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Elaina Cano  
San Luis Obispo - County Clerk-Recorder  
09/09/2024 11:56 AM

**CONFORMED COPY**

Copy of document recorded.  
Has not been compared with original.

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

APN# [091-301-073]  
[091-301-031]  
[091-301-029]

**ANNEXATION AGREEMENT**

THIS agreement regarding the annexation of property ("Agreement"), is made this 28 day of August, 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 southwest of the Willow Road and Highway 101 interchange, 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 500<sup>th</sup> and 850<sup>th</sup> 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 689<sup>th</sup> and 1009<sup>th</sup> 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](http://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, nor 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:

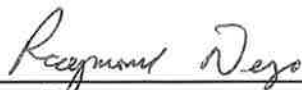
By:   
(Note: Signature must be notarized)  
[Name]

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


DISTRICT:

By:   
Ed Eby  
President

Attest:

  
Ray Dienzo  
Secretary to the Board

Approved as to Form:

  
Craig A. Steele  
General Counsel

**CALIFORNIA ACKNOWLEDGMENT**

CIVIL CODE § 1189

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

State of California

County of San Luis Obispo }

On August 28, 2024 before me, Grace Nicole Millhorn Customer Service Clerk,  
Date Here Insert Name and Title of the Officer

personally appeared Nicholas James Tompkins  
Name(s) of Signer(s)

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



Place Notary Seal and/or Stamp Above

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

WITNESS my hand and official seal.

Signature Grace Millhorn

Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_

# EXHIBIT "A"

## DANA RESERVE PROPERTY DEPICTION

HIGHWAY 101

WILLOW RD.

SANDYDALE

AREA 288.35 AC

PARCEL 1  
49 PM 25

15  
A

15  
B

20  
C

20  
D

15  
A

15  
B

27  
C

27  
D

SCALE 1"=600'

HETRICK RD.

HETRICK RD.

POMEROY RD.

DANA RESERVE, NIPOMO

N:\2017\17-153 Hetrick-Cherokee - Rancho Nipomo\C3D 2019\17-153 Re Nipomo - Dana Reserve Property Depiction.dwg, 8.5X11 PROPERTY DEPICTION, May 01, 2024 3:08pm, MStanton



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

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 NCSO 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 NCS D boundary; thence along the existing NCS D 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 <sup>1</sup>	Responsible Entity	Timeframe for Completion
<b>Water Distribution and Storage</b>	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
<b>Wastewater Collection</b>	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
<b>Wastewater Treatment</b>	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

<sup>1</sup> 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](http://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](http://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](http://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