the hydraulic evaluations, the following improvements were identified to address the observed system deficiencies.

- Connection to Dana Reserve collection area:
 - Install approximately 2,500 linear feet of 6-inch polyvinyl chloride (PVC) force main from the Dana Reserve Development lift station to Frontage Road and continue new pipeline to Camino Caballo (by Developer)
 - Install approximately 1,200 linear feet of 12-inch PVC gravity sewer pipeline and new manholes on Frontage Road (by Developer)
- Sanitary sewer lift station for Dana Reserve Development (by Developer)
- Replace existing 10-inch with 3,500 linear feet (LF) of 15-inch PVC sewer main and manholes between Juniper Street and Grande Avenue (in progress by District)
- Replace existing 12-inch with 1,170 LF of 18-inch PVC sewer main and manholes between Grande Avenue and Division Street (in progress by District)

The hydraulic analysis in the Dana W&WW Evaluation concluded the Frontage Road sewer improvements should be implemented as soon as possible to meet existing system flows. The gravity sewer pipeline sizes were selected to meet future flow conditions including buildout of the Project.

Treatment Facility

The Dana W&WW Evaluation concluded that the Project will have a significant impact on the District’s Southland WWTF. Additionally, the Central Coast Regional Water Quality Control Board (RWQCB) has notified the District that the Southland WWTF will be enrolled under General Waste Discharge requirements for Discharges from Domestic Wastewater Systems with Flows Greater than 100,000 gallons per day (Order No. R3-2020-0020). Recommended projects to meet current and future regulatory requirements with the addition of the Project loading are listed in **Table 2-9**.

Table 2-9: Summary of Southland WWTF Evaluation		
Process	Summary of Findings	Recommendations to Meet Existing Demands with Dana Reserve
Influent Lift Station	Capacity is adequate for existing conditions	Install a third pump, sized the same as existing
Influent Screen	Capacity is adequate for existing flowrates	–
Grit Removal	Capacity is adequate for existing conditions	Install second grit system
Extended Aeration Basins	Additional basins required	Install Aeration Basin #2 to meet current capacity requirements. Install Aeration Basin #3 to meet anticipated permit requirements. Expand blower system as needed
Secondary Clarifiers	Overflow rate is adequate for existing conditions. Peak solids loading rate is exceeded at existing demands with Dana Reserve	Install third clarifier for redundancy. Upgrade Return Activated Sludge (RAS) pumping system
Gravity Belt Thickener (GBT)	Additional operating hours will be necessary to meet existing demands with Dana Reserve. No redundancy is available if the single GBT fails	Install second GBT
Dewatering Screw Press	Additional press required to meet combined loading	Install second screw press

2.3 Timing to Extend Services

The Project will be a multiuse neighborhood encompassing 288 acres of currently undeveloped land and will include up to 1,370 residential units, 4.7 acres of commercial development, and 10.1 acres of recreational land use. The proposed project phasing is shown in **Figure 2-1**.

Figure 2-1: Project Phasing Plan (2024 Specific Plan)



The proposed phasing plan for the project is shown in **Table 2-10**. Residential units have been grouped as single-family, clustered single-family, or multi-family with commercial and park areas grouped by type.

Table 2-10: Anticipated Dana Reserve Specific Plan Construction Schedule							
Land Use	2024	2025	2026	2027	2028	2029	Total
Residential Single-Family Units - DR-SF1^{1,2}							
NBD ³ - 4	24	24	24	–	–	–	72
NBD - 5	–	10	20	25	24	25	104
NBD - 6	–	–	24	24	30	36	114
NBD - 7	31	31	31	31	33	–	157
NBD - 8	12	12	12	12	14	–	62
NBD - 9	30	40	40	40	40	8	198
Subtotal	97	117	151	132	141	69	707
Residential Single-Family (Cluster) Units - DR-SF2⁴							
NBD - 3	–	22	42	42	18	–	124
Subtotal	0	22	42	42	18	0	124
Residential Multi-Family - DR-MF⁵							
NBD - 1	–	80	–	93	–	–	173
NBD - 2	–	52	53	53	52	–	210
NBD - 10	38	37	–	–	40	41	156
Subtotal	38	169	53	146	92	41	539
Total Residential	135	308	246	320	251	110	1,370
Flex Commercial Square Footage - DR-FC⁶							
Hotel	–	–	60,000	–	–	–	60,000
Education	–	–	–	–	15,000	15,000	30,000
Retail (Village & Flex)	15,000	15,000	40,000	43,000	–	–	113,000
Total Commercial	15,000	15,000	100,000	43,000	15,000	15,000	203,000
Public Neighborhood Park	–	–	–	435,600	–	–	435,600
Notes:							
1. Unit values based on 2024 Dana Reserve Specific Plan including an increase in the number of proposed deed-restricted affordable housing units from 104 to 156 in Neighborhoods 10A and 10B							
2. DR = density residential; SF1 = Single Family 1							
3. NBD = neighborhood							
4. SF2 = Single Family 2							
5. MF = multi-family							
6. FC = flex commercial							

Since the development schedule is expected to vary from what was originally proposed by the developer, it is recommended that milestones be set for completion of water and wastewater improvements based on the number of residential units. Since residential water demand represents over 86% of the total demand, using residential units to establish milestones for project completion as opposed to years allows District staff to set measurable milestones. Although multi-family residential units are anticipated to have a higher water demand than residential units, District staff intend to use the total number of residential units as "triggers" for project implementation. Differences between water demands among types of residential development will be considered by District staff when scheduling projects, particularly if multi-family development significantly outpaces residential development. **Table 2-11** correlates projected total number of single and multi-family units with total water demand and wastewater flow for the development according to the proposed construction schedule.

Table 2-11: Correlation Between Residential Development and Anticipated Demands/Flows for the Project							
Land Use Type	Cumulative Development ¹						
	2024	2025	2026	2027	2028	2029	2030
Single-Family Residential Units	97	236	429	603	762	831	831
Multi-Family Residential Units	38	207	260	406	498	539	539
Total Residential Units²	135	443	689	1,009	1,260	1,370	1,370
Cumulative Demand (AF) ³	47	99	166	241	280	340	340
Cumulative Flow (GPD) ⁴	21,000	63,000	112,000	166,000	197,000	209,000	209,000
Notes: <ol style="list-style-type: none"> 1. Planned cumulative residential units per annum from developer construction schedule 2. Unit values based on 2024 Dana Reserve Specific Plan 3. Total estimated annual water demand calculated from Table 2-2 4. Total estimated annual wastewater flows calculated from Table 2-8 							

2.4 Improvements Required

The following identifies the water distribution, wastewater collection, and wastewater treatment improvements that will be required to serve the Project.

2.4.1 Water Distribution System, Wastewater Collection, and Treatment Improvements

Major water transmission and storage projects were recommended for implementation prior to completion and occupancy of the first residential unit due to the need for fire flow, emergency storage, and redundant water supply to the project. Several projects will need to be initiated as soon as possible after the annexation agreement is approved in order to address the proposed development schedule. Based on the Dana Reserve Development Phasing Study – Revised Figures for Annexation Agreement (MKN, May 2024), an updated schedule for implementation of the required water and wastewater improvements was developed. The implementation schedule will be initiated upon the effective date of the annexation agreement between the District and the Project Developer. The schedule is organized according to months from completion of the annexation agreement. Updates made as an adaptation to the original Dana Reserve Development Phasing Study (MKN, March 2024) included the following:

- Wastewater projects have been organized into two major phases:
 - Requiring completion prior to the first residential unit
 - Requiring completion prior to Unit 1,009
- Wastewater Project 6 has been separated into Projects 6A and 6B, for each aeration basin respectively
- The District will need to complete Wastewater Project 6A – Extended Aeration Basin No. 2 prior to completion of the first residential unit
- The District will need to complete the following projects prior to completion of Unit 1,009:
 - Wastewater Project 6B – Extended Aeration Basin No. 3

- Wastewater Project 8 – GBT
- Wastewater Project 9 – Dewatering Screw Press

Table 2-12 provides an overview of the water distribution system, wastewater collection, and treatment improvements required to serve the Project.

Table 2-12: Required Water and Wastewater Improvements for the Project					
Project	Complete Units to Initiate Construction	Engineering, Administration, & Construction Management	Construction	Contingency	Total
Water Distribution System Improvement Projects					
Project 1	Prior to First Unit	\$800,000	\$2,640,000	\$800,000	\$4,240,000
Project 2	Prior to First Unit	\$280,000	\$930,000	\$280,000	\$1,490,000
Project 4	Prior to First Unit	Developer Funded			
Project 6	Prior to First Unit	To Be Financed Separately by District			
Project 5	Prior to Unit 689	\$1,650,000	\$5,470,000	\$1,650,000	\$8,770,000
Project 7	Prior to Unit 1,000	\$1,360,000	\$4,500,000	\$1,180,000	\$7,040,000
Water Projects Subtotal		\$4,090,000	\$13,540,000	\$3,910,000	\$21,540,000
Wastewater Collection System Improvement Projects					
Project 2A	Prior to First Unit	Developer Funded			
Project 2B	Prior to First Unit	Developer Funded			
Project 3		In Progress – District Funded			
Wastewater Treatment Improvement Projects					
Project 4	Prior to First Unit	\$20,000	\$60,000	\$20,000	\$100,000
Project 6A	Prior to First Unit	\$610,000	\$2,020,000	\$610,000	\$3,240,000
Project 5	Prior to Unit 1,009	\$210,000	\$650,000	\$210,000	\$1,070,000
Project 6B	Prior to Unit 1,009	\$650,000	\$2,180,000	\$650,000	\$3,480,000
Project 7	Prior to Unit 1,009	\$910,000	\$3,020,000	\$910,000	\$4,840,000
Project 8	Prior to Unit 1,009	\$270,000	\$880,000	\$270,000	\$1,420,000
Project 9	Prior to Unit 1,009	\$500,000	\$1,620,000	\$500,000	\$2,620,000
Wastewater Projects Subtotal		\$3,170,000	\$10,430,000	\$3,170,000	\$16,770,000
Notes:					
1. All costs rounded to nearest \$10,000					
2. Cost values shown based on Table 6-2 from Dana Reserve Development Phasing Study – Revised Figures for Annexation Agreement (MKN, May 2024)					

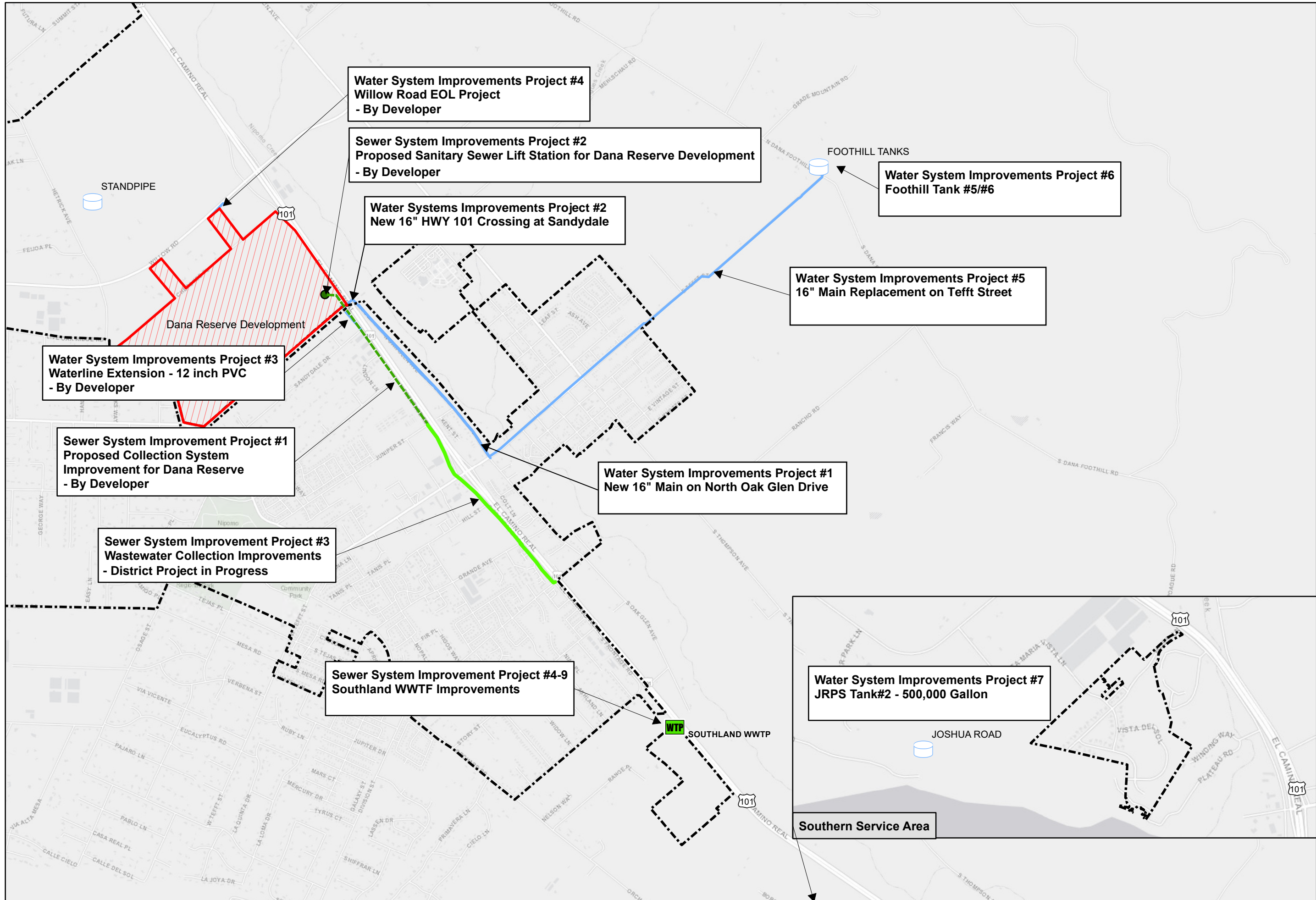
Figure 2-2 identifies the location and extent of the required water distribution, wastewater collection, and wastewater treatment improvement projects.

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Nipomo Community Services District
Plan for Services
Dana Reserve Specific Plan

Figure 2-2
Required Water and Wastewater Improvements Map



Water System Improvements Project #4
Willow Road EOL Project
- By Developer

Sewer System Improvements Project #2
Proposed Sanitary Sewer Lift Station for Dana Reserve Development
- By Developer

Water Systems Improvements Project #2
New 16" HWY 101 Crossing at Sandydale

Water System Improvements Project #6
Foothill Tank #5/#6

Water System Improvements Project #5
16" Main Replacement on Tefft Street

Water System Improvements Project #3
Waterline Extension - 12 inch PVC
- By Developer

Sewer System Improvement Project #1
Proposed Collection System Improvement for Dana Reserve
- By Developer

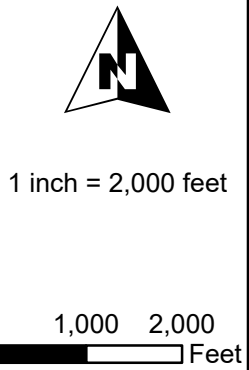
Water System Improvements Project #1
New 16" Main on North Oak Glen Drive

Sewer System Improvement Project #3
Wastewater Collection Improvements
- District Project in Progress

Sewer System Improvement Project #4-9
Southland WWTF Improvements

Water System Improvements Project #7
JRPS Tank#2 - 500,000 Gallon

Southern Service Area



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2.5 Services Financing

Over 60% of the investment for water and wastewater improvements to serve the Project and approximately 30% completion of recommended projects will be required prior to completion of the first unit within the development. Major capital improvement projects will be funded by the Project developer through capacity charges collected by the District. As identified in the Water and Wastewater Rate Impact Analysis Study (Tuckfield & Associates, May 2022) prepared for the District, water supply for the Project will be from the NSWP which consists of a higher water rate as compared to the District's groundwater supply. These rates will cover the cost of operating and maintaining the water system. In addition, the customer base expansion will benefit the entire District service area as developed parcels will contribute to the debt service of NSWP capital costs. The same study (Tuckfield & Associates in May 2022) included a cost allocation analysis, demonstrating that the current water rates for the District will yield positive benefits.

As identified in the Water and Wastewater Rate Impact Analysis Study (Tuckfield & Associates, May 2022), the Project customers will be merged into the existing District wastewater customer base. Since most of the costs for wastewater treatment are fixed, the addition of the Project customers will also have a positive benefit on the District's existing wastewater rates.

2.5.1 Water Improvements

Major water transmission and storage projects were recommended for implementation prior to completion and occupancy of the first residential unit due to the need for fire flow, emergency storage, and redundant water supply to the project. Several projects will need to be initiated as soon as possible after the annexation agreement is approved in order to address the proposed development schedule. The project will not affect the rates of the existing customers during the interim period between construction and build-out. It is important to note that these benefits to the existing customer base will not be realized fully until project build-out.

What will affect the existing customers rates is the increase in supplemental water supply from 1,000 acre-feet per year to 2,500 acre-feet per year starting July 1, 2025. The cost for this increase in supplemental water supply will be paid by the existing customers split among the District (2/3 of the cost), Golden State Water Company, and Woodlands Mutual Water Company (1/3 of the cost). This additional supplemental water supply will be delivered, and the District will incur its cost regardless of whether the project gets built or not. The increase in the customer base resulting from the annexation will benefit the District customers by distributing the cost over this overall larger customer base, but the full benefits will only be realized upon full build-out.

PLAN FOR SERVICES

Developer-Required Improvements

The developer will need to complete, at the developer's expense and as part of onsite improvements prior to completion of the first residential unit, the following projects:

- Water Project 3 – Frontage Road Extension
- Water Project 4 – Willow End of Line (EOL) Connection

District-Required Improvements

The District will need to complete, subject to developer-providing funding and prior to completion of the first residential unit, the following projects:

- Water Project 1 – New 16-inch Main on North Oak Glen Avenue
- Water Project 2 – New 16-inch US 101 Crossing at Sandydale Drive
- Water Project 6 – Foothill Tank Improvements

The District will need to complete, subject to developer-providing funding, the following projects prior to completion of Unit 689:

- Water Project 5 – 16-inch Main Replacement on Tefft Street

The District will need to complete, subject to developer-providing funding, the following projects prior to completion of Unit 1,000:

- Water Project 7 – 500,000-gallon Tank at Joshua Road Pump Station

2.5.2 Wastewater Improvements

Major wastewater collection and treatment improvements are also necessary to provide wastewater service. Several projects will need to be initiated as soon as possible after the annexation agreement is approved to address the proposed development schedule.

Wastewater Project 3 (Frontage Road Trunk Sewer Replacement) is already in design and needs to be completed prior to completion of the first residential unit.

Developer-Required Improvements

The developer will need to complete, at the developer's expense and as part of onsite improvements prior to completion of the first residential unit, the following projects:

- Wastewater Project 1 – Frontage Road Sewer Extension
- Wastewater Project 2 – Dana Reserve Development Lift Station

District-Required Improvements

The District will need to complete, subject to developer-providing funding and prior to completion of the first residential unit, the following projects:

- Wastewater Project 4 – Influent Lift Station
- Wastewater Project 6A – Extended Aeration Basin No. 2

Additionally, the following projects will need to be completed prior to completion of Unit 1,009:

- Wastewater Project 5 – Grit Removal
- Wastewater Project 6B – Extended Aeration Basin No. 3
- Wastewater Project 7 – Secondary Clarifier
- Wastewater Project 8 – GBT
- Wastewater Project 9 – Dewatering Screw Press

Appendix E includes a comprehensive implementation phasing schedule for the water and wastewater improvements required to serve the Project.

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Appendix A: South County Sanitary Services Will Serve Letter

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- SAN LUIS GARBAGE
- SOUTH COUNTY SANITARY
- MISSION COUNTRY DISPOSAL
- MORRO BAY GARBAGE



Safety • Integrity • Service

June 5, 2024

Raymond Dienzo, P.E.

General Manager

Nipomo Community Services District

P.O. Box 326

Nipomo, California 93444

RE: Solid Waste, Recyclable Materials, and Organic Materials Collection - Dana Reserve Annexation

Dear Mr. Dienzo:

At your request, this letter is intended to contribute to the “Plan for Service” being prepared by the Nipomo Community Services District (“NCSD”) for the possible annexation of property into the NCSD boundaries. As you know, NCSD and South County Sanitary Services, Inc. (SCSS) are parties to that certain Amended and Restated Solid Waste, Recycle Materials, and Organic Materials Collection Franchise Agreement between NCSD and South County Sanitary Services, Inc. August 27, 2008, and as most recently amended by that Second Amendment dated November 1, 2022 (collectively, the Agreement) Pursuant to the Agreement, SCSS is NCSD’s exclusive franchisee for, among other things, solid waste and recyclables collection and processing/disposal within the NCSD boundaries.

The proposed annexation is the Dana Reserve Specific Plan project (“DRSP”), a 288 acre planned community currently outside the NCSD’s boundaries, which is largely undeveloped. Under Section 2.4 of Agreement, the franchise area subject to the Agreement “shall automatically extend” to any area annexed to the District. Because the DRSP property is largely undeveloped, there is solid waste provider franchised by the county of San Luis Obispo currently providing service. As such, the parties’ existing Agreement would automatically extend to the DRSP property if the annexation is approved.

Upon certain operational conditions, including safety and accessibility of SCSS’s personnel, vehicles, and equipment - SCSS is prepared to provide solid waste, recyclable materials, and organic materials collection services to the residences and businesses that would be built under the DRSP if the annexation moves forward.

Sincerely,

Jeff Clarin

District Manager

South County Sanitary Services

805-748-8041

Jeffrey.Clarin@Wasteconnections.com

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Appendix B: Wholesale Water Supply Agreement

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RESOLUTION NO. 2013-40

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SANTA MARIA, CALIFORNIA, APPROVING A
WHOLESALE WATER SUPPLY AGREEMENT WITH
NIPOMO COMMUNITY SERVICES DISTRICT**

WHEREAS, on September 7, 2004, the City Council entered into a Memorandum of Understanding with Nipomo Community Services District ("NCSD") to define the terms under which the City of Santa Maria ("City") and NCSD would negotiate for NCSD to purchase supplemental water from the City; and

WHEREAS, on June 30, 2005, a majority of the parties in the Santa Maria Groundwater Litigation, including the City and NCSD, entered into a Stipulated Agreement ("Stipulation"); and

WHEREAS, on June 25, 2008, the Superior Court of California (Santa Maria Groundwater Litigation Lead Case No. 1-97-CV-770214) entered into a judgment incorporating the Stipulation; and

WHEREAS, on January 5, 2010, the City Council adopted a statement of overriding consideration and made findings of consistency regarding the Final Environmental Impact Report on Resolution 2010-04; and

WHEREAS, on January 5, 2010, the City Council approved a Wholesale Water Supply Agreement ("Agreement") for the sale and delivery of supplemental water by the City to NCSD on Resolution 2010-04; and

WHEREAS, on May 9, 2012, the NCSD failed to achieve votes necessary to form an Assessment District to acquire approximately \$30 million in funding to construct infrastructure to deliver the quantities of water specified in the initial Agreement; and

WHEREAS, the NCSD desires to construct an interim project to deliver quantities of water greatly reduced from the original project, thereby reducing delivery capacity; and

WHEREAS, the City and NCSD wish to revise the initial Agreement, notably to modify the Minimum Takedown Schedule (i.e. Quantity) to reflect the reduced delivery capacity, and to modify renegotiation language; and

WHEREAS, the proposed revision to the initial Agreement was approved by the NCSD Board of Directors at their regular meeting on Wednesday, April 24, 2013; and

WHEREAS, all other terms in the Agreement approved on Resolution 2010-04 remain the same.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the City Council of the City of Santa Maria as follows:

- 1.) Authorize and direct the Director of Utilities to enter into a new Wholesale Water Supply Agreement with Nipomo Community Services District, hereto attached as Exhibit "A" and made a part of this resolution; and
- 2.) Authorize and direct the Director of Utilities, or his designee, to enter into extensions and modifications to the Agreement, consistent with the terms of the Agreement, in order to carry out the project.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Santa Maria, California, held this 7th day of May 2013.

/s/ ALICE M. PATINO

Mayor

ATTEST:

/s/ RHONDA M. GARIETZ, CMC

Chief Deputy City Clerk

APPROVED AS TO FORM



Sr. Ass. City Attorney

APPROVED AS TO CONTENT



City Manager



Department Head

WHOLESALE WATER SUPPLY AGREEMENT

This Wholesale Water Supply Agreement ("Agreement") is made and entered into as of May 7, 2013, by and between the **CITY OF SANTA MARIA ("City")**, a California municipal corporation and charter City, and **NIPOMO COMMUNITY SERVICES DISTRICT ("NCSD")**, an independent special district formed under and pursuant to Section 61000, *et seq.* of the California Government Code. City and NCSD are sometimes individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the City provides retail potable water service to customers within its service area in the Santa Maria Valley, in northern Santa Barbara County. The City holds a contract with the Central Coast Water Authority to receive water from the State Water Project ("SWP"). City also holds rights to recharge from Twitchell Reservoir and rights to pump groundwater from the Santa Maria Groundwater Basin ("Santa Maria Basin"); and

WHEREAS, NCSD provides retail potable water service and sewer service within its established boundaries located in and around the Nipomo Mesa Management Area ("NMMA") of the Santa Maria Basin; and

WHEREAS, both the City and the NCSD are Parties to a certain groundwater adjudication lawsuit commonly referred to as the Santa Maria Groundwater Litigation (Santa Maria Valley Water Conservation District vs. City of Santa Maria, et al.; Superior Court of California, County of Santa Clara Case no. 1-97-CV-770214) (referred to herein as "Basin Litigation"). On August 3, 2005, the Court approved a Settlement Stipulation (referred to herein as "Stipulation") that was signed by the Parties, related to the Basin Litigation which, among other things, provides that "the NCSD and City shall employ their best efforts to timely implement the Nipomo Supplemental Water Project, subject to their quasi-judicial obligations specified for administrative action and in the California Environmental Quality Act." The Stipulation was later incorporated into the final Judgment; and

WHEREAS, on a long term basis, City has water available for use in the NMMA that is surplus to that needed to serve City's current and long-term future anticipated demands; and

WHEREAS, pursuant to the Stipulation, NCSD seeks to acquire a Supplemental Water supply (referred to herein as "Supplemental Water") to alleviate pressure on the NMMA from groundwater pumping and to meet current needs and projected demands of NCSD customers; and

WHEREAS, consistent with the Stipulation and Judgment, and subject to the terms and conditions of this Agreement, City is willing to sell and deliver to NCSD an established quantity of Supplemental Water on a wholesale basis.

NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

1. **Purpose.** Consistent with the Stipulation and Judgment, the purpose of this Agreement is to formalize the terms and conditions by which City will provide Supplemental Water to NCSD, including an equivalent amount of capacity in City's water distribution system, for delivery to the NCSD water distribution system through the interconnection described in Paragraph 9, beginning on the Effective Date and continuing each year thereafter for as long as this Agreement remains in effect.

2. **Termination of MOU and Original Wholesale Water Supply Agreement.** City and NCSD executed a Memorandum of Understanding ("MOU") on September 7, 2004, to provide for the reservation of a Supplemental Water supply of up to three thousand (3,000) acre-feet per year ("AFY") in anticipation of the negotiation of the original Wholesale Water Supply Agreement ("Original Agreement"), executed on January 5, 2010. This Agreement shall supersede the terms of the MOU and Original Agreement, which shall terminate and be of no further force or effect. The initial reservation payment of \$37,500 made upon execution of the MOU has already been credited by City to the first quarterly invoice for water delivery pursuant to Paragraph 8.

3. **Term of Agreement.**

(a) **Contract Term.** The term of the Agreement shall commence on the Effective Date and end on June 30, 2085 ("Term"). Notwithstanding the Term, the delivery of Supplemental Water pursuant to this Agreement during any period on or after June 30, 2035, shall be subject to the renewal of the contract between the City and Central Coast Water Authority for SWP water. Furthermore, the terms of this Agreement shall be subject to renegotiation as described below in the event that the SWP contract or any subsequent SWP contract is not renewed or is renegotiated by the City and Central Coast Water Authority prior to June 30, 2035, and the terms of such renegotiation or renewal either (i) substantially impair the ability of City to continue to provide Supplemental Water in the quantities set forth in this Agreement; or (ii) the cost of continuing to provide Supplemental Water pursuant to the terms of this Agreement would create a significant financial burden on the City. In no event shall the City be required to deliver Supplemental Water at a financial loss following June 30, 2035, or in the event of a change in price due to a renegotiation occurring prior to June 30, 2035, as described in the foregoing sentence. Upon the occurrence of one of the foregoing events and within thirty (30) days of a written request from City to NCSD requesting renegotiation, the Parties shall negotiate in good faith and use their best efforts to equitably amend the terms of this Agreement to allow for the continued delivery of Supplemental Water on terms that are mutually beneficial to the Parties for the duration of the Term. The parties will meet in good faith in 2085 to determine whether to extend the term of the Agreement.

(b) **Dispute Resolution.** In the event of a dispute as to whether clause (i) and/or (ii) of Paragraph 3(a) have been triggered as a result of the renegotiation or non-renewal of the SWP contract, then such dispute shall be referred to the dispute resolution procedures referenced in Paragraph 19 of this Agreement. If a final finding is made as a result of such dispute resolution procedure that clause (i) and /or clause (ii) have been triggered, then the Parties shall negotiate in good faith pursuant to Paragraph 3(a). If the Parties cannot agree on the terms and conditions for equitably amending the terms of this

Agreement to address a substantial impairment pursuant to clause (i) of Paragraph 3(a), then whether or not there is a feasible solution to address such substantial impairment may also be referred to the dispute resolution procedures referenced in Paragraph 19 of this Agreement. Notwithstanding the foregoing, the allocation of cost and/or any revision in the price of Supplemental Water to implement a solution or address the existence of an impairment or significant financial burden as set forth in Paragraph 3(a) shall be solely determined by the Parties on mutually acceptable terms and the dispute resolution procedure shall have no authority to order or impose any change with respect to such terms.

(c) **Effective Date.** The "Effective Date" shall mean the date that the NCSD interconnection described in Paragraph 9 has been completed and approved by City's technical staff as operationally ready for commencement of delivery of Supplemental Water.

(d) **Delivery Year.** Each "Delivery Year" shall commence on the Effective Date and any anniversary thereof during the Term and continue for a period of one (1) year.

4. Quantity of Supplemental Water.

(a) **Minimum Delivery.** In each Delivery Year during the Term of this Agreement, City shall deliver and NCSD shall purchase the following minimum quantity of Supplemental Water ("Minimum Quantity"):

<u>Delivery Years</u>	<u>Minimum Delivery Volume (AFY)</u>
1	645
2-5	800
6-10	1,000
11-Term	2,500

Any portion of the Minimum Quantity of Supplemental Water that is available for delivery by City in accordance with the mutually agreeable to delivery schedule referenced in Paragraph 9(e) and that is not taken by NCSD during a given Delivery Year shall be forfeit and shall not roll over to the next year. In the event that City, in its sole and absolute discretion, agrees to deliver unused Supplemental Water in a subsequent Delivery Year, such late delivery shall be an accommodation to NCSD and shall not constitute a waiver or amendment to the terms of this Agreement.

(b) **Additional Delivery.** NCSD may request delivery of Supplemental Water in excess of the Minimum Quantity up to an additional thirty-two hundred (3,200) acre feet per year. NCSD shall give City no less than thirty (30) days written notice of its desire to purchase additional Supplemental Water and the proposed schedule for such delivery. City shall make a good faith effort to comply with such request subject to (i) the availability of excess Supplemental Water from sources used for delivery of water to City's retail customers; and (ii) sufficient delivery capacity to fulfill such request at the NCSD interconnection using the City's existing water distribution system. Any such additional Supplemental Water shall be purchased and delivered on the same terms as the Minimum Quantity, provided, however, that if the cost of procuring and delivering

additional Supplemental Water exceeds the cost of delivering the Minimum Quantity, City shall have the right to impose a surcharge to compensate City for such additional cost as a condition to delivery. City shall notify NCSD of the amount of any such surcharge prior to delivery of any additional Supplemental Water and NCSD shall have the right to withdraw its request. In no event shall City be required to undertake any capital cost or expansion of its existing infrastructure to provide additional Supplemental Water.

5. **Reservation of Minimum Quantity**. Subject to the terms and conditions of this Agreement, City shall hold on reserve sufficient Supplemental Water each year, including an equivalent amount of capacity in City's water distribution system, for City to fulfill its obligation to deliver the Minimum Quantity to NCSD under this Agreement. City shall deliver such Supplemental Water to NCSD from sources used to provide water to City's retail customers. Notwithstanding the foregoing, during the term of the Agreement, City may substitute or combine new or additional replacement sources of water for the source of Supplemental Water, provided, however, that any substitute, combined or additional sources must be equivalent in deliverability, reliability, quality, pressure, and environmental impacts to the source being replaced. Disputes regarding this Paragraph shall be resolved pursuant to Paragraph 19.

6. **Purchase Price for Supplemental Water**. The purchase price for Supplemental Water delivered by City to NCSD shall be based on the "Base Rate" of the City's Water Consumption Rates. For fiscal year 2012-13, the Base Rate is two dollars and ninety seven cents (\$2.97) per one hundred (100) cubic feet of water (or \$1,293.73 per acre-foot of water). The Base Rate may be adjusted each fiscal year subject to approval by the City Council, consistent with applicable legal requirements. Any such adjustment in the purchase price shall go into effect in the next quarterly billing period.

7. **Costs of Delivery**. Except as expressly set forth in this Agreement, City shall be responsible for all costs and expenses related to providing Supplemental Water to NCSD at the NCSD interconnection pursuant to this Agreement. Notwithstanding the foregoing, the purchase price for Supplemental Water includes a cost component for energy costs incurred by City to supply Supplemental Water to the NCSD interconnection equal to two hundred and six dollars and eighty five cents (\$206.85) per acre foot ("Base Energy Cost"). In the event that the actual cost of energy incurred by City to supply Supplemental Water in any Delivery Year exceeds the Base Energy Cost, then City shall have the right to charge NCSD a premium equal to the difference between the actual cost and the Base Energy Cost. The Base Energy Cost shall be adjusted each Delivery Year by a percentage which is equivalent to fifty (50) percent of the increase or decrease, if any, in the Consumer Price Index-Energy Services (Electricity and Natural Gas)-Los Angeles-Riverside-Orange County or any successor index.

8. **Payments for Supplemental Water**. City shall bill NCSD on a quarterly basis in arrears for Supplemental Water delivered to NCSD's interconnection during the previous three (3) months. The amount payable by NCSD to City shall be based on the total quantity in acre-feet of Supplemental Water delivered during the quarter just ended multiplied by the then-current purchase price (as determined in Paragraph 6), plus any costs payable by NCSD pursuant to this Agreement. Notwithstanding the foregoing, to the extent that NCSD has taken less than the Minimum Quantity as of the final quarterly billing

for a Delivery Year, City shall bill NCSD for the remainder of the Minimum Quantity whether or not such Supplemental Water has been delivered, provided that such water was made available for delivery to NCSD as provided in Paragraph 9. All invoices billed to NCSD shall be payable within thirty (30) days of the invoice date, provided that no charges are disputed. City shall have the right to charge late fees of up to five (5) percent of the overdue amount for any invoice that is not paid within such period. In the event NCSD disputes any charges on an invoice, the undisputed amount shall be paid consistent with this Paragraph and the original invoice shall be returned to City for correction and resubmission. If the parties are unable to reach an agreement regarding disputed charges, disputes shall be resolved pursuant to Paragraph 19.

9. Delivery of Water.

(a) **Point of Delivery.** The physical point of delivery of Supplemental Water pursuant to this Agreement shall be the proposed interconnection between the City water distribution system and the NCSD water distribution system located at Taylor Street and Blosser Road or such other alternative location as may be approved by City and NCSD. All facilities constructed by NCSD will be used solely for the purpose of delivering Supplemental Water to NCSD. NCSD shall cooperate with the reasonable requests of City with respect to taking any action necessary to preserve the integrity of the City's water distribution system and the City shall do likewise for NCSD. The operation and maintenance of the NSCD Interconnection will be detailed in an Operation Memorandum of Understanding that will be approved by the City and NCSD prior to connection. City shall waive any fees for City permits related to construction of facilities for delivery of the water. If the parties cannot agree on the terms of the Operations Memorandum of Understanding then the disputed terms will be subject to the dispute resolution procedures referenced in Paragraph 19 of this Agreement.

(b) **Facilities.** NCSD shall be responsible for designing, constructing and operating the NCSD interconnect. The plans and specifications of the NCSD interconnect shall be subject to prior approval by City, which approval shall not unreasonably be withheld provided that such plans and specifications conform to applicable code provisions and any technical requirements imposed for connections to the City's water distribution system. NCSD shall also be responsible for obtaining any and all regulatory and environmental permits, licenses or other approvals necessary to construct and operate the NCSD interconnection. NCSD and/or any contractor working on the NCSD interconnect shall provide insurance coverage naming the City as an additional insured and the scope of such insurance coverage shall be subject to the reasonable approval of City's Risk Manager prior to commencement of any work.

(c) **Construction, Regulatory/Permit and Other Costs.** NCSD shall be solely responsible for all costs related to the construction and operation of the NCSD interconnection with City's retail water distribution system. NCSD shall also be solely responsible for all regulatory and/or permit compliance and costs with respect to the NCSD interconnection.

(d) **City Streets: License to Use Easements and Rights of Way.** The City shall provide NCSD a license, at no additional cost, to use such portions of City streets,

easements, and right of ways as are reasonably necessary to build the NCSD interconnect and deliver the Supplemental Water to NCSD. Such license shall be non-revocable during the Term of this Agreement and shall automatically terminate upon the termination of this Agreement. The foregoing licenses shall not include the right of NCSD to make any alteration or improvement within such City streets, easements and rights of way except in compliance with Paragraph 9.

(e) **Delivery Schedule.** City will deliver the Supplemental Water to NCSD at the NCSD interconnection upon a mutually agreeable delivery schedule. The volume of delivery to the NCSD interconnection shall not exceed a maximum of two hundred seventy-five (275) acre-feet per month or a peak hour flow averaging twenty-five hundred (2,500) gallons per minute. Delivery pressure at the point of connection shall exceed sixty (60) psi during City's normal system operation, not including emergencies or incidents described in Paragraph 9(f). Before delivery begins, the District and City shall agree to an Operation Memorandum of Understanding (OMOU) to describe the specific procedures and limitation on the operations provided for in this Agreement.

(f) **Force Majeure.** If by reason of acts of God, earthquakes, droughts, floods, storms, explosion, fires, labor troubles, strikes, insurrection, riots, acts of the public enemy, or federal, or state, order, rule, or regulation, the City is prevented, in whole or in part, from the delivery of the Supplemental Water to NCSD, as provided herein, then City may reduce delivery of Supplemental Water up to the same percentage the City reduces water delivery to its retail customers.

(g) **Suspension.** The delivery of water may be suspended or curtailed during any period of public emergency or disaster that is declared by City. For the purposes of this Agreement, a public emergency or disaster shall not include ordinary measures taken during periods of drought or water shortage.

(h) **Obligations of City.** For the purposes of this Agreement and subject the limitations contained in this Paragraph 9, City shall have fulfilled its obligation to make Supplemental Water available for delivery so long as the amount of Supplemental Water purchased by NCSD is available at the NCSD interconnection for NCSD to take delivery of pursuant to a predetermined and mutually agreed upon delivery schedule.

10. **Water Quality.** City shall be responsible for ensuring that the quality of the Supplemental Water made available for delivery is of the same pressure and quality of water that City delivers to its residential customers. The quality of water which is delivered by the City to its residents complies with federal, state and local laws, regulations and permit requirements which are applicable to City, including standards applicable to wastewater discharge, as amended from time to time and subject to any compliance waiver granted to the City ("Quality Standards"). City shall provide NCSD with a copy of the Quality Standards (and any change thereto) which are applicable to City and NCSD shall be solely responsible for ensuring that the Quality Standards meet the federal, state and local laws, regulations and permit requirements for potable water delivery by NCSD to its customers, including the discharge of such water. To the extent that the quality standards which are applicable to NCSD exceed the Quality Standards, then NCSD shall be responsible for any necessary additional treatment of the Supplemental Water. City

agrees to indemnify and hold NCSD harmless from any actual liability which arises as a result of the failure of Supplemental Water which is delivered to the NCSD interconnection to meet the Quality Standards. NCSD shall be solely responsible for any actual liability resulting from a change in water quality following the point of delivery (including any additional treatment undertaken by NCSD) and shall indemnify and hold City harmless from any actual liability which arises from any such change. City and NCSD shall promptly notify the other in the event that either becomes aware of a material adverse change in the quality of the Supplemental Water and shall cooperate to identify the cause of such change.

11. **Remarketing of Supplemental Water.** NCSD shall be free to remarket the Supplemental Water to other Parties within the NMMA without restriction to price and terms. NCSD assumes all responsibility for delivery of Supplemental Water from the NCSD interconnection to its customers and contracting Parties. City's obligations under this Agreement are solely with NCSD and no customer of NCSD nor other third party shall have the right to enforce the terms of this Agreement as a third party beneficiary. City shall not sell water to other parties or persons within NCSD's service area or sphere of influence, as amended from time to time, without first receiving the written approval of NCSD.

12. **Regulatory Requirements.**

(a) **Obligations of the City.** The implementation of this Agreement shall be subject to satisfaction by City of the regulatory requirements set forth herein. City shall, if necessary, undertake the following: (i) Obtain all permits, consents, entitlements and approvals necessary to enable the City to reserve and sell, and NCSD to purchase, the Supplemental Water that is the subject of this Agreement; and (ii) fully and completely comply with the requirements of the California Environmental Quality Act ("CEQA"), including, if it is determined that this transaction is subject to CEQA and not exempt from CEQA. The completion of an initial study, and (1) either (a) there shall have been adopted a negative declaration or a mitigated negative declaration, or (b) a final environmental impact report shall have been completed and certified, and (2) the time shall have expired within which a judicial proceeding may be instituted challenging the validity or completeness of any such determination of exemption, or adoption of a negative declaration or of a mitigated negative declaration, or approval of a final environmental impact report.

(b) **Obligations of NCSD.** NCSD shall be solely responsible for obtaining all regulatory approvals necessary in connection with purchasing and taking delivery of the Supplemental Water.

13. **Service Area Integrity.** Nothing in this Agreement is intended nor shall it be interpreted to waive the right of City to provide water service to current or future areas within or adjacent to its existing service area.

14. **Representations or Warranties of City.** City makes the following representations, warranties, and covenants to NCSD:

(a) **Power and Authority to Execute and Perform this Agreement.** The City has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

(b) **Availability of Resource.** Based on information which is currently known to City and City's current forecast of future use, on a long-term basis, City has water and the necessary infrastructure available to fulfill City's obligations under this Agreement that is surplus to that needed to serve City's current and long-term future anticipated demand.

(c) **Enforceability.** This Agreement constitutes a legal, valid, and binding obligation of the City, and is enforceable against the City in accordance with its terms.

15. **Representations or Warranties of NCSD.** NCSD makes the following representations, warranties, and covenants to City:

(a) **Power and Authority to Execute and Perform this Agreement.** NCSD has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

(b) **Enforceability.** This Agreement constitutes a legal, valid, and binding obligation of NCSD, enforceable against NCSD in accordance with its terms.

16. **Default and Termination by City.** In the event NCSD fails to make any payment to City under this Agreement when due, or fails to perform any obligation otherwise required by this Agreement, City shall demand in writing that NCSD cure such non-performance. NCSD shall have thirty (30) days after receipt of such demand to cure. In the event NCSD fails to cure a default within the thirty (30) day period, City may suspend delivery of Supplemental Water and redirect such water to other uses for the duration of the suspension. City shall restore water delivery when NCSD has cured all outstanding defaults and paid all amounts due to the City in full. In the event that NCSD does not cure a default within one (1) year of suspension, then City may terminate this Agreement at any time thereafter.

17. **Default and Termination by NCSD.** NCSD shall have the right to terminate this Agreement, without recourse, if (i) the City is found to be in material breach of its obligations to deliver the Supplemental Water as set forth in this agreement; or (ii) upon written notice to City that NCSD is unable to pay for the Supplemental Water due to the majority protest procedures or other procedures referenced in Proposition 218; or (iii) upon three (3) years prior written notice to City, provided, however, that no such termination without cause shall become effective until the thirtieth (30th) anniversary of the Effective Date.

18. **Expiration of Term.** This Agreement shall terminate and be of no further force and effect as of the expiration of the Term.

19. **Dispute Resolution.** Except as otherwise limited by this Agreement, any dispute arising under this Agreement, including, without limitation, all disputes relating in any manner to the performance or enforcement of this Agreement, shall be resolved by

binding arbitration in the County of Santa Barbara, California, pursuant to the comprehensive arbitration rules and procedures of Judicial Arbitration and Mediation Services ("JAMS") or any successor thereto, as amended or as augmented in this Agreement (the "Rules"). Arbitration shall be initiated as provided by the Rules, although the written notice to the other party initiating arbitration shall also include a description of the claim(s) asserted and the facts upon which the claim(s) are based. Arbitration shall be final and binding upon the parties and shall be the exclusive remedy for all claims subject hereto, including any award of attorney's fees and costs. Either party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. All disputes shall be decided by a single arbitrator. The arbitrator shall be selected by mutual agreement of the parties within thirty (30) days of the effective date of the notice initiating the arbitration. If the parties cannot agree on an arbitrator, then the complaining party shall notify JAMS and request selection of an arbitrator in accordance with the Rules. The arbitrator shall have only such authority to award equitable relief, damages, costs, and fees as a court would have for the particular claim(s) asserted. In no event shall the arbitrator award punitive damages of any kind. The parties acknowledge that one of the purposes of utilizing arbitration is to avoid lengthy and expensive discovery and allow for prompt resolution of the dispute. The arbitrator shall have the power to limit or deny a request for documents or a deposition if the arbitrator determines that the request exceeds those matters which are directly relevant to the claims in controversy. The parties may make a motion for protective order or motion to compel before the arbitrator with regard to the discovery, as provided in the Code of Civil Procedure. Notwithstanding the election by the parties to arbitrate their disputes, nothing contained herein shall prevent a party from filing an action in a court of competent jurisdiction to seek any form of equitable remedy or relief.

20. **Indemnity.** NCSD, its successors and assigns, shall hold harmless, defend and indemnify City, its officials, employees, agents, successors and assigns (all of which are herein referred to as the "City Indemnified Parties") from and against all liabilities, obligations, claims, damages, losses, actions, judgments, suits, costs and expenses, including but not limited to reasonable attorneys' fees (collectively, "Damages"), which may be imposed on, incurred by, or asserted against City Indemnified Parties as a result of (i) a breach of NCSD's obligations; or (ii) the conduct of NCSD's operations associated with the NCSD interconnection to City's retail distribution system and the subsequent delivery of Supplemental Water to NCSD's customers. Notwithstanding the foregoing, in no event shall NCSD be liable to indemnify a City Indemnified Party for (i) any Damages resulting from the negligence or willful misconduct of City; (ii) any third party claim brought in connection with regulatory approvals; or (iii) any claim brought in connection with the quality of the Supplemental Water as provided in Paragraph 10 above. This indemnification shall survive termination of the Agreement.

21. **Third Party Claims.** Promptly following notice of any "Third Party Claim" for which City is indemnified hereunder, City shall notify NCSD of such claim in writing. NCSD shall have a period of thirty (30) days following the receipt of such notice to notify City of whether NCSD elects to assume the defense thereof. If NCSD so notifies City that it elects to assume the defense, NCSD thereafter shall undertake and diligently pursue the defense of the Third Party Claim. NCSD shall not consent to entry of a judgment or enter into any settlement agreement, without the consent of City, which does not include a

complete and unconditional release of City or which imposes injunctive or other equitable relief against City. City shall be entitled to participate in, but not control, the defense thereof, with counsel of its choice and at its own expense. If NCSD does not give the requisite notice, or fails to assume and diligently pursue the defense of such Third Party Claim, City may defend against such Third Party Claim in such manner as it may deem appropriate, at NCSD's expense, including without limitation settlement thereof on such terms as City may deem appropriate, and to pursue such remedies as may be available to City against NCSD. Notwithstanding the foregoing, City shall not consent to entry of a judgment or enter into any settlement agreement, without the consent of NCSD, which does not include a complete and unconditional release of NCSD.

22. **Notice of Claims.** The Parties shall promptly notify each other within ten (10) days of City or NCSD becoming aware of: (1) any claims or suits brought against City or NCSD which involve this Agreement or water supplied to NCSD pursuant to this Agreement, (2) any Third Party Claims, and (3) any force majeure event. Any such notice shall conform to the requirements specified in Paragraph 28 of this Agreement.

23. **Remedies Not Exclusive.** Remedies provided in this Agreement for enforcement of its terms are intended and shall be construed as cumulative rather than exclusive and shall not be deemed to deprive either Party from also using any other remedies provided by this Agreement or by law.

24. **No Transfer of Rights.** The rights granted to NCSD hereunder constitute the right to take delivery of Supplemental Water only and shall not be interpreted as a sale, transfer, or assignment of any of City's water rights.

25. **Subject to Applicable Law.** The Parties acknowledge and agree that this Agreement and the rights and obligations of the Parties shall be subject to the laws governing municipal corporations and special districts as they now exist and as they may be amended or codified by the Legislature of the State of California.

26. **Entire Agreement.** This Agreement contains the entire understanding between NCSD and City with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between NCSD and City. This Agreement cannot be amended except in writing signed by both Parties.

27. **No Waiver.** Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

28. **Notices.** All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one (1) day after being deposited for next day delivery with an overnight courier. Each such notice or communication shall be addressed to the Parties at their respective addresses set forth

next to their signatures below, or such other address as a Party notifies the other in writing.

29. **Headings; Paragraph References.** Captions and headings appearing in this Agreement are inserted solely as reference aids for the ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

30. **Separability.** If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

31. **Binding Effect Assignment.** This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. NCSD shall have the right to assign its rights under this Agreement with the written consent of City, provided, however, that the City shall not unreasonably withhold such consent and further provided that the assignee agrees to be bound by all of the obligations of NCSD set forth herein. Notwithstanding the foregoing, no assignment permitted hereunder shall permit the delivery of Supplemental Water to any property or development other than the Property without the written consent of the City, in its sole and absolute discretion.

32. **Opinions and Determinations: Good Faith.** Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review or determination of either party hereto, such terms are not intended to and shall never be construed to permit such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable. The City and the NCSD shall each act in good faith in performing their respective obligations as set forth in this Agreement.

33. **Incorporation of Recitals.** Recitals A through F are incorporated herein by reference as though set forth at length.

34. **Attorneys Fees.** In the event that any legal proceeding other than the dispute resolution procedures referenced in Paragraph 19, above, is brought to enforce one or more of the terms of this Agreement, to restrain an alleged violation of this Agreement, or to determine the validity of this Agreement or any part, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If both Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the court.


35. **Governing Law and Venue.** This Agreement is a contract governed in accordance with the laws of the State of California. THE PARTIES HEREBY AGREE THAT VENUE FOR ANY ACTION BROUGHT TO ENFORCE THE TERMS OF THIS AGREEMENT SHALL BE IN A COURT OF COMPETENT JURISDICTION IN THE

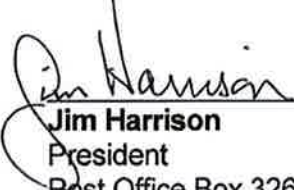
COUNTY OF SANTA BARBARA OTHER THAN A COURT LOCATED WITHIN THE CITY OF SANTA MARIA OR THE NORTHERN PORTION OF SANTA BARBARA COUNTY, CALIFORNIA, AND CONSENT TO THE JURISDICTION THEREOF.

IN WITNESS WHEREOF, the Parties have executed this agreement as of the date first written above.

CITY:
City of Santa Maria, a California
municipal corporation and charter city


NCSD:
Nipomo Community Services District,
a California public agency

By: 
Name: Richard G. Sweet, P.E.
Title: Director of Utilities
Address: 2065 East Main Street
Santa Maria, CA 93454
Fax: (805) 928-7240
Phone: (805) 925-0951 ext. 7211

By: 
Name: Jim Harrison
Title: President
Address: Post Office Box 326
Nipomo, CA 93444
Fax: (805) 929-1932
Phone: (805) 929-1133

APPROVED AS TO FORM:
Best, Best & Krieger LLP

APPROVED AS TO FORM:
District Counsel

By: 
Jill Willis, Partner

By: 
Michael W. Seitz, District Counsel

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF SANTA MARIA)


I, RHONDA M. GARIETZ, CMC, Chief Deputy City Clerk of the City of Santa Maria and ex officio Clerk of the City Council DO HEREBY CERTIFY that the foregoing is a full, true and correct copy of Resolution No. 2013-40 which was duly and regularly introduced and adopted by said City Council at a regular meeting held May 7, 2013, and carried on the following vote:

AYES: Councilmembers Boysen, Green, Orach, Zuniga,
 and Mayor Patino.

NOES: None.

ABSENT: None.

ABSTAIN: None.



Chief Deputy City Clerk
of the City of Santa Maria and
ex officio Clerk of the City Council



CITY OF SANTA MARIA
OFFICE OF THE CITY MANAGER
Records/City Clerk, Ext. 306

110 EAST COOK STREET, ROOM #3 • SANTA MARIA, CA 93454-5190 • 805-925-0951 • FAX 805-925-2243 • www.ci.santa-maria.ca.us

May 10, 2013

RECEIVED

MAY 13 2013

NIPOMO COMMUNITY
SERVICES DISTRICT

Jim Harrison
Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444

RE: WHOLESALE WATER SUPPLY AGREEMENT WITH NIPOMO COMMUNITY SERVICES DISTRICT (NCSD)

Dear Mr. Harrison:

At its regular meeting held on Tuesday, May 7, 2013, the City Council of the City of Santa Maria entered into an Agreement with Nipomo Community Services District ("NCSD") an independent special district formed under and pursuant to Section 61000, et seq. of the California Government Code. Enclosed are two execution originals of the Agreement.

Please sign the Agreements where indicated. Once you have done so, please return one fully executed original to me in the enclosed self-addressed envelope. You should retain one fully executed original for your records.

A certified copy of the Resolution approving the agreement is also enclosed for your records. Should you have any questions regarding the Council's action, please do not hesitate to contact this office at 805-925-0951, Ext. 307 or the Utilities Department at Ext. 7211.

Sincerely,

Rhonda M. Garietz, CMC
Chief Deputy City Clerk

Enclosure: Wholesale Water Supply Agreement x2
Resolution - Certified

pc: Utilities Department

Appendix C: Supplemental Water Management and Groundwater Replenishment Agreement

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NIPOMO SUPPLEMENTAL WATER PROJECT
SUPPLEMENTAL WATER MANAGEMENT AND GROUNDWATER
REPLENISHMENT AGREEMENT

This Nipomo Supplemental Water Project Supplemental Water Management and Groundwater Replenishment Agreement ("Agreement") is made this 16th day of ~~September~~ ^{October}, 2015, between the Nipomo Community Services District, Rural Water Company, The Woodlands Mutual Water Company of San Luis Obispo County and Golden State Water Company with regards to the following facts:

I. RECITALS:

A. The Nipomo Community Services District ("NCS D") is a public entity, independent special district organized and operated pursuant to Govt. Code section 61000 et seq. NCS D provides water and related services within the NCS D boundary located in the southern portion of San Luis Obispo County, within an area generally referred to as the Nipomo Mesa.

B. Golden State Water Company ("GSWC") is a California corporation and a public utility water corporation as defined by Public Utilities Code §§ 216 and 241 providing water service to customers within the Nipomo Mesa subject to California Public Utilities Commission ("PUC") regulation.

C. Rural Water Company ("RWC") is a California corporation and a public utility water corporation as defined by Public Utilities Code §§ 216 and 241 providing water service to customers within the Nipomo Mesa subject to PUC regulation.

D. The Woodlands Mutual Water Company of San Luis Obispo County ("WMWC") is a California corporation and a mutual water company providing water service to its shareholder – customers within the Nipomo Mesa.

E. Collectively, GSWC, RWC and WMWC, are referred to as the "Water Companies" and individually as a "Water Company". NCS D, GSWC, RWC and WMWC are collectively referred to as the "Parties" and individually as a "Party".

F. The Parties, along with hundreds of other individuals and entities are parties to a certain legal proceedings entitled "*Santa Maria Valley Water Conservation District v. City of Santa Maria, et al.*", Superior Court of the State of California, County of Santa Clara, Consolidated Cases CV770214 ("Santa Maria Litigation"), regarding the respective rights of the litigants to groundwater resources in the Santa Maria Groundwater Basin ("Basin").

G. After lengthy proceedings, the court entered an amended judgment

("Judgment") on April 17, 2014, which provides for the long-term management of the Basin water resources.

H. The court retained jurisdiction over the Judgment to ensure the parties manage the Basin water resources consistently with the Judgment.

I. Incorporated into and made a part of the Judgment is a Stipulation dated June 30, 2005 ("Stipulation"), which establishes a detailed management plan for three subareas within the Basin. The Nipomo Mesa is included in the subarea called the Nipomo Mesa Management Area ("NMMA").

J. The Judgment (through the Stipulation) requires NCSD to purchase and transmit to the NMMA a minimum of 2,500 acre-feet of "Nipomo Supplemental Water" each year. NCSD is further required to employ its best efforts to timely implement the Nipomo Supplemental Water Project (NSWP).

K. The Judgment further provides that once the Nipomo Supplemental Water is capable of being delivered, the Parties shall purchase the following portions of the Nipomo Supplemental Water each year to offset groundwater pumping within the NMMA.

Entity	Percent Allocation	AFY (2,500 AF NSWP Yield)
NCSD	66.68	1667.00
GSWC	8.33	208.25
RWC	8.33	208.25
WMWC	16.66	416.50
Total	100.00	2500.00

L. NCSD has entered into a Wholesale Water Supply Agreement with the City of Santa Maria (City), dated May 7, 2013, ("NCSD-City Agreement," attached and incorporated as Exhibit "A"). The NCSD-City Agreement provides a mechanism through which NCSD may purchase Nipomo Supplemental Water for sale and distribution in the NSWP, consistent with the obligations in the Judgment.

M. NCSD has completed construction of the first stage of the NSWP such that NCSD is taking delivery of Nipomo Supplemental Water as of July 1, 2015. The additional stages of the NSWP to allow increased water delivery of a minimum of 2,500 AFY, as required under the Judgment, are currently being planned.

N. On or about June 25, 2015, the PUC approved GSWC's acquisition of RWC. Upon completion of GSWC's acquisition of RWC, GSWC will assume the entirety of RWC's benefits and obligations under this Agreement.

O. NCSD has designed the NSWP to deliver 3,000 AFY. All costs associated with

the capacity in excess of 2,500 AFY are solely assigned to NCSD. Should the Parties, or any faction thereof, elect to expand NSWP facilities to deliver water in excess of 3,000 AFY, further negotiation and agreement among the participating Parties will be required.

P. The purpose of this Agreement is to implement the Parties' obligations with respect to the NSWP as provided in the Stipulation and the Judgment.

In consideration of the foregoing recitals that are incorporated herein by reference and the mutual terms and conditions set forth herein, the Parties agree as follows:

II. DEFINITIONS:

Terms used herein with initial capitalization, whether in singular or plural, shall have the following meanings:

A. "AFY" shall mean acre-feet per year.

B. "Costs" shall mean all the administrative, planning, design, permitting, capital, financing, construction, operation, maintenance, repair, replacement and overhead allocation costs associated with and arising out of the construction and ongoing operation of the NSWP, excluding costs of Points of Interconnection, which shall be funded as provided in Section VII. Costs shall include both actual expenses and reasonably anticipated NSWP related expenses expected to be incurred for the completion of the NSWP and for the ongoing operations of the NSWP. Costs include future financing of phases of the NSWP and future changes in water costs resulting from renegotiation of the NCSD-City Agreement.

C. "Effective Date" shall mean July 1, 2015.

D. "Fiscal Year" shall mean the twelve (12) month period commencing each July 1st during the term of this Agreement and ending the following June 30th.

E. "NSWP Enterprise Fund" shall mean the NSWP Enterprise Fund used by NCSD to account for, budget and track the Costs.

F. "Judgment" shall mean the amended judgment entered by the Court in that case entitled *Santa Maria Valley Water Conservation District v. City of Santa Maria, et al.*, Superior Court of the State of California, County of Santa Clara, consolidated cases CV770214.

G. "NCSD-City Agreement" shall mean the agreement between the City of Santa Maria and Nipomo Community Services District titled "Wholesale Water Supply Agreement," dated May 7, 2013.

H. "Nipomo Mesa Management Area" or "NMMA" shall mean the area so defined and described in the Judgment.

I. "Nipomo Supplemental Water" shall mean up to 2,500 AFY of water delivered within the NMMA to offset groundwater pumping.

J. "Nipomo Supplemental Water Project" or "NSWP" shall mean the facilities and appurtenances, including each Point of Interconnection, necessary to deliver Nipomo Supplemental Water as provided in Section VI.(A) of the Stipulation.

K. "NMMA Technical Group" is the group formed pursuant to the requirements of the Stipulation and Judgment.

L. "Point of Interconnection" shall mean those components of the NSWP extending from NCSD's water distribution system to each Water Company through which Nipomo Supplemental Water may be delivered to each Water Company.

M. "Prudent Utility Practice" shall mean the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts (including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the water utility industry prior thereto) known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety, and expedition, taking into account the fact that Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods, or acts which could have been expected to accomplish the desired result. Prudent Utility Practice includes due regard for manufacturers' warranties and requirements of agencies of competent jurisdiction.

N. "PUC" shall mean the California Public Utilities Commission, the entity with regulatory oversight responsibility for RWC and GSWC.

O. "PUC Application" shall mean those materials and testimony required so that GSWC and RWC may obtain PUC approval adequate to satisfy the conditions subsequent set forth in Section V below.

P. "Stipulation" shall mean the agreement dated June 30, 2005, by and between the majority of the litigants in the Santa Maria Litigation, settling their disputes and imposing a physical solution on the management of water resources in the Santa Maria Basin. The Stipulation is incorporated in and is a part of the Judgment.

Q. "Uncontrollable Force" shall mean any cause or event which is beyond the control of the Party affected, including, but not restricted to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute or strike, labor or material shortage, sabotage, restraint by court order or public authority and action or non-action by or

failure to obtain the necessary authorizations or approvals from any governmental agency or authority which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome.

III. PURPOSE:

A. The purpose of this Agreement is to enable the Parties to meet their respective obligations under the Judgment, based on the percentage allocations presented in Section I.K, regarding the NSWP. In particular, the Parties intend this Agreement to provide for: (1) payment to NCSD for each Party's allocation of Costs, and (2) distribution and use of Nipomo Supplemental Water.

B. The underlying premise of the NSWP is to use Nipomo Supplemental Water within the NMMA to offset 2,500 AFY of groundwater pumping in those areas within the NMMA where groundwater levels are most depressed and thus augment the replenishment of groundwater in those critical areas within the NMMA. As described herein, the Parties will use the Nipomo Supplemental Water to increase groundwater replenishment within the NMMA and improve the long-term reliability and integrity of groundwater availability within the NMMA. The Nipomo Supplemental Water delivered to the Parties pursuant to this Agreement shall be used exclusively for the benefit of properties within the existing jurisdictions and service areas of the Parties and in accordance with the Judgment and Stipulation.

IV. EFFECTIVE DATE AND TERM:

A. This Agreement shall be effective on July 1, 2015 and shall terminate on June 30, 2085 ("Term").

B. Notwithstanding the Term, the delivery of Nipomo Supplemental Water to the Parties subsequent to June 30, 2035, is subject to the renewal of the contract for state water between the City and the Central Coast Water Authority. The NCSD-City Agreement provides that it is subject to renegotiation in the event that the City's contract with the Central Coast Water Authority is not renewed as of June 30, 2035 or if the renewal terms would create a significant financial burden to the City or impair the ability of the City to provide Nipomo Supplemental Water in the quantities set forth in the NCSD-City Agreement.

C. Should renegotiation of the NCSD-City Agreement be required, NCSD and the City are required to negotiate and use their best efforts to equitably amend the terms of the NCSD-City Agreement to allow for the continued delivery of Nipomo Supplemental Water on terms mutually beneficial to both parties for the duration of the Term. NCSD will consult and confer with the Water Companies prior to entering into any material amendments to the NCSD-City Agreement.

D. Obligations incurred hereunder but not satisfied prior to termination of this Agreement shall survive such termination until fully discharged, including any payments due by one Party to another Party hereunder.

V. CONDITIONS SUBSEQUENT:

This Agreement shall terminate and shall be of no further force and effect as to either or both GSWC and RWC, subject to the following conditions.

A. As promptly as is reasonably practicable and in no event later than October 30, 2015, GSWC shall apply for PUC approval for imposition of the necessary rate adjustments so that GSWC may meet its financial obligations provided under this Agreement. GSWC shall provide NCSD with written notice of the satisfaction or waiver of this provision. If GSWC fails to obtain this PUC approval, through a PUC decision or order that is no longer subject to appeal, on or before December 31, 2017, either NCSD or GSWC may, each in its sole discretion, declare a failure to satisfy this condition and terminate this agreement as to GSWC. If either NCSD or GSWC exercises this termination right, the provisions of Article X(D)(1) of the Stipulation shall apply.

B. As promptly as is reasonably practicable and in no event later than October 30, 2015, RWC shall apply to for PUC approval for imposition of the necessary rate adjustments so that RWC may meet its financial obligations provided under this Agreement. RWC shall provide NCSD with written notice of the satisfaction or waiver of this provision. If RWC fails to obtain this PUC approval, through a PUC decision or order that is no longer subject to appeal, on or before December 31, 2017, either NCSD or RWC may, each in its sole discretion, declare a failure to satisfy this condition and terminate this agreement as to RWC. If either NCSD or RWC exercises this termination right, the provisions of Article X(D)(1) of the Stipulation shall apply.

C. The Parties shall make every reasonable business effort to coordinate and cooperate in providing any necessary data, information and testimony to support the PUC approval processes contemplated in this Section.

D. GSWC and RWC shall each be responsible for its own PUC Application. However, each entity expects its PUC Application to be substantially the same in its content. Each PUC Application shall include a request for full financial participation in the NSWP as provided in this Agreement, as of the Effective Date. RWC and GSWC shall make their reasonable best efforts to obtain a prompt and reasonable response to the PUC Application from the PUC, including making every reasonable attempt to reach an acceptable settlement of the PUC Application in lieu of processing the PUC Application through a contested administrative hearing at the PUC. The Parties acknowledge that obtaining PUC approval of each PUC Application may take 12 months or more, following the date of submission of the PUC Application, and that neither GSWC nor RWC have control over the time it takes the PUC to process and

resolve each PUC Application. Notwithstanding the Effective Date, neither GSWC's, nor RWC's financial obligations provided in this Agreement accrue and are enforceable as to either entity, unless and until the PUC provides GSWC and RWC approval to make the necessary customer water rate adjustments equal to each entity's respective share of the Costs provided in this Agreement as of the Effective Date and otherwise consistent with Section IX.B.

E. Until the conditions subsequent in this section are satisfied with written notice, or waived, neither NCSD, RWC, nor GSWC waive their rights to exercise the provisions of Article X(D)(1) of the Stipulation.

VI. USE OF NIPOMO SUPPLEMENTAL WATER.

NCSD shall be responsible for the distribution and use of the Nipomo Supplemental Water between and among the Parties subject to the following:

A. Subject to the groundwater management and recharge protocols provided in this Agreement, the presumed quantity and rate of delivery of Nipomo Supplemental Water for each Party shall be as provided in the table below, based upon an assumed delivery of 2,500 AFY. To the extent Nipomo Supplemental Water is not available for delivery at the volumes or rates shown, each Party's deliveries shall be reduced on a proportional basis. To the extent the implementation of groundwater management and recharge protocols provide for alternative deliveries, each Party shall be responsible for its portion of the Costs as otherwise provided in this Agreement.

Entity	Annual (AF)	Quarterly (AF)	Maximum per Month (AF)
NCSD	1668	417	139
GSWC	208	52	17
RWC	208	52	17
WMWC	416	104	35

B. The highest priority use of Nipomo Supplemental Water shall be to offset groundwater pumping within those regions within the NMMA where depressed groundwater levels exist.

C. Provided that such reduction does not materially and adversely affect its ability to provide water for the reasonable and beneficial use of its customers, for each AF of the 2,500 AFY Nipomo Supplemental Water used within the NMMA, the user shall reduce its groundwater pumping by the same amount. The Parties shall develop a method of confirming this reduction in groundwater use.

D. Over the term of this Agreement, the Advisory Committee (as defined in XII.A) shall periodically meet and confer with the NMMA Technical Group regarding the distribution of the Nipomo Supplemental Water between the Parties, given the priority

specified in subsections VI.A and B, above. Based on the input from the Advisory Committee and the NMMA Technical Group, the status of Points of Interconnection as provided in the Section VII.A below and other relevant hydrologic conditions, NCSD shall determine the distribution of Nipomo Supplemental Water among the Parties. NCSD shall make its determination regarding the distribution of Nipomo Supplemental Water, following the consultation described in this subsection and based upon a reasonable, good faith interpretation of how best to manage the then existing hydrologic conditions within the NMMA, the availability of Nipomo Supplemental Water and the ability to rely on existing Points of Interconnection and establish a new Point of Interconnection with RWC, if one has not yet been established.

E. Pursuant to section VI(B)(3) of the Stipulation, provided WMWC is concurrently using or has made arrangements for other Parties to use within the NMMA the Nipomo Supplemental Water allocated to the WMWC under Section VI(A), above, WMWC shall not be subject to restriction in the reasonable and beneficial use of groundwater necessary for full development of its service area; provided however, nothing in this Agreement is intended to modify or amend the benefits and obligations provided in the Stipulation and the Judgment applicable to WMWC, or the court's retained jurisdiction pursuant to the Stipulation and the Judgment.

VII. POINTS OF INTERCONNECTION, CONTROL AND MEASUREMENT OF NIPOMO SUPPLEMENTAL WATER DELIVERIES.

A. Point(s) of Interconnection. As of the Effective Date, NCSD's water system is interconnected with GSWC and WMWC water systems. Each of these existing interconnections will require improvements, and possibly reconstruction, to be fully functional "Point(s) of Interconnection." No Point of Interconnection is in place between NCSD and RWC. If, pursuant to Section VI.D, the Parties determine each or all Points of Interconnection are necessary to make optimal use of Nipomo Supplemental Water, NCSD and each Water Company shall develop the most cost effective design and arrange for the construction of the Points of Interconnection as promptly as practical. The Cost of each Point of Interconnection, including the improvements required for existing Points of Interconnection with WMWC and GSWC, shall be incorporated into the NSWP Costs and NSWP Enterprise Fund as provided in this Agreement. The Parties acknowledge and agree that the Point of Interconnection with RWC, if and when established, will be included as a component of the NWSP. However, the Parties agree that allocation of Costs for the pipeline portion of the RWC Point of Interconnection may differ from the allocation set forth in Section I.K above, to be agreed upon by the Parties once those Costs are determined. The Costs for the RWC Point of Interconnection, excluding the Costs of the pipeline portion of the RWC Point of Interconnection, shall be shared consistent with the allocation set forth in Section I.K in a magnitude equivalent to that included in the Costs for the WMWC and GSWC Points of Interconnection.

B. Each Point of Interconnection shall include flow control and metering devices

used to control and measure the delivery of Nipomo Supplemental Water at the Point of Interconnection. Each Point of Interconnection and the appurtenant facilities shall be considered part of the NSWP and shall be owned, operated and maintained by NCSD.

C. NCSD shall arrange for the inspection and testing of the metering devices at least once per calendar year, unless more frequent testing and inspection is appropriate as a result of repairs to or replacements of a metering device. NCSD shall provide reasonable advance notice to and coordinate with each Water Company to accomplish required testing or inspection activities.

D. The operation and maintenance of any Point of Interconnection will be detailed in an Operation Memorandum of Understanding that will be approved by the NCSD and other affected parties prior to connection. If the Parties cannot agree on the terms of the Operations Memorandum of Understanding then the disputed terms will be subject to the dispute resolution procedures referenced in XII of this Agreement.

VIII. NSWP ENTERPRISE FUND BUDGET:

A. NCSD shall operate the NSWP as an enterprise fund ("NSWP Enterprise Fund"), separating all Costs related to the NSWP within and only to that NSWP Enterprise Fund. Prudent Utility Practices shall apply to NCSD's management of the NSWP Enterprise Fund and the NSWP.

B. Each Fiscal Year NCSD shall prepare a NSWP Enterprise Fund Budget ("Budget") for all revenues and expenditures related to the NSWP Enterprise Fund. The Budget shall include a summary of projected Nipomo Supplemental Water deliveries and the Costs associated with those deliveries. A draft of the Budget shall be available to each Water Company for review by May 1st of each year. NCSD shall make every reasonable effort to adopt the final Budget during June of each year at a regularly scheduled NCSD board meeting. The Advisory Committee shall determine the most effective content, format and reporting frequency for financial and budget reports for the NSWP Enterprise Fund.

C. The Budget shall provide the basis for and detail the cost allocations and quarterly billings described in Section IX.

D. Unless the Parties agree otherwise, every five years, a third party expert accounting firm shall perform an overhead allocation analysis for NCSD, including the NSWP Enterprise Fund. The overhead allocation recommendations of that study shall be applied in the next annual budgeting cycle for the NSWP Enterprise Fund. The cost of this study shall be included in the administrative overhead allocated to the NSWP Enterprise Fund. The Advisory Committee shall appoint the accounting firm to perform the overhead allocation analysis.

E. The Water Companies acknowledge and agree that NCSD has incurred

NSWP Supplemental Water Management and Groundwater Replenishment Agreement

Page 9 of 20

substantial Costs related to the completed portions of the NSWP as of the Effective Date and will incur additional Costs to complete the NSWP. These costs include, but are not limited to, planning, environmental reviews, legal fees, acquisition of easements, an assessment election, and the construction and financing of the primary distribution pipeline extending from the City to NCSD facilities and future stages of the NSWP project. These Costs have been funded by NCSD, with very limited contributions from the Water Companies.

F. The Budget shall include the amortized recovery of the NSWP capital costs (whether funded by NCSD with internal funds or borrowed funds) attributable to each Water Company, pursuant to Section I.K above, plus interest on the unamortized balance of such costs. The capital costs to be amortized in each Budget shall include amounts expended to date and the additional costs necessary to complete the NSWP. NCSD shall not recover interest on the capital portion of NSWP Costs that are funded through the use of NSWP Enterprise Fund assets or reserves.

G. The amortization period for capital costs shall be 30 years beginning July 1, 2015. Interest will be charged monthly on the remaining unamortized balance as of the prior month end.

H. Each Water Company may elect to make early payments of its amortized portion of the capital costs and such early payments shall be credited against the capital obligation of that Water Company.

I. The interest rates to be charged to each Water Company will be determined as follows:

1. For GSWC and RWC, the interest rate charged will be equal to the interest rate on amounts NSCD has borrowed to finance a portion of the project Costs plus one-half of one percent. In the event GSWC's credit rating drops materially below its current rating of A+, and such change would have a material impact on any expected borrowing or financial security related to the NSWP Enterprise Fund, the interest rate charged will be subject to renegotiation between GSWC, RWC and NCSD. The interest specified in this subsection applicable to RWC is predicated on expectation that GSWC will complete its acquisition of RWC prior to the PUC approval of this Agreement. The interest rate and security assurance applicable to RWC's capital obligation shall be subject to renegotiation should GSWC fail to complete its acquisition prior to the PUC's approval of this Agreement.

2. For WMWC, the interest rate charged will be equal to the interest rate on amounts NSCD has borrowed to finance a portion of the project Costs plus two percent. In the event there is a material change in WMWC's financial condition, the interest rate charged will be subject to renegotiation between NCSD and WMWC. WMWC acknowledges that its agreement to amend its bylaws to authorize recordation and enforcement of liens under Corporations

Code § 14304 (“Section 14304 Lien Rights”) constitutes a material inducement to NCSD to forego other forms of security for repayment of WMWC’s capital obligations, and agrees that it shall not subsequently revise its bylaws to relinquish its Section 14304 Lien Rights without having previously agreed to provide alternate security reasonably acceptable to NCSD.

3. In the event NCSD makes additional borrowings to finance subsequent stages of the NSWAP, the interest rates charged GSWC, RWC and WMWC will be adjusted based on the weighted average of the interest rates attributable to unamortized balances of prior stages of the NSWAP and the interest rate attributable to the capital costs of the new stage.

J. The NSWAP Enterprise Fund shall include a funded replacement reserve (“NSWAP Enterprise Fund Reserve”) to accumulate funds for the future replacement of NSWAP equipment and facilities. The initial NSWAP Enterprise Fund Reserve amount shall be set at one percent of total project Costs. Thereafter, the NSWAP Enterprise Fund Reserve shall be increased annually based upon the percentage increase in the Consumer Price Index (CPI) – All Urban Consumers (Los Angeles-Riverside-Orange Co., CA area) for the immediately preceding calendar year, subject to the following.

1. The maximum balance in the NSWAP Enterprise Fund Reserve shall be \$3,000,000. The NSWAP Enterprise Fund Reserve maximum shall be increased annually based upon the percentage increase in the Consumer Price Index (CPI) – All Urban Consumers (Los Angeles-Riverside-Orange Co., CA area) for the immediately preceding calendar year. Once the balance in the NSWAP Enterprise Fund Reserve reaches the maximum then in effect, the annual reserve shall cease to be collected until such time as the NSWAP Enterprise Fund Reserve balance drops below the maximum. Should required expenditures exceed the balance then in the NSWAP Enterprise Fund Reserve, the Advisory Committee will establish a plan for funding the deficit in a timely manner. The maximum balance in the NSWAP Enterprise Fund Reserve may be increased or decreased subject to unanimous approval by the Advisory Committee.

2. Subject to approval by the Advisory Committee, the balance in the NSWAP Enterprise Fund Reserve can be used to fund extraordinary unbudgeted operations and maintenance expenses in those cases where the NSWAP Enterprise Fund does not have sufficient operating funds to cover the expenditure.

3. Interest income earned on the NSWAP Enterprise Fund Reserve shall remain in the NSWAP Enterprise Fund.

IX. RATES AND CHARGES: Based on the Budget, NCSD shall allocate Costs to and invoice the Water Companies as follows:

A. Each Water Company shall be responsible for its share of the Costs of Nipomo Supplemental Water and the NSWP based on the pro-rata shares of the NSWP as provided in Section I.K and the Budget. The Cost allocations shall take into account all Costs for the NSWP. An energy (pumping) credit shall be provided to each Party for any portion of its Nipomo Supplemental Water not delivered directly to that Party, but instead used by another Party pursuant to Section VI.

B. During the term of this Agreement, and where applicable subject to the jurisdiction and approval by the PUC, each Water Company shall charge and collect rates and charges for the water services furnished in its service area which will yield gross revenues sufficient to pay all costs of operating and maintaining the water system within the designated area, including all payments due under this Agreement, as they become due and payable.

C. Following each calendar quarter, NCSD shall provide a written invoice to each Water Company for its share of the Costs during the prior quarter. All invoices will be payable within thirty (30) days of delivery of the invoice. NCSD shall have the right to charge late fees of up to five (5) percent of the overdue amount for any invoice that is not paid within such period.

D. Until such time as GSWC and RWC receive approval from the PUC as provided in Section V, NCSD will not charge late fees on outstanding GSWC and RWC invoices; however, interest will accrue on outstanding charges at the rate specified in Section VIII.

E. In the event a Party disputes any charges on an invoice, the undisputed amount shall be paid and no late fee will be assessed pending resolution of the disputed amount. Along with payment of the undisputed amount, the Party shall provide a detailed written description of the nature and amount in dispute. NCSD and the Party with the dispute shall make every reasonable business effort to resolve the dispute promptly.

F. Within 90 days after the end of each fiscal year, NCSD shall compare prior year actual Costs to the total amount billed to the Parties for that year. If actual Costs exceed the amount billed for that year, each Party will be billed for its allocated share of the excess costs. If actual Costs are less than the amount billed for that year, each party will have the option to have its allocated share of the difference be (1) credited against any unamortized capital costs then due NCSD or (2) be refunded.

X. CONTINUITY OF SERVICE:

A. NCSD reserves the right to temporarily interrupt or curtail delivery of Nipomo Supplemental Water to make repairs, replacements, modifications, or to perform maintenance work on the NSWP, or to respond to an existing or impending Uncontrollable Force, as determined in NCSD's sole judgment. NCSD shall use its

reasonable best business efforts to provide advance written notice to the Water Companies of any restriction or interruption in the use of the NSWP or planned deliveries of Nipomo Supplemental Water.

B. In addition to limitations specified in X.A. above, NCSD may interrupt or curtail the use of the NSWP to the extent that the continued use of the NSWP could: (i) materially and adversely affect the reliability of the NSWP; or (ii) cause NCSD to violate the terms of any rule, regulation, or binding obligation it may otherwise have with respect to the production, treatment or delivery of Nipomo Supplemental Water.

XI. DEVELOPMENT OF EXPANDED GROUNDWATER MANAGEMENT AND RECHARGE CAPABILITY:

The Parties acknowledge and agree that the availability of additional Nipomo Supplemental Water would be beneficial for use within the NMMA. The Parties agree to negotiate an amendment to this Agreement to include the expanded use of Nipomo Supplemental Water for the benefit of the groundwater resources water balance within the NMMA. The Parties shall use their reasonable best efforts to complete the negotiation as promptly as practical.

XII. RESOLUTION OF DISPUTES:

The Parties' shall attempt to amicably and promptly resolve any dispute arising between the Parties and under this Agreement. Nothing in this Agreement shall preclude any Party from taking any lawful action it deems appropriate to enforce its rights under this Agreement. The Parties shall initially attempt to resolve any dispute by the means set forth below:

A. Advisory Committee. The Parties shall exercise best efforts to resolve disputes through consensus. An Advisory Committee shall be established and be comprised of two representatives of each Party. The Advisory Committee shall be convened whenever necessary to ensure this Agreement is being administered and implemented consistent with the intentions of all the Parties. An NCSD representative shall chair the Advisory Committee. The Chair shall be responsible for scheduling all meetings under this section. Any Party may request a meeting of the Advisory Committee.

B. Annual Meeting. The Advisory Committee shall meet annually, or as often as necessary, to review the administration and implementation of this Agreement. The Advisory Committee shall use its best efforts to obtain consensus on the resolution of technical, administrative, financial, legal and operational issues that may arise from time to time with regard to this Agreement.

C. Dispute Resolution Procedure. The Parties shall submit any dispute related to or arising out of this Agreement to the Advisory Committee for consideration. The

Chair may request the Party or Parties to any dispute to submit a description of the dispute in writing prior to convening the Advisory Committee. As soon as practical, and within 14 days of the submission of a written description of a dispute, the Chair shall schedule a meeting of the Advisory Committee. The Advisory Committee shall convene within 30 days of the submission of a written description of a dispute and shall make every reasonable effort to resolve the dispute.

D. Failure of the Advisory Committee to Resolve the Dispute. If the Advisory Committee fails to resolve a dispute, the Parties may elect to refer the dispute to mediation. If the Parties are unable to agree promptly upon a mediator or a mediation process, each Party may freely pursue any equitable and legal remedy.

E. Emergencies. Where an unresolved dispute may pose an imminent danger to the public, health, safety or welfare, the Parties shall not be subject to the provisions of this Section.

XIII. LIABILITY AND INDEMNIFICATION:

A. Limitation of Liability: Except as to the negligent or willful misconduct of a Party, each Party shall release and hold harmless the other Parties from and against any and all liability, loss, damage and expense arising from, alleged to arise from, in connection with, or incident to the services rendered under this Agreement.

B. Indemnification and Defense: Each Party shall indemnify, defend and hold harmless the other Parties, its directors, members, officers, employees and agents from and against any and all third-party claims, suits or actions instituted on account of personal injuries or death of any person (including but not limited to workers and the public) or physical damage to property resulting from or arising out of the indemnitor's willful misconduct or negligent act or omission while engaged in the performance of obligations or exercise of rights under this Agreement.

C. Limitation on Damages: No Party shall be liable to any other Party for any consequential, incidental, punitive, special or exemplary damages or lost opportunity costs, lost profit or other business interruption damages, by statute or in tort or contract, under any provision of this Agreement.

D. Water Quality. NCSD shall be responsible for ensuring that the quality of the Nipomo Supplemental Water made available for delivery is of the same pressure and quality of water that NCSD delivers to its residential customers. The quality of water which is delivered by NCSD to its residents shall comply with all federal, state and local laws, regulations and permit requirements which are applicable to NCSD, including standards applicable to wastewater discharge, as amended from time to time and subject to any compliance waiver granted to NCSD ("Quality Standards"). NCSD shall provide GSWC, RWC and WMWC with a copy of the Quality Standards (and any change thereto) which are applicable to NCSD and GSWC, RWC and WMWC shall be solely responsible for ensuring that the Quality Standards meet the federal, state and local laws, regulations and

permit requirements for potable water delivery by GSWC, RWC and WMWC to its customers, including the discharge of such water. To the extent that the quality standards which are applicable to GSWC, RWC and WMWC exceed the Quality Standards, then GSWC, RWC and WMWC shall be responsible for any necessary additional treatment of the Nipomo Supplemental Water. NCS D agrees to indemnify and hold GSWC, RWC and WMWC harmless from any liability which arises as a result of the failure of the Nipomo Supplemental Water which is delivered to the GSWC, RWC and WMWC to meet the Quality Standards. GSWC, RWC and WMWC shall be solely responsible for any actual liability resulting from a change in water quality following the Point of Interconnection (including any additional treatment undertaken by GSWC, RWC and WMWC) and shall indemnify and hold NCS D harmless from any actual liability which arises from any such change. NCS D and GSWC, RWC and WMWC shall promptly notify the other in the event that either becomes aware of a material adverse change in the quality of the Nipomo Supplemental Water and shall cooperate to identify the cause of such change.

XIV RELATIONSHIP OF THE PARTIES:

The covenants, obligations and liabilities of the Parties are intended to be several and not joint or collective and nothing herein contained shall ever be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any Party. Each Party shall be individually responsible for its own covenants, obligations and liabilities as herein provided. No Party shall be under the control of or shall be deemed to control another Party. No Party shall be the agent of or have a right or power to bind another Party without such other Party's express written consent, except as provided in this Agreement.

XV. UNCONTROLLABLE FORCES:

If the existence of an Uncontrollable Force, as defined in Section II.Q above, disables a Party from performing its obligations under this Agreement (except for such Party's obligations to make payments hereunder), such Party shall not be considered to be in default in the performance of any such obligations while such disability of performance exists. A Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall exercise due diligence to remove such inability with all reasonable dispatch. Nothing contained herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved.

XVI. AUDITS:

Each Party shall have the right to audit any costs, payments, settlements or other supporting information pertaining to this Agreement, including the Costs and the Budget. Any such audit shall be undertaken by the requesting Party or its representative at reasonable times and in conformance with generally accepted auditing standards. The audited Party shall fully cooperate with any such audit, the cost of which shall be paid by the requesting Party. The right to audit a billing shall extend for a period of three (3) years

following the rendering of the bill. Each Party shall retain all necessary records or documentation for the entire length of such three (3) year period and shall, to the extent permitted by law, take all steps reasonably available to assure the confidentiality of the audited Party's accounting records and supporting documents.

XVII. THIRD PARTY BENEFICIARIES:

There are no third Party beneficiaries to this Agreement. This Agreement shall not confer any right or remedy upon any person or entity other than the Parties and their respective successors and assigns permitted under Section XVIII. This Agreement shall not release or discharge any obligation or liability of any third party to any Party or give any third party any right of subrogation or action over or against a Party.

XVIII. ASSIGNMENT OF INTERESTS:

A. No Party shall assign this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed. Each Water Company expressly understands and agrees that it shall not be unreasonable for NCSD to withhold or delay its consent to any proposed or purported assignment to any person or entity ("Assignee") that has not demonstrated to NCSD's reasonable satisfaction that NCSD's interests as contemplated herein will not be adversely affected thereby.

B. Any assignment by a Party of its interest in this Agreement which is made without the prior written consent of the other Parties shall not relieve the assigning Party from primary liability for any of its duties and obligations under this Agreement, and in the event of any such assignment, the assigning Party shall continue to remain primarily liable for payment of any and all money due the other Parties as provided under this Agreement, and for the performance and observance of all covenants, duties and obligations to be performed and observed under this Agreement by the Party to the same extent as though no assignment had been made.

C. Whenever an assignment of a Party's interest in this Agreement is made with the written consent of the other Parties, the assigning Party's assignee shall expressly assume in writing the duties and obligations under this Agreement of the assigning party and, within thirty (30) days after any such assignment and assumption of duties and obligations, the assigning Party shall furnish, or cause to be furnished, to the other Party a true and correct copy of such assignment and assumption of duties and obligations. Upon the effective date of such assignment, the assigning Party shall be relieved of its obligations and duties under this Agreement.

D. Subject to the foregoing restrictions on assignment, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

XIX. NO DEDICATION OF FACILITIES:

Any undertaking by a Party to another Party under this Agreement shall not constitute the dedication of the system, or any portion thereof, of that Party to the public or to another Party, nor affect the status of that Party as an independent system.

XX. COMPLETE AGREEMENT:

This Agreement contains the entire agreement and understanding between the Parties as to the subject matter of this Agreement and supersedes all prior commitments, representations and discussions between the Parties.

XXI. CONSTRUCTION OF AGREEMENT:

Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against any Party, but shall be construed in a manner that most accurately reflects the intent of the Parties when this Agreement was executed and is consistent with the nature of the rights and obligations of the Parties with respect to the matter being construed.

XXII. NON-DISCRIMINATION:

During the performance of this Agreement, no Party shall deny the Agreement's benefits to any person, nor shall any Party discriminate unlawfully against any employee or applicant for employment, on the grounds of or because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, marital status or disability, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto. Each party shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

XXIII. EVENTS OF DEFAULT:

In the event that a Party shall materially default in the performance of its obligations under this Agreement, the Authorized Representatives of the non-defaulting Parties may give written notice of the default to the Authorized Representative of the defaulting Party. If within thirty (30) days after the non-defaulting Parties' Authorized Representative shall have given such written notice to the defaulting Party's Authorized Representative, the defaulting Party shall have failed to cure the default in its performance of this Agreement, or if such default requires more than thirty (30) days to cure and the defaulting Party fails to commence such cure and diligently prosecute such cure to completion, in addition to any other remedies provided by law, the non-defaulting Parties may terminate this Agreement by written notice of termination as provided for in Section XXVIII. In addition to any other cause of default arising hereunder, a Party shall be in a default if:

- A. It becomes insolvent; or

B. It makes a general assignment of substantially all of its assets for the benefit of its creditors, files a petition for bankruptcy or reorganization or seeks other relief under any applicable insolvency laws; or

C. It has filed against it a petition for bankruptcy, reorganization or other relief under any applicable insolvency laws and such petition is not dismissed within sixty (60) days after it is filed.

D. In the event of a default and termination of the Agreement as to the defaulting Party, the non-defaulting Parties shall use commercially reasonable best efforts to negotiate any revisions to this Agreement that are necessary or appropriate in light of such termination, which revisions shall be consistent with the purpose and intent of this Agreement and shall preserve, to the maximum extent possible, all material consideration to the remaining parties. Termination of this Agreement, either in its entirety or as to one or more Parties, shall not affect the validity or enforceability of the Stipulation and Judgment or the rights and obligations of any Party thereunder.

XXIV. AMENDMENTS:

This Agreement may be modified, supplemented or amended only by a writing duly executed by the Parties.

XXV. WAIVERS:

A. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter arising in connection therewith. Any delay, short of the statutory period of limitation in asserting or enforcing any right, shall not be deemed a waiver of such right.

B. Nothing in this Agreement shall limit, nor act as a waiver, of any Party's rights or defenses in pursuing or defending against any legal or equitable claim or remedy that may be asserted regarding each Party's rights and obligations to participate in the NSWP and bear its percentage allocation of the Costs of the NSWP (as presented in Recital K).

XXVI. SECTION HEADINGS:

All captions and headings appearing in this Agreement are inserted to facilitate reference and shall not govern, except where logically necessary, the interpretations of the provisions hereof.

XXVII. GOVERNING LAW:

NSWP Supplemental Water Management and Groundwater Replenishment Agreement

Page 18 of 20

This Agreement shall be interpreted, governed by and construed under the laws of the State of California or the laws of the United States as applicable, as if executed and to be performed wholly within the State of California.

XXVIII. NOTICES:

A. Any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person, by email or sent by United States mail, postage prepaid, to the persons specified below, unless otherwise provided for in this Agreement:

Nipomo Community Services District
Attention: General Manager
P.O. Box 326
Nipomo, California 93444-326
generalmanger@ncsd.ca.gov

Golden State Water Company
Attention: Senior Vice President of Regulated Utilities
630 East Foothill Blvd
San Dimas, CA 91773

Rural Water Company
c/o Frank B. & Associates
Attention: Frank Brommenschenkel
134 Davis Street
Santa Paula, CA 93060

Woodlands Mutual Water Company
c/o Wallace Group
Attention: Robert S. Miller
612 Clarion Ct.
San Luis Obispo, CA 93401

B. Any Party may at any time, by written notice to the other Parties, change the designation or address of the person so specified as the one to receive notices pursuant to this Agreement.

[signatures on following page]

XXIX. SIGNATURE CLAUSE:

The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

NIPOMO COMMUNITY SERVICES DISTRICT

Michael S. LeBrun
Date: October 16, 2015
By: MICHAEL S. LEBRUN
GENERAL MANAGER

GOLDEN STATE WATER COMPANY

Date: _____, 2015
BY: _____

RURAL WATER COMPANY

Date: _____, 2015
BY: _____

WOODLANDS MUTUAL WATER COMPANY

Date: _____, 2015
BY: _____

XXIX. SIGNATURE CLAUSE:

The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

NIPOMO COMMUNITY SERVICES DISTRICT

Date: _____, 2015
By: MICHAEL S. LEBRUN
GENERAL MANAGER

GOLDEN STATE WATER COMPANY

Date: Robert J. Spronks
September 10, 2015
BY: Robert J. Spronks
President & CEO

RURAL WATER COMPANY

Date: _____, 2015
BY:

WOODLANDS MUTUAL WATER COMPANY

Date: _____, 2015
BY:

XXIX. SIGNATURE CLAUSE:

The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

NIPOMO COMMUNITY SERVICES DISTRICT

Date: _____, 2015
By: MICHAEL S. LEBRUN
GENERAL MANAGER

GOLDEN STATE WATER COMPANY

Date: _____, 2015
BY:

RURAL WATER COMPANY

Date: Charles M Baker
Sept 9, 2015
BY: Chuck Baker

WOODLANDS MUTUAL WATER COMPANY

Date: _____, 2015
BY:

XXIX. SIGNATURE CLAUSE:

The signatories hereto represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

NIPOMO COMMUNITY SERVICES DISTRICT

Date: _____, 2015
By: MICHAEL S. LEBRUN
GENERAL MANAGER

GOLDEN STATE WATER COMPANY

Date: _____, 2015
BY:

RURAL WATER COMPANY

Date: _____, 2015
BY:

WOODLANDS MUTUAL WATER COMPANY

Date: Don R. Go President
10 / 15, 2015
BY:

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Appendix D: Final Santa Maria River Valley Groundwater Basin Judgement

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

SANTA MARIA VALLEY WATER
CONSERVATION DISTRICT,

Plaintiff,

v.

CITY OF SANTA MARIA, et al.,

Defendants.

) SANTA MARIA GROUNDWATER
) LITIGATION
) Lead Case No. CV 770214
) (CONSOLIDATED FOR ALL PURPOSES)

) [Consolidated With Case Numbers:
) CV 784900; CV 785509; CV 785522;
) CV 787150; CV 784921; CV 785511;
) CV 785936; CV 787151; CV 784926;
) CV 785515; CV 786791; CV 787152;
) CV 036410]

AND RELATED CROSS-ACTIONS AND
ACTIONS CONSOLIDATED FOR ALL
PURPOSES

) San Luis Obispo County Superior Court Case
) Nos. 990738 and 990739

) [Assigned to Judge Jack Komar for All
) Purposes]

STIPULATION (JUNE 30, 2005 VERSION)

TABLE OF CONTENTS

	<u>Page</u>
1	
2	
3	I. INTRODUCTION -- ALL MANAGEMENT AREAS 1
4	A. Parties and Jurisdiction 1
5	B. Further Trial 2
6	C. Definitions..... 2
7	II. EXHIBITS 6
8	III. DECLARATION OF RIGHTS -- ALL MANAGEMENT AREAS 6
9	A. Recognition of Priority of Overlying Rights..... 7
10	B. Prescriptive Rights 7
11	C. Appropriative Rights 7
12	D. Developed Water Rights 7
13	E. Rights to Storage Space 7
14	F. Other Surface Water Rights 7
15	IV. PHYSICAL SOLUTION – ALL MANAGEMENT AREAS 8
16	A. Authority 8
17	B. Purposes and Objectives 8
18	C. Basin Management Areas 8
19	D. Groundwater Monitoring 9
20	E. New Developed Water 10
21	F. Severe Water Shortage Response 11
22	V. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO SANTA MARIA VALLEY MANAGEMENT AREA 11
23	A. Water Rights to Sources of Supply 11
24	B. Monitoring and Management..... 14
25	C. Response to Varying Conditions..... 15
26	D. Management and Administration of the Twitchell Project..... 17
27	E. New Urban Uses – Santa Maria Valley Management Area..... 20
28	VI. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO NIPOMO MESA MANAGEMENT AREA 21
29	A. Supplemental Water 21
30	B. Rights to Use Groundwater..... 23
31	C. NMMA Technical Group..... 24
32	D. Potentially Severe and Severe Water Shortage Conditions 25
33	E. New Urban Uses 27
34	VII. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO NORTHERN CITIES MANAGEMENT AREA 28
35	VIII. INJUNCTION – ALL MANAGEMENT AREAS 29
36	A. Use Only Pursuant to Stipulation..... 29
37	B. Injunction Against Transportation From the Basin..... 29

1	C.	No Third Party Beneficiaries	29
2	IX.	RESERVED JURISDICTION – ALL MANAGEMENT AREAS	30
3	A.	Reserved Jurisdiction; Modifications, Cancellations, Amendments.....	30
4	B.	Noticed Motion	31
5	C.	<i>De Novo</i> Nature of Proceeding	31
6	D.	Filing and Notice.....	31
7	X.	MISCELLANEOUS PROVISIONS – ALL MANAGEMENT AREAS	31
8	A.	Unenforceable Terms	31
9	B.	Water Quality	32
10	C.	Duty to Cooperate	32
11	D.	Stipulating Parties Under Public Utilities Commission Regulation	32
12	E.	Designation of Address, for Notice and Service	33
13	F.	No Loss of Rights	33
14	G.	Intervention After Judgment	33
15	H.	Stipulation and Judgment Binding on Successors, Assigns, etc.	34
16	I.	Costs	34
17	J.	Non-Stipulating Parties	34
18	K.	Counterparts	35
19	L.	Effective Date.....	35

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1 **I. INTRODUCTION -- ALL MANAGEMENT AREAS**

2 The Stipulating Parties hereby stipulate and agree to entry of judgment containing the
3 terms and conditions of this Stipulation.

4 **A. Parties and Jurisdiction**

5 1. Plaintiff and Cross-Defendant Santa Maria Valley Water Conservation District
6 (“District”) is a water conservation district organized under California Water Code section 74000,
7 *et seq.* The District does not pump Groundwater from the Basin.

8 2. Defendants, Cross-Complainants and Cross-Defendants the City of Santa Maria
9 (“Santa Maria”), City of Guadalupe (“Guadalupe”), Southern California Water Company
10 (“SCWC”), Nipomo Community Services District (“NCSD”), Rural Water Company (“RWC”),
11 City of Arroyo Grande (“Arroyo Grande”), City of Pismo Beach (“Pismo Beach”), City of Grover
12 Beach (“Grover Beach”) and Oceano Community Services District (“Oceano”) rely, in part, on
13 Groundwater to provide public water service to customers within the Basin.

14 3. Cross-Defendant County of San Luis Obispo (“San Luis Obispo”) is a subdivision
15 of the State of California. Cross-Defendant San Luis Obispo County Flood Control and Water
16 Conservation District (“SLO District”) is a public entity organized pursuant to the laws of the
17 State of California. Neither San Luis Obispo nor SLO District pumps Groundwater from the
18 Basin.

19 4. Cross-Defendant County of Santa Barbara (“Santa Barbara”) is a subdivision of
20 the State of California. Santa Barbara does not pump Groundwater from the Basin.

21 5. Numerous other Cross-Defendants and Cross-Complainants are Overlying
22 Owners. Many of these Overlying Owners pump Groundwater from the Basin, while others do
23 not currently exercise their Overlying Rights. Those Overlying Owners who are Stipulating
24 Parties are identified on Exhibit “A”.

25 6. This action presents an *inter se* adjudication of the claims alleged between and
26 among all Parties. This Court has jurisdiction over the subject matter of this action and over the
27 Parties herein.

28 ///

1 **B. Further Trial**

2 The Stipulating Parties recognize that not all Parties have entered into this Stipulation and
3 that a trial will be necessary as to all non-Stipulating Parties. No Stipulating Party shall interfere
4 or oppose the effort of any other Stipulating Party in the preparation and conduct of any such
5 trial. All Stipulating Parties agree to cooperate and coordinate their efforts in any trial or hearing
6 necessary to obtain entry of a judgment containing the terms and conditions of this Stipulation.
7 No Stipulating Party shall have any obligation to contribute financially to any future trial.

8 **C. Definitions**

9 As used in this Stipulation, the following terms shall have the meanings herein set forth:

- 10 1. Annual or Year – That period beginning January 1 and ending December
11 31.
- 12 2. Annual Report – The report prepared and filed with the Court annually for
13 each Management Area.
- 14 3. Appropriative Rights – The right to use surplus Native Groundwater for
15 reasonable and beneficial use.
- 16 4. Available State Water Project Water – The amount of SWP Water an
17 Importer is entitled to receive in a given Year based upon the California Department of Water
18 Resources final Table A allocation.
- 19 5. Basin - The groundwater basin described in the Phase I and II orders of the
20 Court, as modified, and presented in Exhibit “B”.
- 21 6. Developed Water – Groundwater derived from human intervention as of
22 the date of this Stipulation, which shall be limited to Twitchell Yield, Lopez Water, Return
23 Flows, and recharge resulting from storm water percolation ponds.
- 24 7. Groundwater – Twitchell Yield, Lopez Water, Return Flows, storm water
25 percolation, Native Groundwater and all other recharge percolating within the Basin.
- 26 8. Importer(s) – Any Party who brings Imported Water into the Basin. At the
27 date of this Stipulation, the Importers are Santa Maria, SCWC, Guadalupe, Pismo Beach, and
28 Oceano.

1 9. Imported Water – Water within the Basin, originating outside the Basin
2 that absent human intervention would not recharge or be used in the Basin.

3 10. Lopez Project – Lopez Dam and Reservoir located on Arroyo Grande
4 Creek, together with the associated water treatment plant, delivery pipeline and all associated
5 facilities, pursuant to State Water Resources Control Board permit No. 12814 (A-18375) and
6 pending application No. A-30826.

7 11. Lopez Water – Groundwater within the Basin derived from the operation of
8 the Lopez Project.

9 12. Management Areas – The three areas within the Basin that have sufficient
10 distinguishing characteristics to permit the water resources and facilities of each area to be
11 individually managed. The Management Areas are: the Northern Cities Management Area, the
12 Nipomo Mesa Management Area, and the Santa Maria Valley Management Area, as shown on
13 Exhibit "C".

14 13. Management Area Engineer – The individual(s) or consulting firm(s) that
15 are hired to prepare the Monitoring Plan(s) and Annual Report(s) for one or more of the
16 Management Areas.

17 14. Monitoring Parties – Those Parties responsible for conducting and funding
18 each Monitoring Program.

19 15. Monitoring Program – The data collection and analysis program to be con-
20 ducted within each Management Area sufficient to allow the preparation of the Annual Report.

21 16. Native Groundwater – Groundwater within the Basin, not derived from
22 human intervention, that replenishes the Basin through precipitation, stream channel infiltration,
23 tributary runoff, or other natural processes.

24 17. New Developed Water – Groundwater derived from human intervention
25 through programs or projects implemented after the date of this Stipulation.

26 18. New Urban Uses – Municipal and industrial use which may occur on land
27 that, as of January 1, 2005, was located: 1) within the boundaries of a municipality or its sphere of
28 influence, or within the process of inclusion in its sphere of influence; or 2) within the certificated

1 service area of a publicly regulated utility. The New Urban Use areas are identified in Exhibit
2 “D”. New Urban Uses does not include the current DJ Farms development within Guadalupe
3 City limits (including Santa Barbara County APN 113-080-18, 113-080-24).

4 19. Nipomo Mesa Management Area or NMMA – That Management Area
5 shown on Exhibit “C”.

6 20. Nipomo Mesa Management Area Technical Group – The committee
7 formed to administer the relevant provisions of the Stipulation regarding the Nipomo Mesa
8 Management Area.

9 21. Northern Cities Management Area – That Management Area which is part
10 of Zone #3 of the San Luis Obispo County Flood Control and Water Conservation District as
11 shown on Exhibit “C”.

12 22. Northern Cities – Arroyo Grande, Pismo Beach, Grover Beach and
13 Oceano.

14 23. Northern Parties – The Northern Cities, the Overlying Owners within the
15 Northern Cities Management Area, San Luis Obispo and the SLO District.

16 24. Overlying Right – The appurtenant right of an Overlying Owner to use
17 Native Groundwater for overlying, reasonable and beneficial use.

18 25. Overlying Owner(s) – Owners of land overlying the Basin who hold an
19 Overlying Right.

20 26. Party – Each Person in this consolidated action, whether a Stipulating
21 Party or a non-Stipulating Party.

22 27. Person – Any natural person, firm, association, organization, joint venture,
23 partnership, business, trust, corporation, or public entity.

24 28. Public Hearing – A hearing after notice to all Parties and to any other
25 person legally entitled to notice.

26 29. Return Flows – Groundwater derived from use and recharge within the
27 Basin of water delivered through State Water Project facilities.

28 ///

1 30. Santa Maria Valley Management Area – That Management Area shown on
2 Exhibit “C”.

3 31. Severe Water Shortage Conditions – Those conditions, as separately
4 defined in a Severe Water Shortage Response Plan for each Management Area, that trigger
5 certain discretionary and mandatory responses by the Stipulating Parties upon order of the Court.

6 32. Severe Water Shortage Response Plan – The discretionary and mandatory
7 responses for each Management Area that are to be implemented when Severe Water Shortage
8 Conditions exist.

9 33. State Water Project Water or SWP Water – Water imported through the
10 State of California State Water Resources Development System pursuant to Division 6, Part 6,
11 Chapter 8, of the California Water Code.

12 34. Stipulating Party – A Party that has signed this Stipulation, as listed in
13 Exhibit “A”, or its heirs, executors, administrators, trustees, successors, assigns, and agents.

14 35. Storage Space – The portion of the Basin capable of holding water for sub-
15 sequent reasonable and beneficial uses.

16 36. SWP Contract(s) – Those series of contracts that entitle the Importers to
17 use SWP facilities to bring Imported Water into the Basin.

18 37. Twitchell Management Authority or TMA – The committee formed to
19 administer the relevant provisions of the Stipulation regarding the Santa Maria Valley Manage-
20 ment Area.

21 38. Twitchell Participants – Those Stipulating Parties holding rights to
22 Twitchell Yield.

23 39. Twitchell Project – Dam and reservoir authorized by Congress as the
24 “Santa Maria Project” on September 3, 1954 (Public Law 774, 83d Congress, ch. 1258, 2d
25 session, 68 Stat. 1190) and located on the Cuyama River, approximately six miles upstream from
26 its junction with the Sisquoc River, pursuant to that certain License For Diversion And Use of
27 Water, License No. 10416, issued by the State Water Resources Control Board.

28 ///

1 40. *Twitchell Water* – Groundwater derived from operation of the Twitchell
2 Project.

3 41. *Twitchell Yield* – The total amount of Groundwater allocated annually to
4 the Twitchell Participants.

5 **II. EXHIBITS**

6 The following Exhibits are attached to this Stipulation and incorporated herein:

7 1. *Exhibit "A"*, list identifying the Stipulating Parties and the parcels of land
8 bound by the terms of this Stipulation.

9 2. *Exhibit "B"*, Phase I and II Orders, as modified, and the attached map
10 depicting the Santa Maria Basin.

11 3. *Exhibit "C"*, map of the Basin and boundaries of the three Management
12 Areas.

13 4. *Exhibit "D"*, map identifying those lands as of January 1, 2005: 1) within
14 the boundaries of a municipality or its sphere of influence, or within the process of inclusion in its
15 sphere of influence; or 2) within the certificated service area of a publicly regulated utility; and a
16 list of selected parcels that are nearby these boundaries which are excluded from within these
17 areas.

18 5. *Exhibit "E"*, 2002 Settlement Agreement between the Northern Cities and
19 Northern Landowners.

20 6. *Exhibit "F"*, the agreement among Santa Maria, SCWC and Guadalupe
21 regarding the Twitchell Project and the TMA.

22 7. *Exhibit "G"*, the Court's Order Concerning Electronic Service of Pleadings
23 and Electronic Posting of Discovery Documents dated June 27, 2000.

24 8. *Exhibit "H"*, the form of memorandum of agreement to be recorded.

25 **III. DECLARATION OF RIGHTS -- ALL MANAGEMENT AREAS**

26 The terms and conditions of this Stipulation set forth a physical solution concerning
27 Groundwater, SWP Water and Storage Space, consistent with common law water rights priorities.

28 ///

1 **A. Recognition of Priority of Overlying Rights**

2 Except as expressly modified by the settlement agreement among the Northern Parties
3 (Exhibit “E”), all Overlying Owners that are also Stipulating Parties have a prior and paramount
4 Overlying Right, whether or not yet exercised.

5 **B. Prescriptive Rights**

6 As to the Stipulating Parties, no Party has proved prescriptive rights to any Native
7 Groundwater. Future use by the Stipulating Parties will not be adverse and will not ripen into a
8 prescriptive right as between the Stipulating Parties.

9 **C. Appropriative Rights**

10 Consistent with the specific provisions governing each Management Area, the Stipulating
11 Parties owning and exercising Appropriative Rights have the right to the reasonable and bene-
12 ficial use of Native Groundwater that is surplus to the reasonable and beneficial uses of the
13 Stipulating Parties that are Overlying Owners. New appropriative uses shall be subordinate to
14 existing appropriations and shall be prioritized on a first in time, first in right basis.

15 **D. Developed Water Rights**

16 The Stipulating Parties owning Developed Water or New Developed Water have the right
17 to its reasonable and beneficial use, consistent with the specific provisions governing each
18 Management Area. The right to use Developed Water is a right to use commingled Groundwater
19 and is not limited to the corpus of that water.

20 **E. Rights to Storage Space**

21 The Court shall reserve jurisdiction over the use of the Storage Space, and any Party may
22 apply to the Court for the approval of a project using Storage Space. The Court must approve any
23 project using Storage Space before any Party can claim a right to stored water from that project.
24 The Stipulating Parties agree that Groundwater derived from Developed Water is exempt from
25 the Court approval requirements of this Paragraph.

26 **F. Other Surface Water Rights**

27 Nothing in this Stipulation affects or otherwise alters common law riparian rights or any
28 surface water rights, unless expressly provided in this Stipulation.

1 **IV. PHYSICAL SOLUTION – ALL MANAGEMENT AREAS**

2 **A. Authority**

3 Pursuant to Article X, section 2 of the California Constitution, the Stipulating Parties
4 agree that the Court has the authority to enter a judgment and physical solution containing the
5 terms and conditions of this Stipulation. Unless the Court imposes this physical solution, poten-
6 tial changes in water use could affect Basin adequacy and integrity. The Declaration of Rights is
7 a component of this physical solution.

8 **B. Purposes and Objectives**

9 The terms and conditions of this Stipulation are intended to impose a physical solution
10 establishing a legal and practical means for ensuring the Basin’s long-term sustainability. This
11 physical solution governs Groundwater, SWP Water and Storage Space, and is intended to ensure
12 that the Basin continues to be capable of supporting all existing and future reasonable and
13 beneficial uses. This physical solution is: 1) a fair and equitable basis for the allocation of water
14 rights in the Basin; 2) in furtherance of the mandates of the State Constitution and the water
15 policy of the State of California; and 3) a remedy that gives due consideration to applicable
16 common law rights and priorities to use Groundwater and Storage Space, without substantially
17 impairing any such right.

18 **C. Basin Management Areas**

19 Development and use of Groundwater, SWP Water and Storage Space have historically
20 been financed and managed separately in three Management Areas. For example, only the
21 Northern Parties have paid for, managed, and benefited from the Lopez Project; whereas only
22 Santa Maria Valley parties have paid for, managed, and benefited from the Twitchell Project. In
23 contrast, the Nipomo Mesa parties have not been involved in the funding or management of either
24 the Twitchell or Lopez Projects.

25 The Stipulating Parties agree that Groundwater, SWP Water and Storage Space can be
26 more efficiently allocated and managed in three Management Areas, given the physical, geo-
27 graphical, political, economic, and historic conditions. The three Management Areas, as shown
28 on Exhibit “C,” are as follows: Northern Cities Management Area; Nipomo Mesa Management

1 Area; and Santa Maria Valley Management Area. The Stipulating Parties intend that manage-
2 ment through three Management Areas will preserve the Basin's integrity.

3 **D. Groundwater Monitoring**

4 1. Monitoring Program. A Monitoring Program shall be established in each
5 of the three Management Areas to collect and analyze data regarding water supply and demand
6 conditions. Data collection and monitoring shall be sufficient to determine land and water uses in
7 the Basin, sources of supply to meet those uses, groundwater conditions including groundwater
8 levels and quality, the amount and disposition of Developed Water supplies, and the amount and
9 disposition of any other sources of water supply in the Basin. The Northern Cities Management
10 Area shall not be required to include in its Monitoring Program or Annual Reports quantification
11 of groundwater recharge from the Lopez Project or storm water percolation ponds, unless the
12 Court orders inclusion of this information.

13 Within one hundred and eighty days after entry of judgment, representatives of the Moni-
14 toring Parties from each Management Area will present to the Court for its approval their
15 proposed Monitoring Program. The Management Area Engineers shall freely share available well
16 data, groundwater models, and other products and tools utilized in monitoring and analysis of
17 conditions in the three Management Areas, consistent with the confidentiality provisions of this
18 Stipulation.

19 Absent a Court order to the contrary, all Stipulating Parties shall make available relevant
20 information regarding groundwater elevations and water quality data necessary to implement the
21 Monitoring Program approved for their respective Management Area. The Monitoring Parties
22 shall coordinate with the Stipulating Parties to obtain any needed data on reasonable terms and
23 conditions. Metering may only be imposed on Stipulating Parties upon a Court order following a
24 showing that such data is necessary to monitor groundwater conditions in the Basin, and in the
25 case of an Overlying Owner, that Overlying Owner has failed to provide information comparable
26 to that provided by other Overlying Owners. The confidentiality of well data from individual
27 owners and operators will be preserved, absent a Court order or written consent.

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2. Monitoring Parties. The Monitoring Parties are as follows:

- (a) Santa Maria Valley Management Area – The Twitchell Management Authority.
- (b) Northern Cities Management Area – The Northern Cities.
- (c) Nipomo Mesa Management Area – The NMMA Technical Group.

3. Annual Reports. Within one hundred and twenty days after each Year, the Management Area Engineers will file an Annual Report with the Court. The Annual Report will summarize the results of the Monitoring Program, changes in groundwater supplies, and any threats to Groundwater supplies. The Annual Report shall also include a tabulation of Management Area water use, including Imported Water availability and use, Return Flow entitlement and use, other Developed Water availability and use, and Groundwater use. Any Stipulating Party may object to the Monitoring Program, the reported results, or the Annual Report by motion.

4. Management Area Engineer. The Monitoring Parties may hire individuals or consulting firms to assist in the preparation of the Monitoring Programs and the Annual Reports. Except as provided below for the Santa Maria Valley Management Area, the Monitoring Parties, in their sole discretion, shall select, retain and replace the Management Area Engineer.

E. New Developed Water

1. Stipulating Parties in each Management Area may prepare and implement plans to develop, salvage or import additional water supplies.

2. The Stipulating Parties that pay, or otherwise provide consideration, for New Developed Water are entitled to use it to the extent the New Developed Water augments the water supplies in that Management Area. If more than one Stipulating Party finances or participates in generating New Developed Water, rights to the supply of New Developed Water shall be proportional to each Stipulating Party’s financial contribution or other consideration, or as otherwise mutually agreed to by the participating Stipulating Parties. This paragraph does not apply to Return Flows.

///

1 3. The Stipulating Parties who desire to claim New Developed Water supplies
2 must bring a motion, and obtain an order from the Court, quantifying and allocating the rights to
3 the New Developed Water, before they have the prior right to the New Developed Water.

4 **F. Severe Water Shortage Response**

5 This physical solution sets forth a Severe Water Shortage Plan for each Management Area
6 which is intended to provide an effective response to Severe Water Shortage Conditions that may
7 develop within each or all of the Management Areas. The specific Severe Water Shortage Plans
8 for each Management Area are incorporated herein and made a part of the physical solution.

9 **V. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO SANTA MARIA VALLEY**
10 **MANAGEMENT AREA**

11 As supplemented by the provisions of this Stipulation that apply to all Management Areas,
12 the following terms govern rights to Groundwater, SWP Water and Storage Space in the Santa
13 Maria Valley Management Area.

14 **A. Water Rights to Sources of Supply**

15 1. *Overlying Rights.* The Stipulating Parties who are Overlying Owners
16 within the Santa Maria Valley Management Area each have the prior and paramount right to use
17 Native Groundwater. Subject to Paragraph V(C)(2)(b)(vi), all Overlying Rights are appurtenant
18 to the overlying land and cannot be assigned or conveyed separate or apart from those lands.

19 2. *Appropriative Rights.* The Parties listed in Exhibit "A" are the owners of
20 Appropriative Rights exercised in the Santa Maria Valley Management Area. Each Appropriative
21 Right is limited to Native Groundwater that is surplus to reasonable and beneficial uses of the
22 Stipulating Parties that are Overlying Owners in the Santa Maria Valley Management Area. New
23 appropriative uses shall be subordinate to existing Appropriative Rights and shall be prioritized
24 on a first in time, first in right basis.

25 3. *Developed Water.* The Stipulating Parties owning Developed Water have
26 the right to its reasonable and beneficial use, subject only to the Severe Water Shortage Plan. On
27 an annual basis, the Stipulating Parties shall have the right to the reasonable and beneficial use of
28 Developed Water that is surplus to the reasonable and beneficial uses of the owners of that

1 Developed Water. The right to use Developed Water is a right to use commingled Groundwater
2 and is not limited to the corpus of that water.

3 (a) New Developed Water. The ownership and use of New Developed
4 Water shall be subject to Court order.

5 (b) Twitchell Water.

6 (i) *Amount*. The Twitchell Project annually provides a variable
7 amount of Developed Water that augments the Groundwater in the Santa Maria Valley Manage-
8 ment Area. Twitchell Yield is thirty-two thousand acre-feet per year (“afy”).

9 (ii) *Division of Twitchell Yield*. Twitchell Yield shall be
10 divided as follows: 80% to Santa Maria, SCWC and Guadalupe, and 20% to the Overlying
11 Owners within the District who are Stipulating Parties.

12 a. The Twitchell Yield allocated to Santa Maria,
13 SCWC and Guadalupe is suballocated pursuant to the agreement among Santa Maria, SCWC and
14 Guadalupe, as attached and incorporated herein as Exhibit “F”.

15 b. The Twitchell Yield allocated to the Overlying
16 Owners who are Stipulating Parties within the District shall be equally allocated to each acre of
17 land within the District owned by these Stipulating Parties. Concurrently with the execution of
18 this Stipulation, each of these Stipulating Parties shall report their acreage of overlying land
19 within the District on a parcel specific basis. Within one hundred and twenty days of the effec-
20 tive date of this Stipulation, the Management Area Engineer shall create a list of all the Stipu-
21 lating Parties and their respective allocation of the Twitchell Yield.

22 (iii) *Recapture of Twitchell Yield*. The right to use Twitchell
23 Yield is a right to use commingled Groundwater and is not limited to the corpus of that water.

24 (iv) *Transfer of Twitchell Yield*. Twitchell Yield may be trans-
25 ferred, temporarily or permanently, only between Stipulating Parties and the transfer market shall
26 be as open and competitive as practical. A memorandum of agreement summarizing each transfer
27 shall be filed with the Court and provided to the TMA. Any such memorandum of agreement
28 shall state the Parties to the transfer, the amount of Twitchell Yield transferred, the price per acre-

1 foot, and the Party responsible for the financial obligation associated with the Twitchell Yield.

2 (v) *Carryover.* Any portion of Twitchell Yield that is not used
3 in a given Year shall not be carried over into the following Year.

4 (c) State Water Project Water.

5 (i) *Import and Use of State Water Project Water.* Santa Maria,
6 SCWC and Guadalupe all have SWP Contracts. Santa Maria will import and use within the Santa
7 Maria Valley Management Area not less than 10,000 acre-feet each Year of Available SWP
8 Water, or the full amount of Available SWP Water if the amount physically available is less than
9 10,000 acre-feet in a given Year under Santa Maria's SWP Contract. Guadalupe will import and
10 use within the Santa Maria Valley Management Area a minimum of 75% of its Available SWP
11 Water. SCWC will import and use within the Basin all its Available SWP Water. Santa Maria,
12 SCWC and Guadalupe will not voluntarily relinquish or terminate their current SWP Contracts,
13 and shall seek renewal of these SWP Contracts.

14 (ii) *Return Flows.*

15 a. *Fixed Amount.* The Return Flows available to each
16 Importer is fixed based on a percentage of the annual amount of SWP Water the Importer uses
17 within the Basin. The fixed percentage for each importer is as follows: (a) Santa Maria 65%; (b)
18 SCWC 45%; and (c) Guadalupe 45%. The percentage provided to SCWC and Guadalupe shall
19 be adjusted through a Court order if: a) either entity increases its use of water imported into the
20 Basin, b) the applicable method of wastewater treatment and discharge to the Basin is altered, or
21 c) good cause is shown.

22 b. *Recapture.* The right to use Return Flows does not
23 attach to the corpus of SWP water deliveries or the treated SWP wastewater discharged into the
24 Basin but is a right to use the commingled Groundwater. The Importer's right to Return Flows is
25 assignable in whole or in part, subject to necessary accounting.

26 c. *Quantification of Return Flows.* Return Flows equal
27 the total amount of SWP Water used by the Importer in the prior five Years, divided by five, and
28 then multiplied by the Importer's percentage as provided in Paragraph V(A)(3)(c)(ii)(a) above.

1 d. Carryover. Any portion of Return Flows that is not
2 used in a given Year shall not be carried over into the following Year.

3 **B. Monitoring and Management**

4 1. Status of Management Area. Current Groundwater and SWP Water sup-
5 plies are sustaining existing water uses. Changes in land and water use and demographic con-
6 ditions can be expected to occur, possibly resulting in changes in water supply or demand
7 requirements.

8 2. Need for Monitoring. Monitoring and reporting of changes in land and
9 water use and demographic conditions are necessary to ensure that water supplies continue to be
10 sufficient to support water uses.

11 3. Monitoring Program.

12 (a) Annual Report: Content and Processing.

13 The Annual Report shall include an analysis of the relationship between projected water demands
14 and projected water supplies.

15 (i) The Annual Report shall be prepared and signed by the
16 Management Area Engineer, and shall be simultaneously submitted to the Court and the TMA.

17 (ii) Within forty-five days of submission, the TMA shall hold a
18 noticed public hearing to take comments on and consider for adoption the Annual Report. No
19 later than forty-five days from the date of the public hearing, the TMA shall submit to the Court
20 its recommendations regarding the Annual Report.

21 (iii) Within one hundred and twenty days of the date of the
22 submission of the Annual Report to the Court, it shall conduct a noticed hearing on the Annual
23 Report. Any Party may submit comments on the Annual Report. After the hearing, the Court
24 shall accept the Annual Report or direct its modification.

25 (b) Management Area Engineer

26 (i) Absent the unanimous consent of the TMA, the Manage-
27 ment Area Engineer shall not concurrently be employed by any Party holding rights to use
28 Groundwater in the Santa Maria Valley Management Area.

1 (ii) The Management Area Engineer shall initially be the engin-
2 eering firm of Luhdorff & Scalmanini. Luhdorff & Scalmanini shall be the Management Area
3 Engineer for a minimum of the shorter of five years from the date of this Stipulation or the date
4 upon which Mr. Joseph Scalmanini discontinues full time work for that firm.

5 (iii) The TMA shall employ the following process to replace the
6 Management Area Engineer:

7 a. The TMA shall solicit candidates for Management
8 Area Engineer through a public process. All submissions and candidate materials shall be avail-
9 able to any Party upon request. The TMA shall conduct its interview through a public process to
10 the extent practical, and include District and Overlying Owner representatives in the candidate
11 review process.

12 b. Once a short list of candidates (less than five) for
13 Management Area Engineer is obtained, the TMA shall hold a noticed public hearing to take
14 comments on and consider the candidates for Management Area Engineer. The TMA shall make
15 a reasonable effort to select the Management Area Engineer with a unanimous vote. If the TMA
16 unanimously endorses a candidate, that nominee shall be recommended to the Court. Otherwise,
17 the short list of candidates shall be submitted.

18 c. The Court shall appoint the Management Area
19 Engineer following a noticed hearing.

20 4. *Funding.* The TMA shall pay for the Monitoring Program for the Santa
21 Maria Valley Management Area, which includes the cost of the Management Area Engineer and
22 the Annual Report. The cost of the Monitoring Program shall be divided among the Twitchell
23 Participants on the same basis as the allocation of their Twitchell Yield.

24 **C. Response to Varying Conditions**

25 1. *Early Response to Avoid Severe Water Shortage Conditions.* If the Man-
26 agement Area Engineer determines that projected demands are expected to materially exceed
27 projected water supplies, then the Management Area Engineer may recommend programs and
28 projects to augment the Management Area's water supplies. The Stipulating Parties will collabo-

1 rate on a response based upon current conditions, but absent Severe Water Shortage Conditions,
2 implementation of programs and projects will not be mandated.

3 The Stipulating Parties may voluntarily participate in any recommended program or
4 project, either through financial or other contributions. The Stipulating Parties that contribute to
5 such a program or project shall have a priority to the water supplies generated by that program or
6 project with Court approval. The Stipulating Parties agree to aggressively pursue New
7 Developed Water sources, including necessary funding.

8 2. Severe Water Shortage Conditions and Response.

9 (a) Determination. Severe Water Shortage Conditions shall be found
10 to exist when the Management Area Engineer, based on the results of the ongoing Monitoring
11 Program, finds the following: 1) groundwater levels in the Management Area are in a condition of
12 chronic decline over a period of not less than five Years; 2) the groundwater decline has not been
13 caused by drought; 3) there has been a material increase in Groundwater use during the five-Year
14 period; and 4) monitoring wells indicate that groundwater levels in the Santa Maria Valley
15 Management Area are below the lowest recorded levels.

16 (b) Response.

17 (i) If the Management Area Engineer determines that Severe
18 Water Shortage Conditions exist within the Santa Maria Valley Management Area, the Manage-
19 ment Area Engineer shall file and serve, as part of its Annual Report, findings and recommen-
20 dations to alleviate such shortage conditions or the adverse effects caused by such water shortage.

21 (ii) Upon the filing of the Annual Report, the Court shall hold a
22 noticed hearing regarding the existence and appropriate response to the Severe Water Shortage
23 Conditions. If, after that hearing, the Court finds that Severe Water Shortage Conditions exist in
24 the Santa Maria Valley Management Area, the Court shall first order all use of Groundwater to be
25 limited to: (a) for Guadalupe, Santa Maria and SCWC, their Developed Water; (b) entitled
26 Stipulating Parties to their New Developed Water; and (c) for the Overlying Owners, the Native
27 Groundwater plus any Developed Water to which individual Overlying Owners are entitled.

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1 (iii) The Court may also order Stipulating Parties to address
2 specific adverse effects caused by the Severe Water Shortage Conditions. The responses may
3 include, but are not limited to: (a) measures recommended in the Annual Report and the related
4 Court proceedings; and (b) other measures intended to address localized problems in the Santa
5 Maria Valley Management Area directly related to the Severe Water Shortage Conditions.

6 (iv) The Court may adjust the Groundwater use limitations
7 imposed on any Stipulating Party(ies) who implement programs or projects providing additional
8 water supplies within the Santa Maria Valley Management Area.

9 (v) If the Court finds that Management Area conditions have
10 deteriorated since it first found Severe Water Shortage Conditions, the Court may impose further
11 limitations on Groundwater use. If the Court imposes further limitations on Groundwater use, a
12 Stipulating Party shall be exempt from those limitations to the extent: (a) the Stipulating Party can
13 demonstrate that it has already implemented limitations in its Groundwater use, equivalent to
14 those ordered by the Court; or (b) the Stipulating Party can demonstrate that further limitations
15 would not avoid or reduce the deteriorating conditions.

16 (vi) During Severe Water Shortage Conditions, the Stipulating
17 Parties may make agreements for temporary transfer of rights to pump Native Groundwater,
18 voluntary fallowing, or the implementation of extraordinary conservation measures. Transfers of
19 Native Groundwater must benefit the Management Area and be approved by the Court.

20 **D. Management and Administration of the Twitchell Project**

21 1. Operational Parameters. All Twitchell Project operations (operation and
22 maintenance and capital projects) will be performed consistent with the following parameters
23 (Operational Parameters):

24 (a) Maximize recharge of the Santa Maria Valley Management Area
25 from Twitchell Water, including without limitation, the avoidance of impacts on recharge
26 resulting from ongoing accumulation of silt to the maximum extent practical.

27 (b) Operate the Twitchell Project in accordance with the requirements
28 of applicable law including, without limitation, the requirements of the Bureau of Reclamation

1 and Army Corps of Engineers.

2 (c) Operate the Twitchell Project in accordance with industry standards
3 and best management practices.

4 2. Twitchell Project Manual.

5 (a) The TMA will hire and pay for a professional engineering con-
6 sulting firm with expertise in dam and reservoir operations and maintenance, acceptable to the
7 District and the TMA, to develop an integrated operation and maintenance procedure manual
8 (“Twitchell Project Manual”) and provide recommendations for capital and maintenance projects
9 that are consistent with the Operational Parameters.

10 (b) The District shall hold one or more public hearings to solicit input
11 regarding the content of the Twitchell Project Manual.

12 (c) Within eighteen months of entry of the judgment, the TMA and the
13 District shall adopt a final Twitchell Project Manual.

14 (d) Any disagreement between the District and the TMA regarding the
15 content of the final Twitchell Project Manual shall be presented for Court review and determina-
16 tion pursuant to the judicial review provisions provided in this Stipulation.

17 (e) The District will exercise its discretionary authority to conduct all
18 its operation and maintenance activities for the Twitchell Project in accordance with the Twitchell
19 Project Manual.

20 3. Twitchell Project Funding.

21 (a) District will maintain its current operation and maintenance (O&M)
22 assessments. These funds will be used for District staff salaries, property, equipment, rent,
23 expenses, and other day-to-day operations, and will be expended consistent with the Twitchell
24 Project Manual to the extent it is applicable.

25 (b) The TMA will separately fund, administer, construct and manage
26 any additional Twitchell Project expenses or projects, including Capital Improvement Projects
27 (see below) and O&M, (Extraordinary Project Operations) consistent with the Twitchell Project
28 Manual. The TMA and the District will make reasonable efforts to work cooperatively to imple-

1 ment Extraordinary Project Operations.

2 (c) Consistent with the provisions of this Paragraph V(D), the District
3 and the TMA shall be responsible for ensuring the ongoing operational integrity of the Twitchell
4 Project and the maintenance of the Twitchell Yield. The Stipulating Parties expect that this
5 ongoing responsibility may involve significant expenditures. Within 120 days of the effective
6 date of this Stipulation, and annually thereafter, the Twitchell Participants shall establish an
7 operating budget for the TMA to fund its responsibilities set forth in this Stipulation. For the first
8 five years following the PUC approval as provided below, the TMA's annual budget shall be
9 established at an amount between \$500,000 to \$700,000. Following the initial budgeting period,
10 the TMA shall set its budget in three- to five-year increments, as it deems necessary to meet its
11 obligations to preserve the Twitchell Yield. Any unused revenues shall be segregated into a
12 reserve account, for future funding needs of the Twitchell Project. The Stipulating Parties agree
13 to cooperate and coordinate their efforts to enable the TMA to fulfill its responsibilities as pro-
14 vided in this Stipulation.

15 4. Twitchell Management Authority.

16 (a) The TMA shall be comprised of one representative of each of the
17 following parties: Santa Maria, Guadalupe, Southern California Water Company, the District, and
18 Overlying Landowners holding rights to Twitchell Yield.

19 (b) Only those parties holding an allocation of Twitchell Yield shall be
20 voting members of the TMA. Voting shall be based on each party's proportionate allocation of
21 Twitchell Yield.

22 (c) The TMA shall be responsible for all the Extraordinary Project
23 Operations.

24 (d) The TMA shall be responsible for developing proposals for Capital
25 Improvement Projects relating to the Twitchell Project. Capital Improvement Projects shall mean
26 projects involving the expenditure of funds for the improvement or enhancement of the Twitchell
27 Project, but shall not include normal operation, maintenance or repair activities.

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1 (e) Upon the development of a proposal for a Capital Improvement
2 Project, the TMA shall, in cooperation with the District, hold one or more public hearings to
3 solicit input.

4 (f) Following the public hearing process, the TMA may vote on
5 whether to implement the Capital Improvement Project.

6 (g) The cost of TMA-sponsored Extraordinary Project Operations and
7 Capital Improvement Projects shall be divided among Twitchell Participants on the same basis as
8 the allocation of their Twitchell Yield.

9 (h) The District shall assume operation and maintenance responsibility
10 for any TMA sponsored Capital Improvement Project to the extent practical within the District's
11 day-to-day operations.

12 5. Regulatory Compliance. The TMA or the District shall provide advance
13 notice to the Court and all Parties of the initiation of any regulatory proceeding relating to the
14 Twitchell Project.

15 6. Existing Contracts. The Twitchell Reservoir Project will continue to be
16 governed by and subject to the terms and conditions of the December 1955 agreement between
17 the District and the Santa Barbara County Water Agency and nothing in this Stipulation is
18 intended to modify the rights or obligations provided in that agreement. To the extent that the
19 approval of Santa Barbara County Water Agency or the United States Bureau of Reclamation is
20 required in connection with the implementation of this Stipulation, the Stipulating Parties agree to
21 work cooperatively to obtain such approval(s).

22 **E. New Urban Uses – Santa Maria Valley Management Area**

23 1. New Urban Uses shall obtain water service from the local public water
24 supplier. The local public water supplier shall provide water service on a reasonable and non-
25 discriminatory basis.

26 2. New municipal and industrial uses on land adjacent to or within one-
27 quarter mile of the boundary line depicted in Exhibit D shall comply with any applicable Cor-
28 porations Code provisions and negotiate in good faith to obtain water service from the local

1 public water supplier, before forming a mutual water company to provide water service.

2 3. No modification of land use authority. This Stipulation does not modify
3 the authority of the entity holding land use approval authority over the proposed New Urban
4 Uses.

5 4. New Urban Uses shall provide a source of supplemental water to offset the
6 water demand associated with that development. For the purposes of this section, supplemental
7 water shall include all sources of Developed Water, except: i) Twitchell Water, ii) storm water
8 percolation ponds existing as of the date of entry of the judgment, or iii) Overlying Owners' right
9 to use of surplus Developed Water.

10 **VI. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO NIPOMO MESA MAN-**
11 **AGEMENT AREA**

12 As supplemented by the provisions of this Stipulation that apply to all Management Areas,
13 the following terms shall apply to the Nipomo Mesa Management Area.

14 **A. Supplemental Water**

15 1. MOU. NCS D has entered into a Memorandum of Understanding
16 ("MOU") with Santa Maria which contemplates the wholesale purchase and transmission from
17 Santa Maria to the NMMA of a certain amount of water each Year (the "Nipomo Supplemental
18 Water"). All water delivered pursuant to the MOU for delivery by NCS D to its ratepayers shall
19 be applied within the NCS D or the NCS D's sphere of influence as it exists at the time of the
20 transmission of that water.

21 2. The NCS D agrees to purchase and transmit to the NMMA a minimum of
22 2,500 acre-feet of Nipomo Supplemental Water each Year. However, the NMMA Technical
23 Group may require NCS D in any given Year to purchase and transmit to the NMMA an amount
24 in excess of 2,500 acre-feet and up to the maximum amount of Nipomo Supplemental Water
25 which the NCS D is entitled to receive under the MOU if the Technical Group concludes that such
26 an amount is necessary to protect or sustain Groundwater supplies in the NMMA. The NMMA
27 Technical Group also may periodically reduce the required amount of Nipomo Supplemental
28 Water used in the NMMA so long as it finds that groundwater supplies in the NMMA are not

1 endangered in any way or to any degree whatsoever by such a reduction.

2 3. The Stipulating Parties agree to support (and, conversely, not to oppose in
3 any way or to encourage or assist any other Person or party in opposing or challenging) the imple-
4 mentation of the MOU, which includes environmental and regulatory permits and approvals, the
5 approval of a wholesale water supply agreement between Santa Maria and NCSD, and the
6 alignment and construction of a pipeline and related infrastructure necessary to deliver the
7 Nipomo Supplemental Water from Santa Maria to the NMMA (“Nipomo Supplemental Water
8 Project”). ConocoPhillips retains the right to object to or provide input on the alignment of any
9 pipelines associated with the Nipomo Supplemental Water Project if they might interfere with the
10 location of existing ConocoPhillips pipelines. The Stipulating Parties retain their rights to be
11 compensated for any interest or property acquired in implementing the Nipomo Supplemental
12 Water Project.

13 4. NCSD and Santa Maria shall employ their best efforts to timely implement
14 the Nipomo Supplemental Water Project, subject to their quasi-judicial obligations specified for
15 administrative actions and in the California Environmental Quality Act.

16 5. The enforcement of the provisions of Paragraph VI(D) below is condi-
17 tioned upon the full implementation of the Nipomo Supplemental Water Project, including the
18 Yearly use of at least 2,500 acre-feet of Nipomo Supplemental Water (subject to the provisions of
19 Paragraph VI(A)(2) above) within the NMMA. In the event that Potentially Severe Water
20 Shortage Conditions or Severe Water Shortage Conditions are triggered as referenced in Para-
21 graph VI(D) before Nipomo Supplemental Water is used in the NMMA, NCSD, SCWC,
22 Woodlands and RWC agree to develop a well management plan that is acceptable to the NMMA
23 Technical Group, and which may include such steps as imposing conservation measures, seeking
24 sources of supplemental water to serve new customers, and declaring or obtaining approval to
25 declare a moratorium on the granting of further intent to serve or will serve letters. In the event
26 that it becomes apparent that the Nipomo Supplemental Water will not be fully capable of being
27 delivered, any Stipulating Party may apply to the Court, pursuant to a noticed motion, for appro-
28 priate modifications to this portion of the Stipulation and the judgment entered based upon the

1 terms and conditions of this Stipulation, including declaring this Paragraph VI to be null and void,
2 and of no legal or binding effect.

3 6. Once the Nipomo Supplemental Water is capable of being delivered, those
4 certain Stipulating Parties listed below shall purchase the following portions of the Nipomo
5 Supplemental Water Yearly:

6 NCS D - 66.68%

7 Woodlands Mutual Water Company - 16.66%

8 SCWC - 8.33%

9 RWC - 8.33%

10 **B. Rights to Use Groundwater**

11 1. ConocoPhillips and its successors-in-interest shall have the right to the
12 reasonable and beneficial use of Groundwater on the property it owns as of the date of this Stipu-
13 lation located in the NMMA (“ConocoPhillips Property”) without limitation, except in the event
14 the mandatory action trigger point (Severe Water Shortage conditions) described in Paragraph
15 VI(D) (2) below is reached. Further, any public water supplier which provides water service to
16 the ConocoPhillips Property may exercise that right subject to the limitation described in Para-
17 graph VI(D)(2).

18 2. Overlying Owners that are Stipulating Parties that own land located in the
19 NMMA as of the date of this Stipulation shall have the right to the reasonable and beneficial use
20 of Groundwater on their property within the NMMA without limitation, except in the event the
21 mandatory action trigger point (Severe Water Shortage Conditions) described in Paragraph
22 VI(D)(2) below is reached.

23 3. The Woodlands Mutual Water Company shall not be subject to restriction
24 in its reasonable and beneficial use of Groundwater, provided it is concurrently using or has made
25 arrangements for other NMMA parties to use within the NMMA, the Nipomo Supplemental
26 Water allocated to the Woodlands in Paragraph VI(A)(5). Otherwise, the Woodlands Mutual
27 Water Company shall be subject to reductions equivalent to those imposed on NCS D, RWC and
28 SCWC, as provided in Paragraph VI(D)(1-2).

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2 **C. NMMA Technical Group**

3 1. The NMMA Technical Group shall include representatives appointed by
4 NCSD, SCWC, ConocoPhillips, Woodlands Mutual Water Company and an agricultural Over-
5 lying Owner who is also a Stipulating Party.

6 2. The NMMA Technical Group shall develop a Monitoring Program for the
7 NMMA (“NMMA Monitoring Program”), which shall be consistent with the Monitoring
8 Program described in Paragraph IV(D). The NMMA Monitoring Program shall also include the
9 setting of well elevation and water quality criteria that trigger the responses set forth in Paragraph
10 D below. The Stipulating Parties shall provide monitoring and other production data to the
11 NMMA Technical Group at no charge, to the extent that such data has been generated and is
12 readily available. The NMMA Technical Group shall adopt rules and regulations concerning
13 measuring devices and production reports that are, to the extent feasible, consistent with the
14 Monitoring Programs for other Management Areas. If the NMMA Technical Group is unable to
15 agree on any aspect of the NMMA Monitoring Program, the matter may be resolved by the Court
16 pursuant to a noticed motion.

17 3. The NMMA Technical Group meetings shall be open to any Stipulating
18 Party. NMMA Technical Group files and records shall be available to any Stipulating Party upon
19 written request. Notices of the NMMA Technical Group meetings, as well as all its final work
20 product (documents) shall be posted to groups.yahoo.com/group/NipomoCommunity/

21 4. The NMMA Technical Group functions shall be funded by contribution
22 levels to be negotiated by NCSD, SCWC, RWC, ConocoPhillips, and Woodlands Mutual Water
23 Company. In-lieu contributions through engineering services may be provided, subject to agree-
24 ment by those parties. The budget of the NMMA Technical Group shall not exceed \$75,000 per
25 year without prior approval of the Court pursuant to a noticed motion.

26 5. Any final NMMA Technical Group actions shall be subject to *de novo*
27 Court review by motion.

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2 **D. Potentially Severe and Severe Water Shortage Conditions**

3 1. Caution trigger point (Potentially Severe Water Shortage Conditions)

4 (a) Characteristics. The NMMA Technical Group shall develop
5 criteria for declaring the existence of Potentially Severe Water Shortage Conditions. These
6 criteria shall be approved by the Court and entered as a modification to this Stipulation or the
7 judgment to be entered based upon this Stipulation. Such criteria shall be designed to reflect that
8 water levels beneath the NMMA as a whole are at a point at which voluntary conservation
9 measures, augmentation of supply, or other steps may be desirable or necessary to avoid further
10 declines in water levels.

11 (b) Responses. If the NMMA Technical Group determines that Potentially Severe Water Shortage Conditions have been reached, the Stipulating Parties shall coordinate their efforts to implement voluntary conservation measures, adopt programs to increase the supply of Nipomo Supplemental Water if available, use within the NMMA other sources of Developed Water or New Developed Water, or implement other measures to reduce Groundwater use.

17 2. Mandatory action trigger point (Severe Water Shortage Conditions)

18 (a) Characteristics. The NMMA Technical Group shall develop the
19 criteria for declaring that the lowest historic water levels beneath the NMMA as a whole have
20 been reached or that conditions constituting seawater intrusion have been reached. These criteria
21 shall be approved by the Court and entered as a modification to this Stipulation or the judgment to
22 be entered based upon this Stipulation.

23 (b) Responses. As a first response, subparagraphs (i) through (iii) shall
24 be imposed concurrently upon order of the Court. The Court may also order the Stipulating
25 Parties to implement all or some portion of the additional responses provided in subparagraph (iv)
26 below.

27 (i) For Overlying Owners other than Woodlands Mutual Water
28 Company and ConocoPhillips, a reduction in the use of Groundwater to no more than 110% of

1 the highest pooled amount previously collectively used by those Stipulating Parties in a Year,
2 prorated for any partial Year in which implementation shall occur, unless one or more of those
3 Stipulating Parties agrees to forego production for consideration received. Such forbearance shall
4 cause an equivalent reduction in the pooled allowance. The base Year from which the calculation
5 of any reduction is to be made may include any prior single Year up to the Year in which the
6 Nipomo Supplemental Water is transmitted. The method of reducing pooled production to 110%
7 is to be prescribed by the NMMA Technical Group and approved by the Court. The quantifica-
8 tion of the pooled amount pursuant to this subsection shall be determined at the time the manda-
9 tory action trigger point (Severe Water Shortage Conditions) described in Paragraph VI(D)(2) is
10 reached. The NMMA Technical Group shall determine a technically responsible and consistent
11 method to determine the pooled amount and any individual's contribution to the pooled amount.
12 If the NMMA Technical Group cannot agree upon a technically responsible and consistent
13 method to determine the pooled amount, the matter may be determined by the Court pursuant to a
14 noticed motion.

15 (ii) ConocoPhillips shall reduce its Yearly Groundwater use to
16 no more than 110% of the highest amount it previously used in a single Year, unless it agrees in
17 writing to use less Groundwater for consideration received. The base Year from which the calcu-
18 lation of any reduction is to be made may include any prior single Year up to the Year in which
19 the Nipomo Supplemental Water is transmitted. ConocoPhillips shall have discretion in deter-
20 mining how reduction of its Groundwater use is achieved.

21 (iii) NCSD, RWC, SCWC, and Woodlands (if applicable as
22 provided in Paragraph VI(B)(3) above) shall implement those mandatory conservation measures
23 prescribed by the NMMA Technical Group and approved by the Court.

24 (iv) If the Court finds that Management Area conditions have
25 deteriorated since it first found Severe Water Shortage Conditions, the Court may impose further
26 mandatory limitations on Groundwater use by NCSD, SCWC, RWC and the Woodlands. Manda-
27 tory measures designed to reduce water consumption, such as water reductions, water restrictions,
28 and rate increases for the purveyors, shall be considered.

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2 (v) During Severe Water Shortage Conditions, the Stipulating
3 Parties may make agreements for temporary transfer of rights to pump Native Groundwater,
4 voluntary fallowing, or the implementation of extraordinary conservation measures. Transfer of
5 Native Groundwater must benefit the Management Area and be approved by the Court.

6 **E. New Urban Uses**

7 1. Within the sphere of influence or service area. New Urban Uses shall
8 obtain water service from the local public water supplier. The local public water supplier shall
9 provide water service on a reasonable and non-discriminatory basis.

10 2. Outside the sphere of influence or service area. New municipal and indus-
11 trial uses on land adjacent to or within one quarter mile of the boundary line depicted in Exhibit D
12 shall comply with any applicable Corporations Code provisions, including good faith negotiations
13 with the local water purveyor(s), prior to forming a mutual water company to provide water
14 service.

15 3. The ConocoPhillips property, owned as of the date of this Stipulation and
16 located within the NMMA, is not in the sphere of influence or service area, nor is it in the process
17 of being included in the sphere of influence, of a municipality or within the certificated service
18 area of a publicly regulated utility as of the date of this Stipulation, nor is it adjacent to or in close
19 proximity to the sphere of influence of a municipality or the certificated service area of a publicly
20 regulated utility as of the date of this Stipulation, as those terms are used in Paragraphs VI(E)(1
21 and 2).

22 4. No modification of land use authority. This Stipulation does not modify the
23 authority of the entity holding land use approval authority over the proposed New Urban Uses.

24 5. New Urban Uses as provided in Paragraph VI(E)(1) above and new muni-
25 cipal and industrial uses as provided in Paragraph VI(E)(2) above shall provide a source of
26 supplemental water, or a water resource development fee, to offset the water demand associated
27 with that development. For the purposes of this Paragraph, supplemental water shall include all
28 sources of Developed Water or New Developed Water.

1 **VII. PHYSICAL SOLUTION: PROVISIONS SPECIFIC TO NORTHERN CITIES**
2 **MANAGEMENT AREA**

3 These terms, supplemented by the provisions of this Stipulation that apply to all
4 Management Areas, govern water rights and resources in the Northern Cities Management Area.

5 1. Groundwater Monitoring. Groundwater monitoring in the Northern Cities
6 Management Area will be conducted by the Northern Cities in the manner described above.

7 2. Lopez Project. The Lopez Project will continue to be managed by the SLO
8 District. The Northern Cities and Landowners will continue to bear costs of the Lopez Reservoir
9 and no costs of the Twitchell Reservoir.

10 3. Independent Management Per Settlement Agreement.

11 (a) Existing Groundwater, SWP Water and Storage Space in the
12 Northern Cities Management Area will continue to be allocated and independently managed by
13 the Northern Parties in accordance with the Northern Cities and Northern Landowners' 2002
14 Settlement Agreement (Exhibit "E") for the purpose of preserving the long-term integrity of water
15 supplies in the Northern Cities Management Area. That Settlement Agreement initially allocates
16 57% of the safe yield of groundwater in Zone 3 to the farmers and 43% to the cities; and it
17 provides *inter alia* that any increase or decrease in the safe yield will be shared by the cities and
18 landowners on a pro rata basis. That Settlement Agreement is reaffirmed as part of this Stipula-
19 tion and its terms are incorporated into this Stipulation, except that the provisions regarding con-
20 tinuing jurisdiction (§ 4), groundwater monitoring, reporting, and the Technical Oversight
21 Committee (§§ 7-20) are canceled and superseded by the provisions of this Stipulation dealing
22 with those issues.

23 (b) Without the written agreement of each of the Northern Cities, no
24 party other than Northern Parties shall have any right to:

25 (i) pump, store, or use Groundwater or surface water within the
26 Northern Cities Management Area; or

27 (ii) limit or interfere with the pumping, storage, management or
28 usage of Groundwater or surface water by the Northern Parties within the Northern Cities

1 Management Area.

2 (c) For drought protection, conservation, or other management pur-
3 poses, the Northern Parties may engage in contractual transfers, leases, licenses, or sales of any of
4 their water rights, including voluntary fallowing programs. However, no Groundwater produced
5 within the Northern Cities Management Area may be transported outside of the Northern Cities
6 Management Area without the written agreement of each of the Northern Cities.

7 4. Current and future deliveries of water within the spheres of influence of the
8 Northern Cities as they exist on January 1, 2005 shall be considered existing uses and within the
9 Northern Cities Management Area.

10 **VIII. INJUNCTION – ALL MANAGEMENT AREAS**

11 **A. Use Only Pursuant to Stipulation**

12 Each and every Stipulating Party, their officers, agents, employees, successors and
13 assigns, are enjoined and restrained from exercising the rights and obligations provided through
14 this Stipulation in a manner inconsistent with the express provisions of this Stipulation.

15 **B. Injunction Against Transportation From the Basin**

16 Except upon further order of the Court, each and every Stipulating Party and its officers,
17 agents, employees, successors and assigns, is enjoined and restrained from transporting Ground-
18 water to areas outside the Basin, except for those uses in existence as of the date of this Stipula-
19 tion; provided, however, that Groundwater may be delivered for use outside the Basin as long as
20 the wastewater generated by that use of water is discharged within the Basin, or agricultural
21 return flows resulting from that use return to the Basin.

22 **C. No Third Party Beneficiaries**

23 This Stipulation is intended to benefit the Stipulating Parties and no other Parties. Only a
24 Stipulating Party may enforce the terms of this Stipulation or assert a right to any benefits of, or
25 enforce any obligations contained in this Stipulation.

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1 **IX. RESERVED JURISDICTION – ALL MANAGEMENT AREAS**

2 **A. Reserved Jurisdiction; Modifications, Cancellations, Amendments**

3 Jurisdiction, power and authority are retained by and reserved to the Court as set forth in
4 this Paragraph. Nothing in the Court's reserved jurisdiction shall authorize modification, cancel-
5 lation or amendment of the rights provided under Paragraphs III; V(A, E); VI(A, B, D); VII(2, 3);
6 VIII(A); IX(A, C); and X(A, D) of this Stipulation. Subject to this limitation, the Court shall
7 make such further or supplemental orders as may be necessary or appropriate regarding the
8 following:

- 9 1. enforcement of this Stipulation;
- 10 2. claims regarding waste/unreasonable use of water;
- 11 3. disputes between Stipulating Parties across Management Area boundaries;
- 12 4. interpretation and enforcement of the judgment;
- 13 5. consider the content or implementation of a Monitoring Program;
- 14 6. consider the content, conclusions, or recommendations contained in an
15 Annual Report;
- 16 7. consider Twitchell Project operations, including, but not limited to: i) the
17 content of the Twitchell Project Manual; ii) TMA or District compliance
18 with the Twitchell Project Manual; iii) decisions to implement Extraor-
19 dinary Project Operations; or iv) the maintenance of Twitchell Yield;
- 20 8. claims of localized physical interference between the Stipulating Parties in
21 exercising their rights pursuant to this Stipulation; provided, however,
22 rights to use Groundwater under this Stipulation shall have equal status;
23 and
- 24 9. modify, clarify, amend or amplify the judgment and the Northern Parties
25 Settlement Agreement; Provided, however, that all of the foregoing shall
26 be consistent with the spirit and intent of this Stipulation.

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1 **B. Noticed Motion**

2 Any party that seeks the Court’s exercise of reserved jurisdiction shall file a noticed
3 motion with the Court. Any noticed motion shall be made pursuant to the Court’s Order Con-
4 cerning Electronic Service of Pleadings and Electronic Posting of Discovery Documents dated
5 June 27, 2000, attached and incorporated as Exhibit “G”. Any request for judicial review shall be
6 filed within sixty days of the act or omission giving rise to the claim. Upon a showing of good
7 cause, the Court may extend the sixty-day time limitation.

8 **C. De Novo Nature of Proceeding**

9 The Court shall exercise *de novo* review in all proceedings. The actions or decisions of
10 any Party, the Monitoring Parties, the TMA, or the Management Area Engineer shall have no
11 heightened evidentiary weight in any proceedings before the Court.

12 **D. Filing and Notice**

13 As long as the Court’s electronic filing system remains available, all Court filings shall be
14 made pursuant to Exhibit “G”. If the Court’s electronic filing system is eliminated and not
15 replaced, the Stipulating Parties shall promptly establish a substitute electronic filing system and
16 abide by the same rules as contained in the Court’s Order.

17 **X. MISCELLANEOUS PROVISIONS – ALL MANAGEMENT AREAS**

18 **A. Unenforceable Terms**

19 The Stipulating Parties agree that if any provision of this Stipulation or the judgment
20 entered based on this Stipulation is held to be invalid, void, or unenforceable, the remaining pro-
21 visions shall nevertheless continue in full force and effect; provided, however, any order which
22 invalidates, voids, deems unenforceable, or materially alters those Paragraphs enumerated in
23 Paragraph IX(A) or any of them, shall render the entirety of the Stipulation and the judgment
24 entered based on this Stipulation voidable and unenforceable, as to any Stipulating Party who
25 files and serves a motion to be released from the Stipulation and the judgment based upon the
26 Stipulation within sixty days of entry of that order, and whose motion is granted upon a showing
27 of good cause.

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1 **B. Water Quality**

2 Nothing in the Stipulation shall be interpreted as relieving any Stipulating Party of its
3 responsibilities to comply with state or federal laws for the protection of water quality or the
4 provisions of any permits, standards, requirements, or orders promulgated thereunder.

5 **C. Duty to Cooperate**

6 The Stipulating Parties agree not to oppose, or in any way encourage or assist any other
7 party in opposing or challenging, any action, approval, or proceeding necessary to obtain
8 approval of or make effective this Stipulation or the judgment to be entered on terms consistent
9 with this Stipulation.

10 **D. Stipulating Parties Under Public Utilities Commission Regulation**

11 1. To the extent allowed by law, SCWC and RWC shall comply with this
12 Stipulation, prior to obtaining California Public Utilities Commission (“PUC”) approval. If the
13 PUC fails to approve SCWC’s and RWC’s participation or fails to provide approval of the neces-
14 sary rate adjustments so that SCWC and RWC may meet their respective financial obligations,
15 including the participation in Developed Water projects, Monitoring Programs, TMA and as
16 otherwise provided in this Stipulation, shall render the entirety of the Stipulation and those terms
17 of any judgment based on this Stipulation invalid, void and unenforceable, as to any Stipulating
18 Party who files and serves a notice of rescission within sixty days of notice by SCWC or RWC of
19 a final PUC Order.

20 2. Any Party, or its successors or assigns, agreeing to become a new customer
21 of SCWC or RWC, or an existing customer proposing to increase its water use through a change
22 in land use requiring a discretionary land use permit or other form of land use entitlement, that
23 has not executed reservation contracts for supplemental water as specified in Exhibit F will
24 provide the following, once approved by the PUC:

25 (a) If in the Santa Maria Valley Management Area, a water resource
26 development fee as specified in Exhibit F or a source of supplemental water sufficient to offset
27 the consumptive demand associated with the new use as provided in Paragraph V(E); or

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1 (b) If in the NMMA, a water resource development fee, or a source of
2 supplemental water sufficient to offset the consumptive demand associated with the new use.

3 3. Any Person who is not engaged in a New Urban Use and who agrees to
4 become a customer of SCWC or RWC shall retain its right to contest the applicable water
5 resource development fee, should that fee ever become applicable to that Person.

6 **E. Designation of Address, for Notice and Service**

7 Each Stipulating Party shall designate the name, address and e-mail address, if any, to be
8 used for purposes of all subsequent notices and service, either by its endorsement on the Stipula-
9 tion for entry of judgment or by a separate designation to be filed within thirty days after execu-
10 tion of this Stipulation. This designation may be changed from time to time by filing a written
11 notice with the Court. Any Stipulating Party desiring to be relieved of receiving notices may file
12 a waiver of notice on a form approved by the Court. The Court shall maintain at all times a
13 current list of Parties to whom notices are to be sent and their addresses for purposes of service.
14 The Court shall also maintain a full current list of names, addresses, and e-mail addresses of all
15 Parties or their successors, as filed herein. Copies of such lists shall be available to any Person.
16 If no designation is made, a Stipulating Party's designee shall be deemed to be, in order of
17 priority: i) the Party's attorney of record; ii) if the Party does not have an attorney of record, the
18 Party itself at the address specified.

19 **F. No Loss of Rights**

20 Nothing in this Stipulation shall be interpreted to require or encourage any Stipulating
21 Party to use more water in any Year than is actually required. As between the Stipulating Parties,
22 failure to use all of the water to which a Stipulating Party is entitled hereunder shall not, no matter
23 how long continued, be deemed or constitute an abandonment or forfeiture of such Stipulating
24 Party's rights, in whole or in part.

25 **G. Intervention After Judgment**

26 Any Person who is not a Party or successor to a Party, who proposes to use Groundwater
27 or Storage Space, may seek to become a Party to the judgment through a petition for intervention.
28 The Court will consider an order confirming intervention following thirty days notice to the

1 Parties. Thereafter, if approved by the Court, such intervenor shall then be a Party bound by the
2 judgment as provided by the Court.

3 **H. Stipulation and Judgment Binding on Successors, Assigns, etc.**

4 The Stipulating Parties agree that all property owned by them within the Basin is subject
5 to this Stipulation and the judgment to be entered based upon the terms and conditions of this
6 Stipulation. This Stipulation and the judgment will be binding upon and inure to the benefit of
7 each Stipulating Party and their respective heirs, executors, administrators, trustees, successors,
8 assigns, and agents. This Stipulation and the judgment to be entered based the terms and condi-
9 tions of this Stipulation shall not bind the Stipulating Parties that cease to own property within the
10 Basin, or cease to use Groundwater. As soon as practical after the effective date of this Stipula-
11 tion, a memorandum of agreement referencing this Stipulation shall be recorded in Santa Barbara
12 and San Luis Obispo Counties by Santa Maria, in cooperation with the Northern Cities and
13 SCWC. The document to be recorded shall be in the format provided in Exhibit "H".

14 **I. Costs**

15 No Stipulating Party shall recover any costs or attorneys fees from another Stipulating
16 Party incurred prior to the entry of a judgment based on this Stipulation.

17 **J. Non-Stipulating Parties**

18 It is anticipated that the Court will enter a single judgment governing the rights of all
19 Parties in this matter. The Stipulating Parties enter into this Stipulation with the expectation that
20 the Court will enter, as a part of the judgment, the terms and conditions of this Stipulation. This
21 Stipulation shall not compromise, in any way, the Court's legal and equitable powers to enter a
22 single judgment that includes provisions applicable to the non-Stipulating Parties that may
23 impose differing rights and obligations than those applicable to the Stipulating Parties. As against
24 non-Stipulating Parties, each Stipulating Party expressly reserves and does not waive its right to
25 appeal any prior or subsequent ruling or order of the Court, and assert any and all claims and
26 defenses, including prescriptive claims. The Stipulating Parties agree they will not voluntarily
27 enter into a further settlement or stipulation with non-Stipulating Parties that provides those non-
28 Stipulating Parties with terms and conditions more beneficial than those provided to similarly

1 situated Stipulating Parties.

2 **K. Counterparts**

3 This Stipulation may be signed in any number of counterparts, including counterparts by
4 facsimile signature, each of which shall be deemed an original, but all of which shall together
5 constitute one and the same instrument. The original signature pages shall be filed with Court.

6 **L. Effective Date**

7 This Stipulation shall be effective when signed by the Stipulating Parties listed on Exhibit
8 "A" and accepted by the Court.

Party	Signature, title, and date	Parcels Subject to Stipulation
Attorney of Record	Approved as to form: By: _____ Date: _____	

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is HATCH & PARENT, 21 E. Carrillo Street, Santa Barbara, California 93101.

Pursuant to the Court's Order dated June 28, 2000, I, Gina Lane, did the following:

- Posted the following document at approximately 4:30 p.m. on June 30, 2005.

STIPULATION (JUNE 30, 2005 VERSION)

- Mailed a Notice of Availability to all parties (designating or defaulting to mail service) on the current website's service list.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 30, 2005, at Santa Barbara, California.

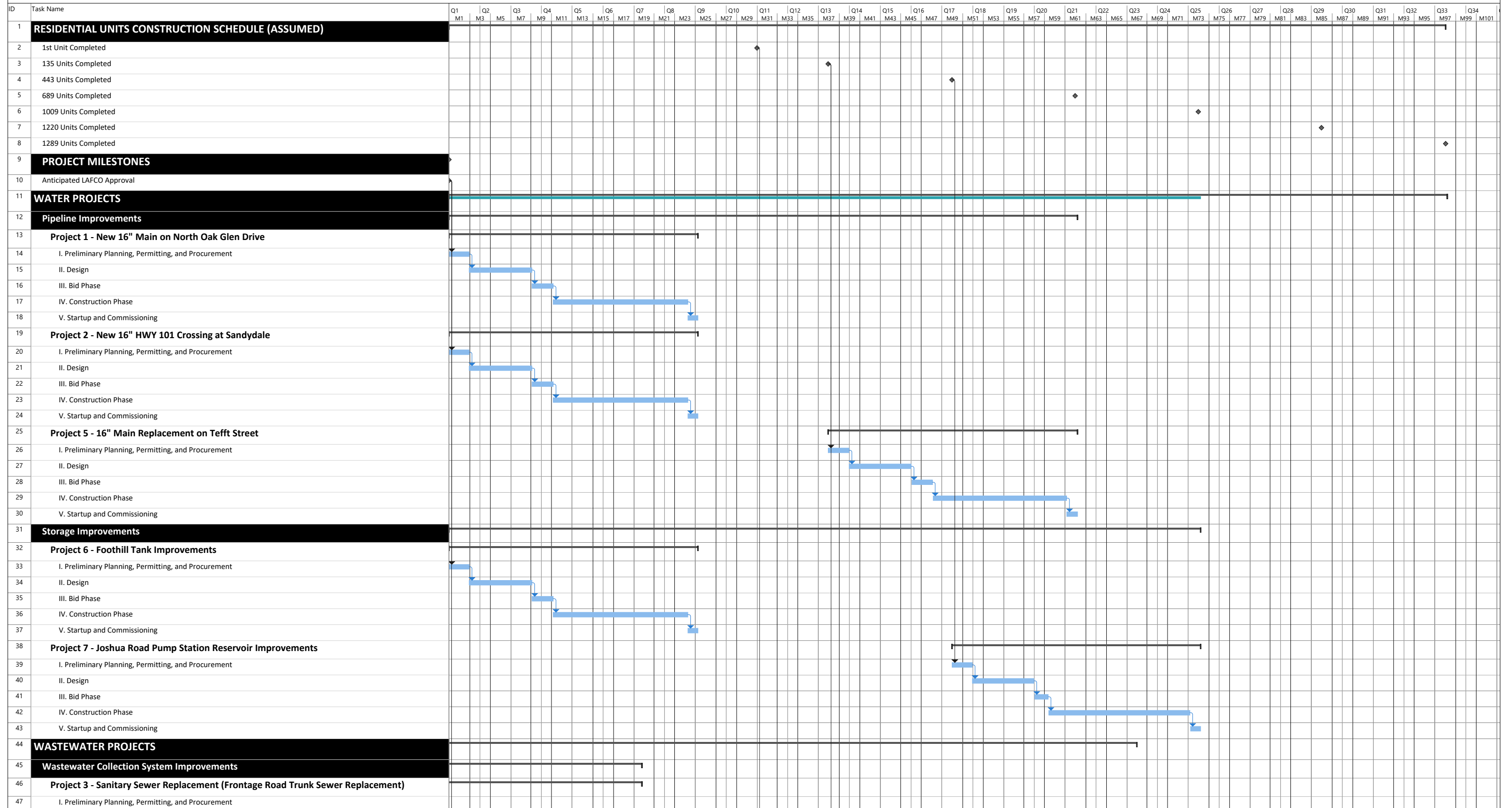


GINA M. LANE

Appendix E: Implementation Phasing Schedule

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Figure 5-1
Nipomo Community Services District
Dana Reserve Development
Water and Wastewater Phasing Study



Project: NCS D Dana Reserve Phasing Schedule
 Date: Fri 4/26/24

Task		Milestone		Project Summary		Inactive Milestone		Manual Task		Manual Summary Rollup		Start-only		External Tasks		Deadline		Manual Progress	
Split		Summary		Inactive Task		Inactive Summary		Duration-only		Manual Summary		Finish-only		External Milestone		Progress			

Figure 5-1
Nipomo Community Services District
Dana Reserve Development
Water and Wastewater Phasing Study

