

**FIRST AMENDED
AGREEMENT FOR EXTRATERRITORIAL WATER AND SEWER
SERVICE BETWEEN THE NIPOMO COMMUNITY SERVICES
DISTRICT AND THE LUCIA MAR UNIFIED SCHOOL DISTRICT**

1. PARTIES AND DATE.

This First Amended Agreement for Extraterritorial Water and Sewer Service ("Agreement") is made and entered into this 7th day of November, 2000 by and between the **Nipomo Community Services District**, a community services district organized and operating pursuant to the provisions of the California Government Code ("Community Services District") and the **Lucia Mar Unified School District**, a public school district organized and operating pursuant to the provisions of the California Education Code ("School District").

2. RECITALS.

2.1 The School District represents and warrants that it has an interest in certain real property situated in the County of San Luis Obispo ("County") on which it intends to construct its second high school ("Property"). The Property is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. The Property is located outside and immediately adjacent to the Community Services District's service boundaries.

2.2 The School District had requested that the Community Services District provide water and sewer service to the Property, and the Community Services District agreed to grant the School District's request on the terms and conditions provided for in that Agreement for Extraterritorial Water and Sewer Service Between the Nipomo Community Services District and the Lucia Mar Unified School District dated on or about August 10, 1999 ("Original Agreement").

2.3 The School District and Community Services District now wish to amend that Original Agreement to set forth the terms and conditions under which the School District may expand its existing domestic well on the Dana Elementary School property ("Dana Well") and transport water from the Dana Well through the Community Services District's system in order to serve the new high school.

3. TERMS.

3.1 Authority to Enter Agreement. This Agreement is entered into by the Community Services District and the School District for the provision of water and sewer services outside the Community Services District's jurisdictional boundaries pursuant to Government Code Section 56133.

3.2 Term. The term of this Agreement shall be from the date first hereinabove written until either Party terminates this Agreement pursuant to Section 3.15 of this Agreement.

3.3 Condition Precedent. The School District shall pay the Community Services District for engineering services required to update the Community Services District's Water and Sewer Master Plan to include evaluations of the infrastructure needed to serve the Property and associated impacts on the resources of the Community Services District. The School District shall deposit \$2,500.00 with the Community Services District for the estimated cost of such engineering services. Upon completion of the update services, the Community Services District shall provide the School District with a written invoice from the engineer specifying the time and services attributable to the update required pursuant to this Agreement. If the documented invoice indicates that the costs are less than \$2,500, the School District shall be entitled to a refund of the difference within thirty (30) days. If the invoice indicates the costs are more than \$2,500, the School District shall pay such amount within thirty (30) days of its receipt of the invoice.

3.4 Agreement to Provide Water Service. Upon receipt and approval of the Engineer's Report reference in Section 3.3 above, the Community Services District agrees to provide water and sewer service to the Property, and the School District agrees to accept and pay for such service, subject to the terms and conditions of this Agreement and the following conditions:

- 3.4.1 The School District shall enter into a Plan Check and Inspection Agreement with the Community Services District and pay the appropriate Community Services District fees.
- 3.4.2 The School District shall submit Improvement Plans for approval by the Community Services District showing all existing off-site water and sewer facilities and all proposed facilities (off-site and on-site) required to provide water and sewer service to the Property. Such facilities shall be in compliance with the Community Services District's Plans and Specifications.
- 3.4.3 The School District shall pay the following Community Services District fees prior to the Community Services District delivering water to the Property for construction and/or occupancy: (1) sewer

capacity fee based upon the rate of \$2,370 per dwelling unit equivalency (currently estimated to be \$187,230); (2) water capacity fee based upon one 3" domestic meter (\$53,000) and one 4" irrigation meter (\$106,000); (3) fire capacity fee based upon an 8" water meter (\$92,000); (4) if the School District transports water from the Dana Well through the Community Services District's system to the Property, the School District will pay a one time fee of \$100,000 for its fair share of the cost to upgrade the Tefft Street water line); and (5) regulatory and fire water storage fee based upon 400,000 gallons of storage (\$200,000). In addition, at the time Phase II of the new high school connects to the Community Service District's sewage system, the School District agrees to pay its fair share of the applicable costs to upgrade the Tefft Street lift station. With respect to this Phase II fee, the Community Services District shall provide written documentation establishing, to the satisfaction of the School District, the applicable costs and the fair share allocation. If the parties are unable to agree upon a fair share allocation formula or resulting cost to the School District, the parties shall resolve the dispute through binding arbitration with an arbitrator mutually acceptable to both parties. If the parties are unable to agree upon an arbitrator, the matter shall be determined by three arbitrators, with one appointed by the School District, one appointed by the Community Services District, and one appointed by the other two arbitrators. The cost of arbitration shall be borne equally by both parties.

- 3.4.4 The School District shall submit a detailed plumbing plan of the on-site water and sewer facilities so that the Community Services District may determine the number of fixture units in each building on the Property.
- 3.4.5 The School District shall design any landscape development of the common areas on the Property such that it requires minimal water use.
- 3.4.6 The School District shall submit the following documents before commencement of delivery of water for occupancy purposes through the Community Service District water system: Reproducible As-Builts, Offer of Dedication of the Connecting Facilities, Engineer's Certification, certification of the School District's water treatment facilities by the County Health Department, verification of

employment by the School District of a Certified Operator, and Summary of costs of water & sewer improvements.

- 3.4.7 In the event the School District expands the Dana Well in sufficient capacity to serve the new high school and transports that water through the Community Services District system, the School District shall maintain and make available to the Community Services District, upon reasonable notice and during normal business hours, all required records pertaining to the Dana Well and the School District's water treatment system.

3.5 Regulations. The School District agrees to abide by all rules and regulations of the Community Services District regarding the provision of water and sewer service to the Property. With respect to water treatment standards, the School District shall comply with all applicable federal, state and county laws, rules and regulations.

3.6 Payment for Service.

- 3.6.1 Sewer Service: The School District agrees to pay the Community Services District for sewer service delivered to the Property in accordance with the Community Services District's customary rates and charges for such services which are applicable to property within the Community Services District's boundaries and which may be amended from time to time.
- 3.6.2 Water Service: In the event the School District expands the Dana Well in sufficient capacity to serve the new high school and transports that water through the Community Services District system, the School District agrees to pay the Community Services District ten cents (\$0.10) per 100 cubic feet of water ("Unit Price") transported from the Dana Well through the Community Services District's system to the Property. All rights to the water pumped from the Dana Well shall remain with the School District until said water enters the Community Services District water distribution facilities. The School District shall pay to have meters installed at the point the water enters the Community Services District facilities and the point at which the water is delivered to the Property. For each meter, the School District shall pay the customary monthly charge which is applicable to property within the Community Services District boundaries. The Community Services

District shall provide the School District with a written monthly report on its water bill of the amount of water which enters the Community Services District facilities and the amount of water which is delivered to the Property. Each month, the School District shall pay the Unit Price for water actually delivered to the Property and shall receive a credit equal to the Unit Price for any water which enters the Community District Facilities but is not delivered to the Property. Credits may be carried over from month-to-month and shall have no expiration date. If some or all of the water delivered to the Property is supplied by the Community Services District from a source other than the Dana Well (e.g. the School District satisfies its water source requirement in Section 3.10 below by some other means, such as successfully completing the retrofitting of facilities), then School District agrees to pay the Community Services District's customary rates and charges for such service which are applicable to property within the Community Services District boundaries and which may be amended from time to time.

3.7 Construction of Connecting Facilities. The School District shall be responsible for constructing and installing, pursuant to the Plan Check and Inspection Agreement between the School District and the Community Services District, the following: (1) the necessary facilities from the Property to the connection points within the Community Services District's jurisdictional boundaries which are required by the Community Services District for the provision of water and sewer service to the Property; and (2) in the event the School District elects to satisfy its water supply obligations (pursuant to Section 3.10) by expanding the Dana Well, all facilities necessary to transport water pumped from the Dana Well to the fire service line located on the Dana Elementary School campus ("Connecting Facilities"). As used herein, the term "Connecting Facilities" expressly excludes the Dana Well and its appurtenant pumping facilities, but includes those facilities necessary to transport the water from the Dana Well to the noted Community Service District facilities. Upon approval and acceptance by the Community Services District, it shall accept ownership and responsibility for the maintenance and repair of those Connecting Facilities located off of the Property or those which the Community Services District would customarily accept within its jurisdictional boundaries. The School District shall accept ownership and responsibility for the maintenance and repair of all other Connecting Facilities.

3.8 Commencement of Service. Upon the School District's performance of its obligations under this Agreement (including Section 3.10), completion of the construction and installation of the Connecting Facilities to the satisfaction and acceptance of the Community Services District, and adequate assurance that the water supply (pursuant to Section 3.10) will be sufficient to serve the property within the Community Services District and the Property, the Community Services District shall commence delivering water and sewer service to the Property. For purposes of this Section,

adequate assurance that the water supply will be sufficient to serve the property within the Community Services District and the Property shall be conclusively presumed with the School District's completion of the Dana Well expansion to produce at least 100 gpm (if elected by the School District) and a confirming report by a hydrologist mutually acceptable to the parties which indicates that the well will have a longterm sustainable production at 100 gpm. To this end, the School District shall use all reasonable efforts to have the Dana Well expanded and under production on or before November 1, 2001. The parties shall cause the confirming report to be prepared at the earliest time the hydrologist determines that the well has been pumping for a sufficient period of time. The School District shall take all steps within its reasonable control to have that confirming report prepared at the soonest possible date. The Community Services District shall give the School District 100% credit equal to the Unit Price in Section 3.6.2 above for water produced by the Dana Well and introduced into the Community Services District's system and not delivered to the Property. The School District shall be entitled to utilize this credit once it begins to utilize water for construction or occupancy purposes on the Property. The Community Services District shall provide a written monthly report of the water credits to the School District until the School District begins to utilize water for construction or occupancy purposes on the Property, at which time the credit shall be reflected and adjusted on the School District's monthly water bills as indicated in Section 3.6.2 above. Credits may be carried over from month-to-month and shall have no expiration date.

3.9 Water Requirements. The Parties anticipate that the Property will require approximately eighty (80) acre feet of water per year.

3.10 Water Source. Prior to the commencement of water service to the Property, the School District shall be responsible for establishing one or more water sources in order to satisfy the water requirements of the Property. If a water source required by this Section is a well, such well must have the capacity to pump at least one hundred (100) gpm or must otherwise be approved by the Community Services District, must meet the Community Services District and State Department of Health Services requirements for water quality, and shall be connected to the Community Services District's facilities to transport the produced water to the new high school.

To the extent the District is not able to establish one or more original water sources acceptable to the Community Services District which supply at least eighty (80) acre feet of water per year (e.g. a well which produces 100 gpm or some other amount acceptable to the Community Services District), the School District may satisfy the remainder of its water source requirement by other suggested methods. Such suggestions shall be subject to the approval of the Community Services District. As one alternative method which is mutually acceptable to the School District and the Community Services District, the School District may fund, implement and complete the retrofitting of homes or other private or public facilities in the area of the Property, to the extent such retrofits are available to meet the anticipated water requirement of the Property, as follows:

- 3.10.1 Enter into a retrofit agreement and prepare and submit a detailed Retrofit Plan to the Community Service District listing the addresses of the homes or other private or public facilities within the District to be retrofitted and the consent of each resident/owner. The School District understands, acknowledges and agrees that the Community Services District can only make the potential retrofit facilities available to the School District, but cannot and does not guarantee that any of the facility owners will agree to have their facilities retrofitted. The School District shall receive water credits only for those retrofit facilities that actually participate and for which retrofitting is completed.
- 3.10.2 Retrofitting of approximately four (4) single-family residences is equivalent to a single-family residence's usage of about 0.4 AFY (acre-feet per year) of water. The School District's estimated water usage for the Property is 80 AFY. Therefore, $80 \div 0.4 \times 4 = 800$ single family residences or equivalents will need to be retrofitted to satisfy the School District's obligations under this Section. The Parties shall mutually agree upon similar retrofit guidelines for other private or public facilities, and shall reasonably cooperate with one another in establishing such guidelines.
- 3.10.3 The Retrofit Plan shall be implemented and completed by a licensed plumbing contractor. Prior to the commencement of service pursuant to Section 3.8 of this Agreement, the plumbing contractor shall certify to the Community Services District the number of retrofits that have been completed in accordance with this Agreement. For those retrofits utilized by the School District pursuant to its Retrofit Option in Section 3.10.5 below, the School District shall substantially complete the retrofits prior to the date the School District begins providing educational services at the new High School.
- 3.10.4 The School District agrees to defend, indemnify and hold the Community Services District and its officers, agents and employees harmless against any and all claims, causes of action, judgments, damages, liability, losses, costs or expenses, including reasonable attorneys' fees, brought against the Community Services District or suffered or incurred by it, arising out of the School District's or the School District's employees or contractors, performance of the Retrofit Plan. The School District's indemnity obligations under this

Section excludes any actions, claims or damages arising from the negligence or willful misconduct of the Community Services District, its officer, employees and contractors.

3.10.5 In order to allow the School District time to verify long-term production of the Dana Well, the Community Services District hereby grants an option to the School District, for a period expiring ninety (90) calendar days following the date of the hydrologist's long-term confirming report in Section 3.8 above, to utilize four hundred (400) potential retrofit facilities within the Community Services District boundaries ("Retrofit Option"). To this end, therefore, the Community Services District will reserve at least 400 potential retrofit facilities and make them available to the School District during the 90 day Retrofit Option period. In order to exercise its Retrofit Option, the School District shall give written notice to the Community Services District of its intent to exercise the option within the 90 day period. If the School District fails to give such notice within the 90 day period, it shall be entitled to utilize the retrofit option to satisfy its water source requirement only to the extent that potential retrofit facilities remain available to the School District. The Community Services District does not guarantee that any potential retrofit facilities will be available to the School District following the expiration of the Retrofit Option. In addition, the Community Services District cannot guarantee that more than 400 potential retrofit facilities will be available to the School District during the Retrofit Option period.

3.11 Continued Water Source. Notwithstanding any other provisions in this Agreement, if the School District's obligation to provide a water source (as provided in Section 3.10 above) is satisfied in whole or in part by a well, then the following continuing obligations shall also apply:

- 3.11.1 The School District, at its sole cost and expense, shall be responsible for maintaining the agreed upon gallons per minute production.
- 3.11.2 The School District shall be responsible, at its sole cost and expense, for the operation and maintenance costs of the well.
- 3.11.3 The School District shall give prompt written notice to the Community Services District of either of the following: (1) any interruption or anticipated interruption in well production for

maintenance and repair; or (2) loss of production capacity of said well.

3.11.4 Upon providing the Community Services District with written notice pursuant to Section 3.11.3, the School District shall take immediate action to promptly complete the maintenance and repairs of said well and/or secure an alternate means of satisfying Section 3.10 to the satisfaction of the Community Services District. The School District shall take all steps within its reasonable control to assure that the maintenance and repair work is completed as soon as possible or to secure an alternate means of satisfying Section 3.10 to the satisfaction of the Community Services District as soon as possible.

3.11.5 To the extent the Community Services District has excess water capacity during periods when the well does not meet production requirements by reason of repair, maintenance and/or loss of capacity, the Community Services District agrees as follows: (1) during the first thirty (30) days from the date the well goes out of service, the School District shall pay to the Community Services District the established water rates (as amended from time to time) for water service from the Community Services District water production facilities which are applicable to property within the Community Services District boundaries; (2) from the 30th day to the 180th day, the School District shall pay to the Community Services District double the established water rates (as amended from time to time) for water service from the Community Services District water production facilities which are applicable to property within the Community Services District boundaries; (3) on the 7th day of well interruption, the School District shall submit a statement to the Community Services District identifying the nature of the interruption and its plan to restore production, along with all consultant reports received by the School District that relate to the well production interruption; (4) if the interruption in well production has not been resolved by the 60th day, the School District shall submit a report on or before the 75th day identifying the nature of the interruption, the steps it has taken to restore water production, and the steps it plans to take to complete restoration of production; (5) upon receipt of the report provided for in subparagraph (4) above and information to its reasonable satisfaction that the School District is diligently pursuing all steps

within its reasonable control to complete the restoration of production, the Community Services District shall grant the School District an extension of up to eighteen (18) months from the expiration of the 180th day following well interruption to complete the restoration of production, during which time the water charges identified in subparagraph (2) above shall remain in effect; (6) during any extension granted by the Community Services District pursuant to subparagraph (5) above, the Community Services District may require the School District to provide another report as provided for in subparagraph (4) above and shall grant another extension of time if the School District meets the terms and conditions of subparagraph (5) above, with the understanding that the maximum cumulative extension to which the School District would be entitled under the terms and conditions of subparagraph (5) above would be eighteen (18) months from the expiration of the 180th day following well interruption; (7) in the event the restoration of production is not completed within the period of time provided for herein, the Community Services District ~~may~~ has the option to take action to terminate the School District's water service.

3.12 Annexation. Within two (2) years of opening the new high school, the School District will apply to LAFCO to annex the Property to the Community Services District. If annexation is not commenced within the two (2) years stated, or if it is not thereafter approved within three (3) years of opening the high school, the Community Services District's Outside of District User Fees will be implemented rather than the fees indicated in Section 3.6.

3.13 Conditions and Covenants. The obligations of School District under this Agreement are both covenants and conditions.

3.14 Groundwater litigation. Notice is provided that Nipomo Community Services District has been made a party to that lawsuit entitled *Santa Maria Valley Water Conservation District, et al. v. City of Santa Maria, et al.*, Santa Clara Superior Court Case No. CV770214. The case involves competing claims to the right to produce water from and/or store water in the Santa Maria Valley Groundwater Basin, the water source from which Nipomo Community Services District derives the water which it serves. The District is now unable to predict with any certainty the outcome of the above-referenced litigation. However, the litigation conceivably could result in a limitation on the availability of groundwater for the District's production and/or an increase in the cost of water which the District serves to its water customers. Notwithstanding the foregoing, in the event the School District meets its water supply obligations under Section 3.10 above, the Community Services District shall ensure that adequate water supply (~~up to the amount transported from the Dana Well~~

through the ~~Community Services District's facilities~~) is provided to the new Nipomo High School at all times, unless a reduction is approved in advance by the School District. For purposes of this Section, adequate water supply shall mean the amount transported from School District wells through the Community Services District's facilities, if the School District meets its obligation by means of one or more wells, and up to the amount of the water source provided by the School District, less any legally authorized reductions or conservation requirements instituted by the Community Services District which are fairly apportioned amongst all of its customers, if the School District meets its obligation by means other than a well.

3.15 Termination. Except as otherwise required by law, prior to the opening of the new high school, this Agreement may be terminated by either Party upon written notice given at least three hundred and sixty-five (365) days in advance. Following the opening of the new high school, this Agreement or the provision of water and sewer service to the high school may be terminated only pursuant to applicable law and the Community Services District's rules and regulations, as well as in the case of default by either Party as provided for in this Agreement.

3.16 Attorneys' Fees. If any party to this Agreement commences any legal proceeding concerning any aspect of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, and all costs and expenses incurred in connection with the action or proceeding, including but not limited to, expert witness fees, court reporter fees and collection expenses.

3.17 Entire Agreement/Amendment. This document represents the entire agreement of the parties hereto with respect to the subject matter hereof. This Agreement may be amended only by a written agreement executed by both parties.

3.18 Binding Upon Successors and Assigns; Covenant Running with the Property. This Agreement shall be binding upon and shall inure to the benefit of the School District and the Community Services District, and their respective heirs, successors, grantees, transferees, lessees and permissible assigns. It is intended to be and shall be a covenant running with the Property.

3.19 Prohibition Against Assignment. The School District may not assign this Agreement or any interest in it without the prior written consent of the Community Services District.

3.20 Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California.

3.21 Cooperation / Further Acts. The parties shall fully cooperate with one another in attaining the purposes of this Agreement. In connection therewith, the parties shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient as related thereto.

DRAFT #6
OCTOBER 31, 2000

3.22 Agreement Limitations. This agreement may be limited or modified as a result of conditions imposed by a Court, or by a change in ordinances, resolutions, rules, fees or regulations affecting all Community Services District customers adopted by the Board of Directors for the protection of the health, safety and welfare of the Community Services District.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered as of the date first above written.

[SIGNATURES ON NEXT PAGE]

DRAFT #6
OCTOBER 31, 2000

NIPOMO COMMUNITY SERVICES DISTRICT

LUCIA MAR UNIFIED SCHOOL DISTRICT

By: _____
Board President

By: _____
Board President

Attest: _____
Board Secretary

Attest: _____
Board Secretary

Approved as to Form:

Approved as to Form:

General Counsel

Best Best & Krieger LLP
Legal Counsel

DRAFT #6
OCTOBER 31, 2000

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

LOTS 1, 2, 3, 4, 6, 7, 8, 11 AND 12 OF THE RESUBDIVISION OF THE NORTHERN PART OF LOT 24 OF THE H.C. WARDS SUBDIVISION OF THE RANCHO NIPOMO, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED APRIL 13, 1887 IN BOOK A, PAGE 15 OF MAPS.