

TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL *BBR*  
DATE: May 18, 2007

**AGENDA ITEM  
E-1  
MAY 23, 2007**

**AUTHORIZE BLACK LAKE POND LINER REPLACEMENT BID SOLICITATION**

**ITEM**

Receive Black Lake WWTF Pond #3 liner replacement design and authorize bid solicitation for subsequent Board Review [RECOMMEND ADOPTION].

**BACKGROUND**

Your Honorable Board hired Garing Taylor and Associates (GTA) to design the liner replacement for Black Lake WWTF Pond #3 in February 2007. GTA has submitted the attached set of plans and cost estimate and is scheduled to present the plans to the Board at your meeting and to answer questions regarding the project. Assuming that your Honorable Board authorizes the bid process at this meeting, GTA will advertise the project and facilitate a June 21, 2007 Bid Opening. This bid results will be presented to your Board for approval at your June 27, 2007 Meeting.

It should be noted that the Black Lake Sewer Fund does not have sufficient reserves to pay for this project. It is staff's expectation that the Board will lend the cost of the upgrade to the Black Lake Sewer customers with the understanding that additional rates will be adopted to repay the debt service on the loan. Staff will present details on the loan at the June 27<sup>th</sup> Board Meeting.

This project is categorically exempt from CEQA and staff has filed a Notice of Exemption.

**RECOMMENDATION**

Staff recommends that your Honorable Board receive GTA's presentation, ask relevant questions, and then authorize the bid solicitation.

**ATTACHMENT**

- Draft Plans
- Cost Estimate

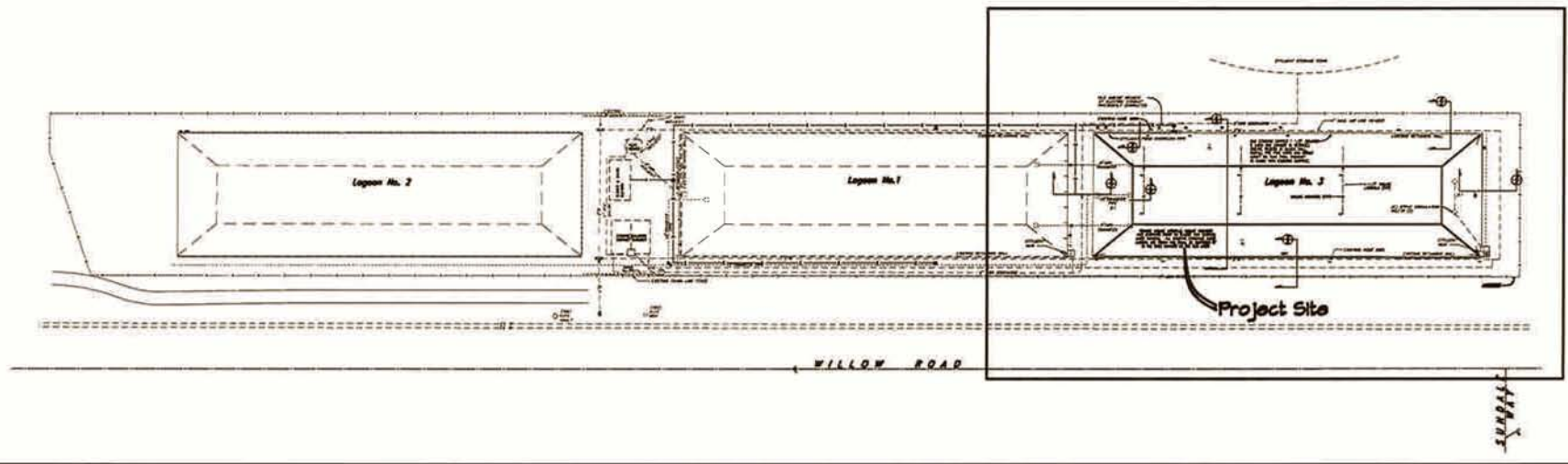
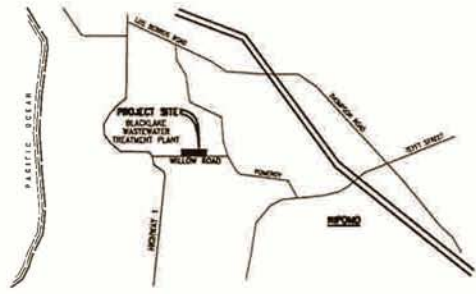
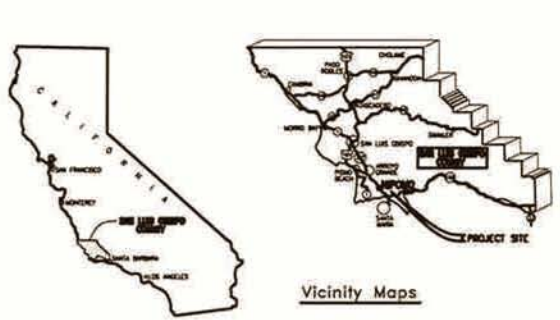
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# LAGOON LINER REPLACEMENT PROJECT BLACK LAKE WASTEWATER TREATMENT PLANT LAGOON NO. 3

**Sheet Index**

1.	TITLE SHEET
2.	PLAN SHEET LAGOON NO.3 AND DETAILS

- GENERAL NOTES**
1. ALL CONSTRUCTION SHALL COMPLY WITH IMPERO COUNTY SERVICES DISTRICT STANDARD PLANS AND SPECIFICATIONS AND THESE PLANS AND SPECIFICATIONS.
  2. THESE PLANS WILL SHOW DETAILS FOR A LHM LINER PRODUCTS. EACH LINER TYPE SO WILL REQUIRE SUBMITTALS WITH SAMPLE PRODUCTS, MANUFACTURER'S SPECIFICATIONS AND EXTENSIVE PRODUCT HISTORY AND CREDENTIALS.
  3. EACH LINER SYSTEM SUBMITTED SHALL BE SUBMITTED BY THE MANUFACTURER FOR 20 YEARS LINER INSTALLATION SHALL BE PERFORMED BY QUALIFIED PERSONNEL ONLY AND WARRANTED FOR 1 YEAR.
  4. AN ENGINEER APPROVED INSPECTOR SHALL BE ON HAND DURING ALL PHASES OF EXCAVATION AND CONSTRUCTION PROCESS AND MUST APPROVE EACH PHASE PRIOR TO PROCEEDING.



Chief Engineering  
Surveying  
Project Management  
R. James Goring, P.E. License No. 20953  
141 South Elm Street  
Stockton, CA 95210  
202/988-1321



Sheet Title  
**Liner Replacement at Black Lake  
Wastewater Treatment Plant**

Client	NoNew Community 140 S. Wilson St. NoNew, CA 95344 Tel: 408.424.1135
Drawn By	Jm
Checked By	Jig
Date	05-2007
File Name	14022_02_07-084
Scale	ASNC
Plot Date	5-14-2007
SHEET	1 of 2





Project: Wastewater Treatment at Black Lake  
 Plan Sheet - Lagoon 1 and Details  
 Date: 04-27-98  
 R.C. Taylor, P.E.  
 R.C. Taylor & Associates



Project: Wastewater Treatment at Black Lake  
 Plan Sheet - Lagoon 1 and Details  
 Date: 04-27-98  
 R.C. Taylor, P.E.  
 R.C. Taylor & Associates

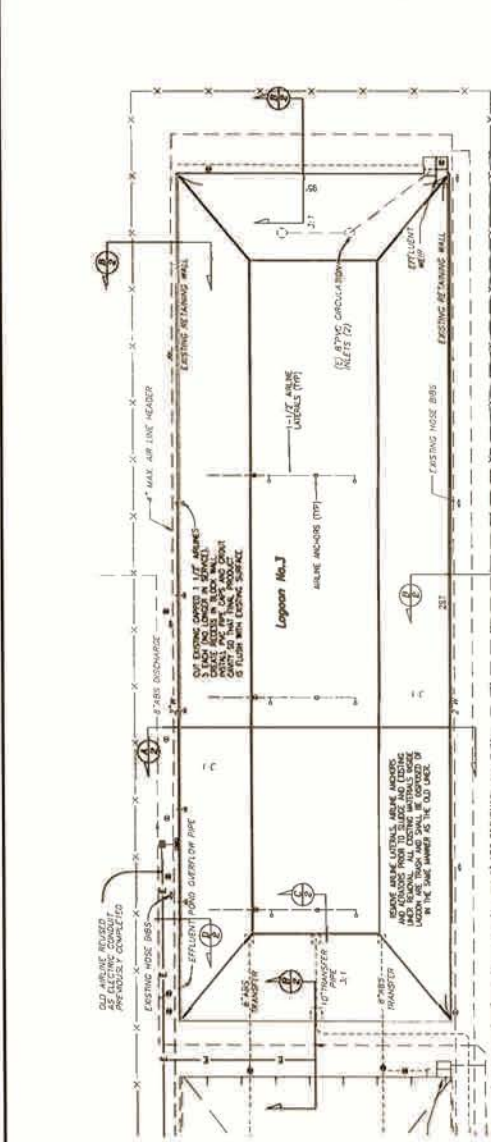
Client: No. 26993  
 State of California  
 Mechanical  
 Date: 04-27-98  
 R.C. Taylor, P.E.  
 R.C. Taylor & Associates

**DEAD END PIPE PROCEDURES**  
 1. REMOVE AND COVER UP EXISTING PIPE AND CONNECTIONS.  
 2. PLACE 18" MIN. THICK CONCRETE SLAB OVER TOP OF PIPE.  
 3. COVER ALL EXISTING CONCRETE STRUCTURES AND  
 4. REMOVE ALL EXISTING CONCRETE STRUCTURES AND  
 5. REMOVE ALL EXISTING CONCRETE STRUCTURES AND  
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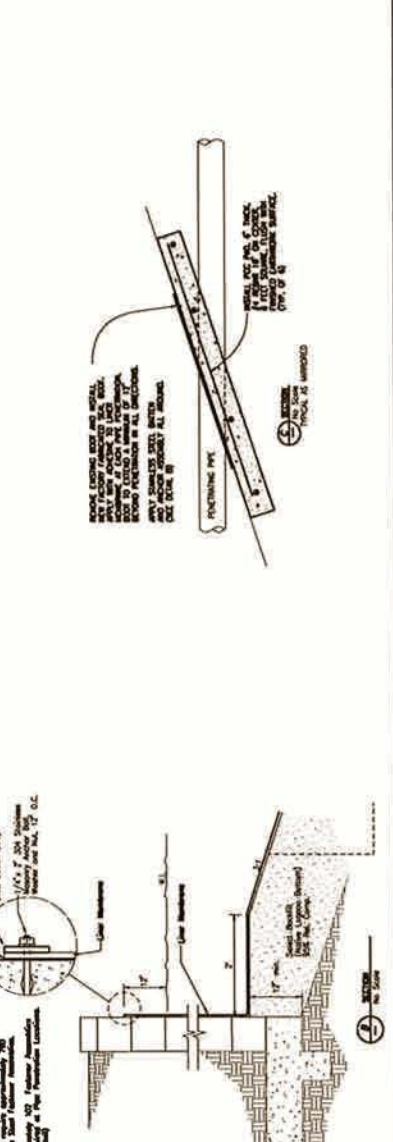
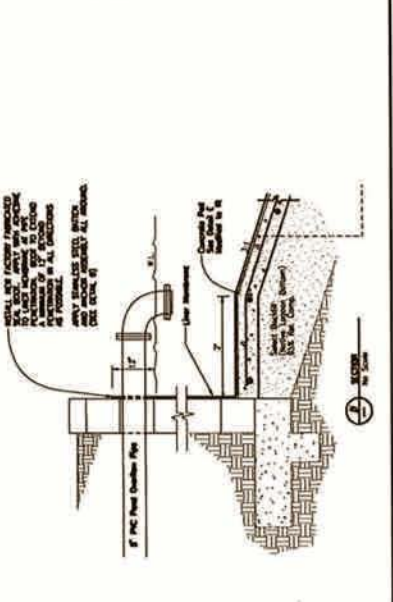
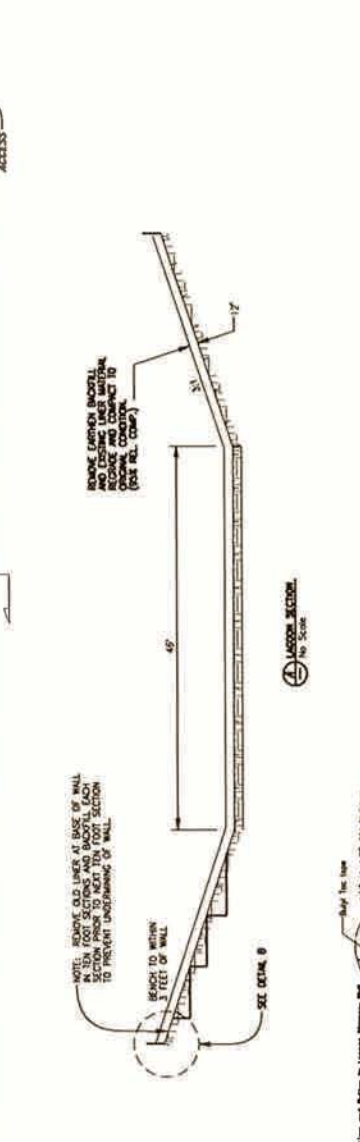
CONTACT UNDERGROUND SERVICE ALERT (USA) TOLL FREE, 1-800-227-2600 AT LEAST 48 HOURS PRIOR TO THE START OF CONSTRUCTION

LEGEND

Symbol	Description
(Symbol)	18" DIA. PIPE
(Symbol)	24" DIA. PIPE
(Symbol)	30" DIA. PIPE
(Symbol)	36" DIA. PIPE
(Symbol)	42" DIA. PIPE
(Symbol)	48" DIA. PIPE
(Symbol)	54" DIA. PIPE
(Symbol)	60" DIA. PIPE
(Symbol)	66" DIA. PIPE
(Symbol)	72" DIA. PIPE
(Symbol)	78" DIA. PIPE
(Symbol)	84" DIA. PIPE
(Symbol)	90" DIA. PIPE
(Symbol)	96" DIA. PIPE
(Symbol)	102" DIA. PIPE
(Symbol)	108" DIA. PIPE
(Symbol)	114" DIA. PIPE
(Symbol)	120" DIA. PIPE
(Symbol)	126" DIA. PIPE
(Symbol)	132" DIA. PIPE
(Symbol)	138" DIA. PIPE
(Symbol)	144" DIA. PIPE
(Symbol)	150" DIA. PIPE
(Symbol)	156" DIA. PIPE
(Symbol)	162" DIA. PIPE
(Symbol)	168" DIA. PIPE
(Symbol)	174" DIA. PIPE
(Symbol)	180" DIA. PIPE
(Symbol)	186" DIA. PIPE
(Symbol)	192" DIA. PIPE
(Symbol)	198" DIA. PIPE
(Symbol)	204" DIA. PIPE
(Symbol)	210" DIA. PIPE
(Symbol)	216" DIA. PIPE
(Symbol)	222" DIA. PIPE
(Symbol)	228" DIA. PIPE
(Symbol)	234" DIA. PIPE
(Symbol)	240" DIA. PIPE
(Symbol)	246" DIA. PIPE
(Symbol)	252" DIA. PIPE
(Symbol)	258" DIA. PIPE
(Symbol)	264" DIA. PIPE
(Symbol)	270" DIA. PIPE
(Symbol)	276" DIA. PIPE
(Symbol)	282" DIA. PIPE
(Symbol)	288" DIA. PIPE
(Symbol)	294" DIA. PIPE
(Symbol)	300" DIA. PIPE



**LINER INSTALLATION PROCEDURES**  
 1. PREPARE THE AREA TO BE LINED BY REMOVING ALL EXISTING CONCRETE AND OTHER MATERIALS.  
 2. GRUB UP ALL EXISTING CONCRETE AND OTHER MATERIALS.  
 3. GRUB UP ALL EXISTING CONCRETE AND OTHER MATERIALS.  
 4. GRUB UP ALL EXISTING CONCRETE AND OTHER MATERIALS.  
 5. GRUB UP ALL EXISTING CONCRETE AND OTHER MATERIALS.  
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 7. GRUB UP ALL EXISTING CONCRETE AND OTHER MATERIALS.  
 8. GRUB UP ALL EXISTING CONCRETE AND OTHER MATERIALS.  
 9. GRUB UP ALL EXISTING CONCRETE AND OTHER MATERIALS.  
 10. GRUB UP ALL EXISTING CONCRETE AND OTHER MATERIALS.



**Engineer's Estimate**  
**Project: ND07-084**  
**Liner Replacement at Black Lake Lagoon # 3**  
**Monday, May 14, 2007**

	<i>Description</i>	<i>Estimated Quantity</i>	<i>Unit of Measure</i>	<i>Unit Cost</i>	<i>AMOUNT</i>
<b>Base Bid</b>					
1	Mobilization and Demobilization	LUMP	SUM		<u>\$8,400.00</u>
2	Daily Overhead Rate to be paid as Extended Overhead	10	WD*	\$400.00	<u>\$4,000.00</u>
3	Clear & Grub (Incl. Vegetation, Sludge, Old Aeration System, Liner Removal & Disposal)	LUMP	SUM		<u>\$57,500.00</u>
4	PCC Pads at Pipe Penetrations Of New Liner	6	each	\$800.00	<u>\$4,800.00</u>
5	Plug old Aeration System piping Flush with Lagoon Wall	LUMP	SUM		<u>\$2,200.00</u>
6	Haul Sludge & Sand to Southland WWTP (Final Pay Quantity)	LUMP	SUM		<u>\$25,000.00</u>
7	Earthwork - Excavate Backfill at Footings; Lagoon Reshape & Compaction	LUMP	SUM		<u>\$28,000.00</u>
8	Lagoon Preparation	LUMP	SUM		<u>\$3,500.00</u>
9	40 mil High Density Polyethylene Lay-In Liner	33,100	S.F.	\$0.68	<u>\$22,508.00</u>
10	Stainless Steel Battens & Hardware	892	L.F.	\$19.83	<u>\$17,688.36</u>
11	Penetration Seal Boots	6	each	\$230.00	<u>\$1,380.00</u>
12	Finish Project	LUMP	SUM		<u>\$400.00</u>
				<b>TOTAL</b>	<b>\$175,376.36</b>
<b>Alternate "A"</b>					
13	Alternate Disposal Site: Haul Sludge and Sand to Cold Canyon Landfill in lieu of Item 6 (Final Pay Quantity)	LUMP	SUM		<u>\$38,000.00</u>
	<b>Alternate Bid: Grand Total with item 13 in lieu of Item 6</b>			<b>TOTAL w/"A"</b>	<b>\$188,376.36</b>

\* WD = Working Day



TO: BOARD OF DIRECTORS  
FROM: BRUCE BUEL, GENERAL MANAGER *BB*  
DATE: May 23, 2007

<b>AGENDA ITEM</b>
<b>E-2</b>
May 23, 2007

**TRACT 2560 OUTSIDE USER AGREEMENT**

**ITEM:**

Authorize execution of Vintage Homes, LLC outside user agreement (formerly Craig Family Trust) to serve a sixteen (16) lot subdivision located at the corner Willow Road and Via Concha Road, Nipomo, California [ADOPT RESOLUTION].

**ATTACHMENTS:**

- Exhibit "A" – Resolution 2007-XXX approving outside user agreement and establishing monthly/bi-monthly rates and charges for water services
- Exhibit "B" – Outside user agreement

**INTRODUCTION**

On March 14, 2007, the District Board of Directors reviewed the application of Kenneth M. Craig and Rosemarie Craig, Trustees of the Craig Family Trust, for an outside user agreement for water and solid waste service to Tract 2560 pending annexation. At the conclusion of the Agenda Item the Board approved a motion authorizing negotiations of a outside user agreement. Subsequent to the Board's approval, the Craig's sold the subdivision to Vintage Homes, LLC, now the Owner as referenced in the outside user agreement. Attached to this Staff Report as Exhibit "B" is the outside user agreement ("Agreement") that staff believes is consistent with the Board's prior motion.

**BACKGROUND**

Tract 2560 consists of approximately nineteen (19) acres, that will be divided into sixteen (16) separate parcels. Tract 2560 is located at the corner of Willow Road and Via Concha Road, Nipomo, California, and is within the District's current sphere of influence. The District, in June, 2006, approved Tract 2560 for annexation. The Local Agency Formation Commission ("LAFCO") is tentatively scheduled to consider the annexation application on June 21, 2007. LAFCO likely conditionally approving the annexation similar to its prior approval of the Holloway Annexation which included the following conditions:

**"Mitigation W-1.** Prior to LAFCO approval of any annexation, the District shall:

1) Implement a water conservation program that decreases water use by 15% based on per capita water consumption. Annexation shall only be approved if the District provides documentation that certifies a 15% decrease in water use has occurred since the approval date of the Sphere of Influence. Conservation measures shall be implemented at the District's discretion.

**Mitigation W-2.** Prior to approval by LAFCO of any annexation, **the District shall complete negotiations for a supplemental water source outside the Nipomo Hydrologic Sub-Area and provide documentation that an agreement is in place to deliver such water by January 1, 2009. Documentation shall be consistent with Section 5, Step Two, Documenting Supply of SB610 Guidebook dated October 8, 2003. A Registered Professional Engineer specializing in water planning shall review and certify such documentation.**" [Emphasis added]

Because of the time it will take to provide supplemental water, Mitigation W-2 (above), Owner is requesting an outside user agreement for water and solid waste services. District Staff believes that the outside user agreement, if approved by the Board, will be considered at the same meeting LAFCO considers approval of the annexation (tentatively set for June 21, 2007).

Staff estimates water demand for the sixteen (16) parcels as follows:

Typical - (w/o District Conservation Measures)	.97 AFY x 16 = <b>15.52 AFY</b>
With Design Conservation Requirements - (District Code §3.05.030, existing)	.55 AFY x 16 = <b>8.8 AFY</b>

The sixteen (16) parcels would draw from the underlying groundwater basin, if supplied by a mutual water company, and would not be subject to District's conservation measures and rates and charges.

The District approved the annexation in 2006, therefore the 8.8 AFY will be credited to that water year under the District's Allocation Ordinance.



The Owners have requested the District to provide water service (outside user agreement) to Tract 2560. To facilitate District services to Tract 2560, Owners have agreed to the following:

1. To construct water improvements and connect the same to the District's water system, all in accordance with District's rules, regulations, ordinances and Plan Check & Inspection Agreement.
2. Pay District costs in processing the outside user agreement and annexation (deposits have been paid).
3. Abandon the use of a mutual water company to provide water service.
4. Diligently complete and not oppose the annexation of the Property to the District.
5. The Property and individual parcels will receive water service on the same terms and conditions, including water conservation measures, as other District water customers.
6. Bi-monthly water rates will be established in accordance with Exhibit "A" (Resolution). Staff recommends that once water meters are set that the District monthly and bi-monthly rates be established at 1.5 times the District's standard rates and charges for water (similar to the Holloway outside user agreement).

### **ANALYSIS**

Pursuant to Government Code §61101 the District is authorized to provide water service outside of its boundaries subject to Government Code §56133 (requirement of LAFCO approval).

Pursuant to Water Code §71613 the District may supply and deliver water to Tract 2560 at special rates, terms and conditions as are determined by the Board for such service. (Note that Water Code sections, related to municipal water districts, are incorporated into Community Services District law).

Nipomo Community Services District Code Section 3.16.010 and 3.16.020 address outside user agreements and provide as follows:

#### ***3.16.010 When allowed.***

*It is the general policy of the district that district water service is limited to parcels within the district boundaries. The district board of directors may authorize water service to parcels outside the district boundaries upon a finding that:*

A. *There exists an extreme hardship and there is excess capacity within the district system to serve such parcel; or*

B. *There is a benefit to the district or the community, such as the Owners providing the district with a water resource.*

**3.16.020 Rates/Conditions.**

*The water usage rates and conditions for district water services outside the district boundaries shall be determined by resolution of the board of directors.*

Pursuant to District Code Section 3.16.010(B) the District would benefit from the proposed outside user agreement for the following reasons:

1. The District has a longstanding policy of opposing mutual water companies that draw water from the same groundwater basin that currently supplies the District. The outside user agreement requires the Owners to construct an water improvements, connect the same to the District's current water system, all in accordance with District's current rules, regulations, ordinances, specifications and agreements.
2. The Owners are required to pay the District's fees for connections, (including supplemental water capacity charges), prior to the recording of the final map or setting meters whichever occurs first, thereby providing additional monetary resources for the District's plans for supplemental water (estimated at \$185,000).
3. Owners are required to pay the District's standard annexation fee of approximately ten thousand dollars (\$10,000) prior to recording of the final map, LAFCO final approval of the annexation or setting water meters, whichever occurs first.
5. Except for monthly/bi-monthly rates and charges, water service will be provided under the same terms and conditions (including conservation measures) as other water customers within the District.
6. Until such time as the annexation is complete, the water customers within Tract 2560 will pay 1.5 times the bi-monthly rates and charges as other District customers pay.

The Agreement requires LAFCO approval under the Cortese-Knox-Hertzberg Local Government Reorganization Act, specifically Government Code §56133 (a) and (b) which provide:

*(a) A city or district may provide new or extended services by contract or agreement outside its jurisdictional boundaries only if it first requests and receives written approval from the commission in the affected county.*



*(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.*

**Recommendation**

Receive Staff Report and public comment and:

1. Approve Resolution 2007-XXX approving the outside user agreement, and establishing bi-monthly rates and charges for District services, conditioned on LAFCO approval; or
2. Amend or modify Staff recommendation.

RESOLUTION NO. 2007- XXX

DRAFT

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
APPROVING AN OUTSIDE USER AGREEMENT FOR WATER AND SOLID  
WASTE SERVICES TO TRACT 2560**

**WHEREAS**, Vintage Homes, LLC, a California Limited Liability Company (“Owners”), (successors to the Craig Family Trust), have requested an Outside User Agreement (“Agreement”) for water and solid waste services to Tract 2560 (“Property”); and

**WHEREAS**, based on the Staff Report, Staff presentation and public comment, the Board of Directors finds that there is a benefit to the District in approving an outside user agreement pending the property’s annexation to the District. The findings and conclusions of the Staff Report are incorporated herein by reference.

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED  
BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES  
DISTRICT THAT:**

1. The Agreement, attached hereto as Exhibit “A”, is hereby approved.
2. The Agreement shall become effective upon:
  - a. The Local Agency Formation Commission (“LAFCO”) approval of the annexation (with or without conditions); and
  - b. The LAFCO approval of the Agreement (Exhibit “A”).
3. The District’s bi-monthly rates and charges for water services shall be 1.5 times the charges established by District ordinance and resolutions (as amended from time to time) for District residential customers.
4. The above Recitals are true and correct and incorporated herein by reference.

Upon the motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_ and on the following roll call vote, to wit:

AYES:  
NOES:  
ABSENT:  
CONFLICTS:



the foregoing resolution is hereby adopted this \_\_\_\_ day of \_\_\_\_\_ 2007.

\_\_\_\_\_  
Michael Winn  
President, Board of Directors  
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
Donna K. Johnson  
Secretary to the Board

\_\_\_\_\_  
Jon S. Seitz  
District Legal Counsel

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

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

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APN# 091-181-052  
091-181-03

Exhibits:

- "A" – Legal Description
- "B" – Plan Check & Inspection Agreement
- "C" – Resolution of District

**AGREEMENT AFFECTING REAL PROPERTY  
NIPOMO COMMUNITY SERVICES DISTRICT  
AND VINTAGE HOMES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY  
AGREEMENT FOR PROVIDING WATER AND  
SOLID WASTE SERVICES TO TRACT 2560**

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the Nipomo Community Services District (herein referred to as "District") and Vintage Homes, LLC, a California Limited Liability Company (hereinafter referred to as the "Owner(s) ) with reference to the following Recitals:

**RECITALS**

A. Owner is the legal fees simple owner of certain real property located in San Luis Obispo County, California, referred to as Tract 2560 (herein "Property" or "Tract 2560), which is located at the corner of Willow Road and Via Concha Road, Nipomo, California, and is more particularly described on Exhibit "A", attached hereto and incorporated herein by this reference.

B. The Property consists of approximately nineteen (19) acres, to be developed into sixteen (16) separate residential parcels. The Property is subject to an Annexation Agreement executed by Owner and District on July 1, 2006.

C. On or about September 15, 2006, Owner's predecessor, Kenneth M. Craig and Rosemarie Craig, Trustees of the Craig Family Trust submitted an application to the Local Agency Formation Commission ("LAFCO") for annexation of the Property to District.

D. The Property is within the District's Sphere of Influence and is immediately adjacent to the District's boundaries and is subject to the above referenced LAFCO application regarding annexation. Therefore, LAFCO, pursuant to Government Code §56133, must approve this Agreement.



E. Pending completion of Annexation Owner has requested District provide the Property with water service and solid waste services, (collectively "District Services") whereby Owner will:

1. At its sole cost and expense apply to LAFCO for approval of this Agreement.
2. Promptly construct water improvements in accordance with District requirements and Plan Check and Inspection Agreement attached hereto as Exhibit "B".
3. Diligently complete and not oppose further action taken by LAFCO in approving Annexation.
4. Upon LAFCO approval of this Agreement, Owner agrees not to form a mutual water company to provide water service to the Property and individual parcels therein.

F. District is willing to provide water and solid waste service to Tract 2560 on the terms and conditions hereinafter provided.

NOW, THEREFORE, for valuable consideration receipt of which is hereby acknowledged the parties agree as follows:

1. **Service Limitations.**

A. Subject to paragraph 7, below, the District's obligation to provide water service to the Property and parcels therein is limited, during the term of this Agreement, to setting sixteen (16) water meters to serve sixteen (16) single family residential units within Tract 2560.

B. Except as provided in subparagraph A, above, Owner shall not connect, or allow to be connected, any other lot or premises or building or structure for the delivery of water and sewer services.

2. **Deposit for District Costs.**

Owner shall deposit the sum of two thousand dollars (\$2,000) (receipt of which is hereby acknowledged) for legal, engineering and administrative services in preparing this Agreement and LAFCO processing of this Agreement. Owner authorizes District to withdraw from the deposit as these costs are incurred by District. pursuant to this Agreement.

District will notify Owner whenever the deposit is reduced to five hundred dollars (\$500) or less. Within fifteen (15) days after such notification is mailed, Owner shall make an additional deposit in the same amount as the initial deposit.

Upon LAFCO's final consideration of this Agreement, any funds so advanced by the Owner in excess of the District's actual costs shall be returned to Owner. Conversely, any costs incurred by the District over and above the amount advanced by the Owner shall be paid by the Owner upon demand.

**3. Water Treatment and Water Quality.**

The water provided to the Property pursuant to this Agreement shall be treated to District drinking water standards, and shall be treated to no greater extent than that provided to other District water users.

**4. Payment of Annexation Fees.**

Prior to the completion of annexation, or the recording of the final map, or setting the first water meter, whichever occurs first, Owner shall make a non-refundable deposit to the District in the amount of nine thousand four hundred dollars (\$9,400) representing the District's Annexation fees of \$500 per acre.

**5. Payment of Capacity Charges/Will Serve Letter.**

A. Prior to District issuing a Will Serve Letter, for District Services, Owner shall deposit with District, the 100% estimate of District's then established connection and capacity charges, including supplemental water capacity charges, for District Services. Said fees, for sixteen (16) single family units, is currently calculated at two hundred thirty-one thousand forty dollars (\$231,040).

B. The District's connection and capacity charges, including supplemental water capacity charges, shall be calculated and owing as of the date the District sets water meters to serve the affected property/parcels from which the amount of the deposit shall be deducted.

**6. District Service.**

A. The District Services to be provided to the Property and individual parcels include water service and solid waste service. The District shall not set water meters or otherwise provide service to the Property, or individual parcels therein, until the following have occurred:

1. The LAFCO has adopted a Resolution approving the annexation.
2. The District has adopted a Resolution of Acceptance of the Improvements as provided by District rules, regulations, ordinances and the Plan Check and Inspection Agreement (Exhibit "B"); and
3. 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.
4. Building permits have been issued by the County of San Luis Obispo for residential units.

B. The Owner agrees that it will comply with all District rules, regulations and ordinances (including regulations and ordinances related to water conservation) that regulate or otherwise affect the delivery of District Services to District customers.



C. Until such time as the Annexation is deemed complete by LAFCO the monthly (or bi-monthly) rates and charges for water service and solid waste service shall be set by Resolution of the Board of Directors as attached hereto as Exhibit "C".

**7. Secondary Units.**

The District will not provide water service to secondary units located on the Property or individual parcels contained therein until such time as annexation of the Property to the District is deemed complete (Certificate of Compliance recorded) by LAFCO. From and after the completion of the annexation, the District will provide water to secondary units in accordance with the then established rules, regulations and ordinances of the District, as amended from time to time.

**8. Term of Agreement.**

Except for Owner's obligations referenced in paragraph 2 of this Agreement, and unless otherwise terminated as provided herein, shall become effective on the date LAFCO approves the Annexation and this Agreement. Subject to paragraph 9, below, this Agreement shall remain in effect until the Annexation is deemed complete.

**9. District's Right to Terminate.**

Owner shall be in default, and District shall have the right to terminate this Agreement, if Owner fails:

- A. To make payments as required by this Agreement;
- B. To promptly design and construct the water improvements in accordance with District's rules, regulations, ordinances and the Plan Check and Inspection Agreement (Exhibit "B");
- C. To commence construction of water improvements within twenty-four (24) months of LAFCO's approval of this Agreement. Owner, upon showing due diligence, shall be entitled to one twelve (12) month extension; and/or
- D. To comply with any other terms or conditions of this Agreement.

District shall provide Owner with Notice of Termination and Owner shall have fifteen (15) days from the date of such Notice to cure the default. After the fifteen (15) day period to cure, the District may immediately terminate this Agreement and terminate District services to the Property.

**10. Owner Not An Agent of District.**

Neither Owner or 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.

**11. Covenants and Conditions.**

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

**12. 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.

**13. 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 6064  
Nipomo, California 93412  
Attn: General Manager

Owner:

Vintage Homes, LLC  
A California Limited Liability Company  
2364 Brant Street  
Arroyo Grande, CA 93420

**14. Sale of Property.**

No transfer of this Agreement, by assignment or otherwise, by Owner shall be valid until and unless approved by the District in writing. Said approval shall not be unreasonably withheld or delayed. Such approval shall be conditioned on the agreement of the successor or transferee to be bound by the terms and conditions of this Agreement and the payment of District's administrative and legal costs in approving the transfer.

**15. Indemnity.**



Owner shall indemnify, defend and hold harmless District and its officers, officials, employees and agents from and against any and all liability, loss, damage, expense, costs (including costs and fees of litigation) of every nature arising out of this Agreement, except such loss or damage which was caused by the proven sole negligence or willful misconduct of District.

**16. Other Agreements.**

This Agreement, along with any Exhibits and attachments, is in addition to other agreements such as the Annexation Agreement entered into by the Parties. This Agreement shall not be construed as a waiver, novation of the Annexation Agreement entered into by District and Owner.

**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. Successors and Assigns.**

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

**21. 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.

**22. Agreement to be Recorded.**

Owner and District intend and consent to the recordation of this Agreement in the office of the County Recorder of the County of San Luis Obispo.

**23. Incorporation of Recitals.**

The parties agree that the Recitals constitute the factual basis upon which the District and the Owner have entered into this Agreement. The District and the Owner each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

**24. 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.

**25. Authority to Execute Agreement.**

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

B. Indemnity. Owner and the undersigned 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.

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

Nipomo Community Services District

By: \_\_\_\_\_  
Michael Winn, President  
Board of Directors

Owner:  
Vintage Homes, LLC  
Jeffrey W. Greer, President

Vintage Homes, LLC  
R. Stephen Osler

By: \_\_\_\_\_  
[Signatures must be notarized]

By: \_\_\_\_\_  
[Signatures must be notarized]



\_\_\_\_\_  
Dennis Law, Attorney for  
Kenneth M. Craig, Trustee  
Rosemarie Craig, Trustee  
Craig Family Trust

Attest:

Approved as to Form:

\_\_\_\_\_  
Donna K. Johnson, Secretary  
Nipomo Community Services District

\_\_\_\_\_  
Jon S. Seitz, District Legal Counsel  
Nipomo Community Services District