

TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BB*
DATE: September 18, 2008



CONSIDER ADOPTION OF HEARING PROTECTION POLICY

ITEM

Consider adoption of Hearing Protection Policy [ADOPT RESOLUTION].

BACKGROUND

Title 8, Section 5095, of the California Code of Regulations requires employers to have an effective hearing protection policy to ensure that employees are adequately trained and informed of hazardous noise levels associated with their work environment. The District currently does not have a written hearing protection policy.

Staff has prepared the attached Hearing Protection Policy based on Cal/OSHA's requirements and SDRMA's model hearing protection policy. Once the policy is adopted, staff will proceed to conduct the appropriate training.

RECOMMENDATION

Staff recommends that your Honorable Board adopt the attached Resolution.

ATTACHMENT

Resolution 2008-XXXX with Exhibit "A" – Hearing Protection Policy

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2008-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT
ADOPTING A HEARING PROTECTION POLICY**

WHEREAS, the Nipomo Community Services District (herein "District") does not have a Hearing Protection Policy, and

WHEREAS, Staff has determined that the District needs a Hearing Protection Policy to ensure that employees are adequately trained and informed of hazardous noise levels associated with their work environment; and

WHEREAS, the draft Hearing Protection Policy has been circulated for employee comment; and

WHEREAS, the Hearing Protection Policy attached as Exhibit "A" to this Resolution has been reviewed by the Board of Directors of the Nipomo Community Services District.

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

1. The policy attached hereto as Exhibit "A" is hereby adopted as the Hearing Protection Policy of the Nipomo Community Services District.
2. Effective Date. This Resolution and the attached Hearing Protection Policy shall take effect immediately.

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

AYES:

NOES:

ABSENT:

CONFLICT:

the foregoing resolution is hereby passed and adopted this 24th day of September, 2008.

Michael Winn
President of the Board
Nipomo Community Services District

ATTEST:

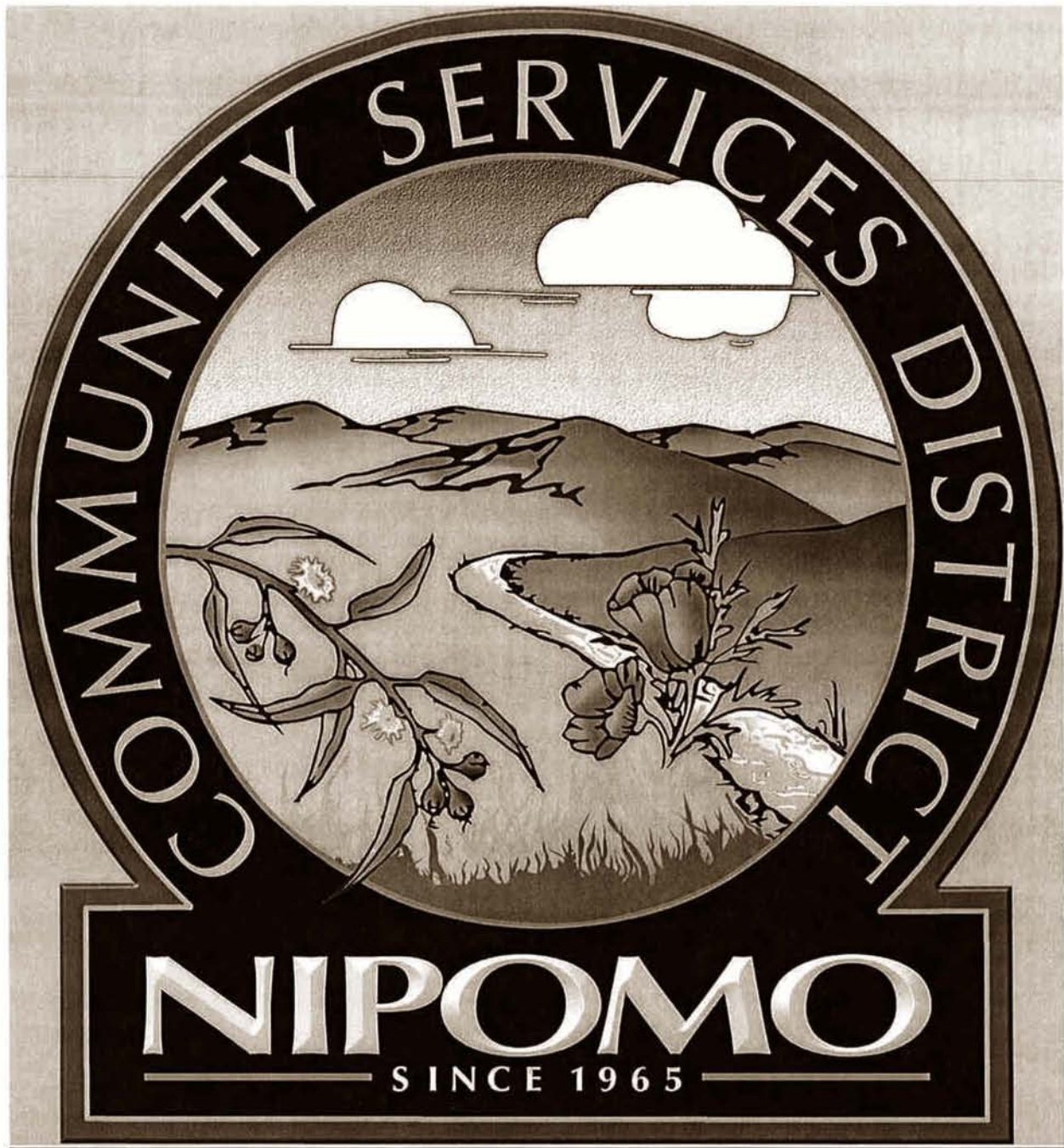
APPROVED:

Donna K. Johnson
Secretary to the Board

JON S. SEITZ
District Legal Counsel

NCSD SAFETY POLICIES AND PROCEDURES

HEARING CONSERVATION POLICY



NCS D SAFETY POLICIES AND PROCEDURES

HEARING CONSERVATION POLICY

I. PURPOSE

This Policy describes the general requirements of the Nipomo Community Service District's hearing conservation program, and provides information and guidance on the proper selection, instruction, and use of hearing protective devices.

II. APPLICABILITY

This Policy applies to all District employees that may be exposed to noise in excess of the Action Level of 85 decibels.

III. POLICY

It is the policy of the Nipomo Community Services District that all aspects of Cal/OSHA's requirements for a Hearing Conservation Program, *California General Industry Safety Orders, Title 8, Subchapter 7, Group 15, Article 105, Sections 5095 - 5100*, shall be met or exceeded.

IV. DEFINITION OF TERMS

"Action Level" - an 8-hour time weighted average of 85 decibels or above measured as an 8-hour TWA (time weighted average).

"Audiogram" - a chart, graph, or table resulting from an audiometric test showing an individual's hearing threshold levels as a function of frequency.

"Baseline Audiogram" - an initial audiogram to which future audiograms are compared.

"Decibel (dB)" - unit of measurement of sound level.

"dB(A) (Decibels A Weighted)" - a unit of measurement of sound level corrected to the A-weighted scale, as defined by ANSI S 1.4-1971.

"Hertz (Hz)" - unit of measurement of frequency, numerically equal to cycles per second.

"Noise Dosimeter" - an instrument that integrates a function of sound pressure at a chosen point in the environment or on a person, over a period of time in such a manner that it directly indicates a noise dose.

"Noise Reduction Rating (NRR)" - a measurement of the ability for a given protective device to attenuate noise as a function of frequency and intensity. The NRR must be shown on the hearing protector package.

"Representative Exposure" - measurements of an employee's noise dose or 8-hour time-weighted average sound level that the employer deems to be representative of exposures of other employees in the workplace.

NCS D SAFETY POLICIES AND PROCEDURES

HEARING CONSERVATION POLICY

"Standard Threshold Shift" - the change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear.

V. RESPONSIBILITIES

- A. Utility Superintendent shall:
 - 1. Ensure that the HEARING PROTECTION POLICY is implemented. The Utility Superintendent has the authority to delegate any or all portions of this Policy to subordinates, but the Superintendent will be held responsible for compliance.
 - 2. Implement the HEARING PROTECTION POLICY.
 - 3. Ensure that hearing protection is available to, and worn by, employees in areas where exposure equals or exceeds the Action Level; and
 - 4. Report to the District Engineer/Safety Officer any changes in working conditions that may result in a change in the noise exposure to employees.

- B. Employees shall:
 - 1. Follow the prescribed elements of the hearing conservation program;
 - 2. Attend training on hearing conservation;
 - 3. Complete an annual District paid audiogram.

- C. Safety Officer shall:
 - 1. Update and maintain this HEARING PROTECTION POLICY on an annual basis;
 - 2. Complete noise exposure determinations and assist in selecting proper hearing protection.

VI. PROCEDURES

A. Workplace Monitoring

When information indicates that an employee's exposure equals or exceeds the Action Level, a monitoring program will be implemented. The monitoring program is designed to determine those employees who are to be included in the hearing conservation program, and to enable proper selection of hearing protectors.

The Safety Officer or a Certified Industrial Hygienist shall conduct the workplace monitoring. Either area monitoring or personal monitoring that is representative of the employee's exposure shall meet the monitoring requirement. Monitoring shall be repeated when there is a change in equipment, engineering controls, or if the adequacy of the hearing protection comes into question. The District shall provide affected employees or their representatives with an opportunity to observe any measurements of employee exposure which are conducted. The District shall notify each employee exposed at or above the Action Level of the results of the monitoring.

Instruments used to measure employee noise exposure shall be calibrated before and after each use to ensure that measurements are accurate. The District will use an A-weighted

NCS D SAFETY POLICIES AND PROCEDURES

HEARING CONSERVATION POLICY

sound level meter or noise dosimeter to conduct the monitoring. Noise exposure measurements shall be retained for two (2) years.

B. Audiometric Testing

Baseline audiometric testing shall be carried out as part of this program. Annual retesting shall be given to those employees exposed to noise at levels that equal or exceed the Action Level as determined by the Safety Officer. The program shall be provided at no cost to employees.

The following job titles have been identified as having occupational exposure to noise in excess of the Action Level of 85 db(A). Each of these employees will receive a baseline and an annual audiogram.

- Utility Superintendent
- Utility Supervisor
- Utility Operator/Water Quality Technician
- Utility Worker
- Inspector/Preventative Maintenance Supervisor
- Maintenance/Customer Service Worker
- District Engineer/Safety Officer

Testing and retesting shall be preceded by a 14-hour "quiet period" without exposure to workplace noise prior to the test. This requirement may be met by wearing hearing protectors, which will reduce the employee's exposure to a sound level of 80 dB(A) or below. Supervisors shall advise employees to avoid high levels of non-occupational noise for a similar time period prior to the test.

Employees will be given the results of the audiometric tests. Each employee's annual audiogram shall be compared to that employee's baseline audiogram to determine if the audiogram is valid and if a standard threshold shift has occurred.

C. Use of Hearing Protection

Hearing Protectors shall be made available to all employees exposed to an 8-hour time weighted average of 85 dB(A) or more. The Safety Officer shall evaluate the attenuation afforded by the hearing protection for the specific environment where the protector is used. Hearing protections shall attenuate exposure to at least an 8-hour time weighted average of 85 dB(A) or attenuate exposure at least to an 8-hour time weighted average of 80dB(A) for employees who have experienced a standard threshold shift. Hearing protection is required for employees whose audio grams show a significant threshold shift, as recommended by the District's medical consultant. The adequacy of hearing protection will be re-evaluated whenever employee noise exposures increase to levels where the hearing protection may no longer be satisfactory.

NCSD SAFETY POLICIES AND PROCEDURES

HEARING CONSERVATION POLICY

D. Training

All employees who are designated to participate in the hearing conservation program shall participate in a training program that includes as a minimum:

1. Effects of noise on hearing;
2. Purpose of hearing protection; its advantages and disadvantages; attenuation provided by the various types; and instructions on selection, fitting, use and care;
3. Specific nature of operations/areas where excessive noise levels could occur; and
4. The purpose of audiometric testing, and an explanation of the test procedures.

In addition, supervisors shall remind employees, through the tailgate safety meetings, of the areas and equipment where hearing protection is required.

E. Record Retention

The District shall retain all noise exposure measurement records for two (2) years. Audiometric test records shall be retained for the duration of the affected employee's employment.

All records required above shall be provided upon written request to employees, former employees, representatives designated by the employee, and any authorized representative of the Chief of Cal/OSHA.

TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *B Buel*
DATE: SEPTEMBER 19, 2008

**AGENDA ITEM
D-4
SEPT. 19, 2008**

AWARD BID FOR PURCHASE OF TWO NEW PICK-UP TRUCKS

ITEM

Award bid for purchase of two new pick-up trucks [AWARD BID AND AUTHORIZE PURCHASE]

BACKGROUND

The purchase of one 2009 1/2 ton 4x4 pick-up truck was budgeted in the 2008-2009 fixed asset purchases to replace the 2000 Chevy 4x4 pick-up truck. The other pick-up truck (2x4) was budgeted as a new addition due to the addition of new personnel.

Bid specifications for the new trucks were faxed to dealers. The dealers and the results are listed below.

<u>DEALER</u>	<u>2x4</u>	<u>4x4</u>
Santa Maria Ford	\$17,765	\$19,388
Mullahey Ford	\$16,725	\$18,147
Amount budgeted	\$19,000	\$25,000

As noted above, funds for purchase of the trucks were budgeted in the FY08-09 Budget.

RECOMMENDATION

The Staff recommends that your Honorable Board award the bid for the purchase of the two vehicles to Mullahey Ford and authorize staff to execute purchase agreements for each truck. Staff further recommends that the 2000 Chevy not be surplusd at this time but used as a back-up for heavy equipment operations.

ATTACHMENTS – None

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TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BB*
DATE: SEPTEMBER 18, 2008

**AGENDA ITEM
D-5
SEPTEMBER 24, 2008**

EXTEND TERM OF OUTSIDE-USER AGREEMENT – TRACT 2642

ITEM

Consider request to extend term of Outside-User Agreement for Tract 2642, an eighteen (18) lot subdivision on South Oakglen Avenue [ADOPT RESOLUTION].

BACKGROUND

Tract 2642 is a proposed 18 lot residential subdivision on South Oakglen Avenue that is within the District's Sphere of Influence but outside of the District's current boundary. The project is being developed by Carl and Debra Holloway, the property owners.

An Outside User Agreement for Tract 2642 was approved by the District Board on February 28, 2007 and was subsequently approved by the Local Agency Formation Commission of San Luis County on March 15, 2007. Based on the LAFCO approval date, the current agreement requires the owner to commence construction of water and sewer improvements by September 15, 2008 and allows the owner to request a six (6) month extension.

The District received the attached request dated August 14, 2008 for a two (2) year time extension of the outside user agreement instead of the six (six) month extension. As indicated in the letter, the owner needs additional time to obtain the County approvals and to allow for the current economic situation.

Staff has prepared the attached amendment to the outside user agreement to allow the owner until September 15, 2010 to begin construction of the water and sewer improvements.

RECOMMENDATION

Staff recommends that your Honorable Board adopt the attached Resolution authorizing Amendment No. 1 to the Agreement for Providing Water and Sewer Service to Tract 2642.

ATTACHMENTS

Letter Requesting Extension Dated August 14, 2008
Resolution 2008-XXXX with Exhibit A - Amendment No. 1 to Agreement for Providing Water and Sewer Service to Tract 2642

August 14, 2008

RECEIVED

AUG 19 2008

NIPOMO COMMUNITY
SERVICES DISTRICT

Bruce Buel
Nipomo Community Service District
148 S. Wilson Street
San Luis Obispo, CA 93401

**RE: Request for Two-Year Time Extension on Outside User Agreement
Tract 2642, Oakglen Ave, Nipomo**

Dear Mr. Buel:


We are requesting a two-year time extension on Tract 2642 Outside User Agreement in lieu of the 6 month time extension. We are scheduled to be submitting the map and plans to the County this month. We anticipate 6 months for plan review.

As you know, economics will be the deciding factor on how fast we will be able to move forward with recordation and construction. If the economy improves, we could be under construction in 12 to 18 months.

If you should need additional information or have any questions, please contact Terry Orton at Westland Engineering, Inc. at 541-2394.

Thank you for your consideration of this request.

Sincerely,


Carl Holloway

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2008-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
APPROVING AMENDMENT NO. 1 TO OUTSIDE USER AGREEMENT FOR WATER AND
SEWER SERVICES TO TRACT 2642**

WHEREAS, the Nipomo Community Services District ("District") entered into an Agreement for Providing Water and Sewer Service to Tract 2642 ("Agreement") on March 1, 2007 with Carl and Debra Holloway ("Owners"); and

WHEREAS, the District and Owners desire to amend Paragraph 9 of the Agreement to allow Owners a longer period of time for the construction of water and sewer improvements.

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

1. Amendment No. 1 to Agreement for Providing Water and Sewer Service for Tract 2642, attached hereto as Exhibit "A", as amended, is hereby approved.
2. 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 24th day of September 2008.

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

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**Recording Requested By and
When Recorded Return to:**

**Nipomo Community Services District
P.O. Box 326
Nipomo, California 93444**

APN# 091-171-005
091-171-027
091-171-028
091-171-029

**AMENDMENT NO. 1 TO
AGREEMENT FOR PROVIDING WATER AND SEWER SERVICE
TO TRACT 2642**

Exhibit "A" – Legal Description
Exhibit "B" – Plan Check and Inspection Agreement

THIS AMENDMENT TO AGREEMENT (herein "Amendment") is made this ____ day of _____, 2008, in San Luis Obispo County, California, by and between the Nipomo Community Services District, duly existing and operating pursuant to the provisions of Government Code Sections 61000, *et seq.*, (hereinafter "District") and Carl Holloway and Debra Holloway, (hereinafter referred to as "Owners"), 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 2642 (herein "Property" or "Tract 2642"), which is located off South Oakglen Avenue, Nipomo, California, and is more particularly described on Exhibit "A", attached hereto and incorporated herein by this reference.
- B. On March 1, 2007, the District and Owners entered into an Agreement titled "Agreement For Providing Water and Sewer Service to Tract 2642 (herein "Agreement").
- C. The Agreement was recorded on April 6, 2007, in the Official Records of San Luis Obispo County as Document #2007023430.

- D. District and Owners desire to amend Paragraph 9 of the Agreement to allow Owners a longer period of time for the construction of water and sewer improvements.

NOW, THEREFORE in consideration of the mutual covenants and conditions contained herein, the parties agree to the First Amendment of the Agreement as follows:

Section 1

Except as amended by Section 2 below, the Terms and Conditions of the Agreement shall remain in full force and effect and such terms and conditions, including Exhibits, are incorporated herein by reference.

Section 2

Paragraph 9 of the Agreement is amended and restated as follows:

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 and sewer improvements in accordance with District's rules, regulations, ordinances and the Plan Check and Inspection Agreement (Exhibit "B");
- C. To commence construction of water and sewer improvements by September 15, 2010; or
- D. To comply with any other terms or conditions of this Agreement.

Owner and 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.

Section 3

Owner and District consent to the recordation of this Amendment in the official records of the County Recorder of the County of San Luis Obispo.

Section 4

Recitals A, B, C and D to this Amendment are incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this Amendment to the Agreement to be effective upon the date executed by District

OWNER:
CARL HOLLOWAY

OWNER:
DEBRA HOLLOWAY

By: _____
[Signature must be notarized]

By: _____
[Signature must be notarized]

NIPOMO COMMUNITY SERVICES DISTRICT

By: _____
MICHAEL WINN, PRESIDENT
Nipomo Community Services District
Board of Directors

Date: _____

ATTEST:

By: _____
DONNA K. JOHNSON, Secretary to
the Board of Directors,
Nipomo Community Services District

Date: _____

EXHIBIT "A"

The Easterly 396.78 feet of Lot 25 of the Re-Subdivision of a portion of Lot 26 of The Rancho Nipomo, San Luis Obispo County, California as recorded In Book A Page 14, San Luis Obispo County records.

APN 090-171-005

All of Lot No. 25 of the Re-subdivision of Lot No. 26 of The Nipomo Rancho, in the County of San Luis Obispo, State of California, as surveyed by George Story in February 1887, and filed March 19, 1887, in Book A, Page 14 of Maps in the office of the County Recorder of said County.

EXCEPT THEREFROM that portion heretofore conveyed to Jack C. Sleath in deed recorded January 20, 1950 in Book 549, Page 60 of Official Records, said conveyed portion, being the Southeasterly 396.78 feet thereof.

ALSO EXCEPT THEREFROM that portion of Lot 25, more particularly described as follows:

Beginning at the most Westerly corner of Lot 24 of said subdivision and running thence Southeasterly along the Southwesterly line of Lots 24 and 25, 545 feet to the True Point of beginning;
Thence from said true point of beginning, Southeasterly along the Southwesterly line of said Lot 25, 105 feet;
Thence Northeasterly at right angles, 105 feet;
Thence Northwesterly at right angles, 105 feet;
Thence Southwesterly at right angles, 105 feet;
to the Point of Beginning.

APN 090-171-028 & 090-171-029

All of Lot No. 24 of the Re-subdivision of part of Lot No. 26 of The Nipomo Rancho, in the County of San Luis Obispo, State of California, as surveyed by George Story in February 1887, and filed March 19, 1887, in Book A. Page 14 of Maps in the office of the County Recorder of said County.

Commencing from the most Westerly corner of the above mentioned Lot 24,
Thence South 45° 00' East along the Southwesterly line of said Lot, 330.27 feet;
Thence North 48° 15' East 508.91 feet to the South corner of parcel 1 described in the deed recorded January 7, 1960 in Book 1041, Page 352 of Official Records; Thence North 45° 07' 40"
West, 330.31 feet along the Southwesterly line of said Parcel to a point on the Northwesterly lot line of said Lot; Thence South 48° 15' West, 508.20 feet to the most westerly corner of the above mentioned Lot 24.

APN 090-171-027

EXHIBIT B

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

APN NOS. 090-171-005
090-171-027
090-171-028
090-171-029

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

Exhibits:

A. Property Description

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 AGREEMENT ("Agreement") is made this 27th day of March 2007, in San Luis Obispo County, California, by and between the Nipomo Community Services District, State of California, hereinafter referred to as "District," and Carl R. and Debra L. Holloway, 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 South Oakglen Avenue, Nipomo, California, also known as Tract 2642 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 :

- Improvement to the water main and sewer main in South Oakglen Avenue
- Construction of new water main and sewer main in the subdivision

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

C. The District is willing to accept the transfer, operation and maintenance of the Improvements and provide 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.**

*Wesley
C.R.A.
J.H.*
~~At the time of execution of this Agreement,~~ Owner shall advance to the District the sum of \$3,000 (three thousand dollars) for engineering, inspection, legal and administrative services in connection with plan checking, inspection of construction, and other costs incurred by the District in accepting the Improvements. Owner 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 \$1,000 (one thousand dollars) 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 completion of construction and acceptance of the Improvements by the District, any funds so advanced by the Owner in excess of the District's actual costs shall be refunded to the 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 and before Notice of Acceptance of the Improvements.

2. **Owner's Engineer of Record.**

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

Westland Eng.

Firm's Name
Ray Orton

Engineer to Contract RE No.

Street Address

City, State, and Zip Code

Phone Number

District shall be notified 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.

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

3. District Specifications.

The District's "Standard Specifications for Water and Sewer Improvements", hereinafter called District Specifications, are made a part of this Agreement by reference as though set forth at length in this Agreement. Receipt of District Specifications is hereby acknowledged by Owner. (District Specifications are found at the District's homepage at, www.nipomocsd.com.)

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, 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:

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

B. To the satisfaction of District, obtain all encroachment permits, real property deeds, permanent and temporary easements, offers of dedication, and/or right of ways (herein collectively "Right of Ways") for the construction, installation, operation, maintenance, repair, removal and replacement of the Improvements. Said Right of Ways 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.

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

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 proposed final Plans to the District for review.

C. Final Review and Approval of the Plans and Delivery of Right of Ways.

Within approximately twenty (20) working days after the date of delivery of the proposed final Plans and delivery of Right of Ways, if any, District will review the documents and notify the Owner of any additional changes or corrections that may be required.

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 faithful performance securities.

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. Each such Contractor shall indemnify, protect, defend and hold the District harmless as required by Indemnity Clause, herein. 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.

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

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

website www.cslb.ca.gov.

11. Faithful Performance Securities.

Prior to District issuing the Notice to Proceed, Owner shall, if required by District, 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.

The bond(s) shall continue in full force and effect through the end of the guarantee period.

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 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 estimated Improvement construction cost to the benefit of the District, as security for the faithful performance of the Work in compliance with the District ordinances, Rules and Regulations, the Plans, and District Specifications

B. Payment Bond. The Owner shall furnish a separate bond in an amount at least equal to one hundred percent (100%) of the 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.

12. Notice to Proceed.

After the District's final approval of the Plans, Right of Ways and upon receipt from Owner of two (2) sets of all required construction securities and insurance forms, and a copy of the Contractor's license, 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 and the District Specifications. During construction, a complete set of approved Plans shall remain at the job-site at all times.

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
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AND
CARL R. AND DEBRA L. HOLLOWAY

If Owner proposes to change the approved Plans for the Improvements, Owner shall first obtain the written approval of the District 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 insure 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 Property for the purposes of performing inspections. The District's inspections are for administrative 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 insure 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 Resolution of Acceptance is approved by the District Board of Directors.

16. Construction Manager.

A. Owner shall employ a 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 insure completion of the record drawings for the Improvements;

4. Obtain District approval prior to the release of any revised Plans or Specifications; and

5. Insure that the Contractor incorporates the District's comments on all submittals, plans and specifications.

B. Owner hereby designates the following firm as Owner's Construction

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

Manager:

Owner
Firm's Name
Carl R. Holloway
Person to Contract RE No.
561 S. Oakleng
Street Address
Nipomo, Ca. 93444
City, State, and Zip Code
(805) 929-4326
Phone Number

District shall be notified immediately, in writing, if the construction manager is replaced during the course of construction.

17. Damage to Property.

Owner shall 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 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 shall accept the Improvements ("Notice of Acceptance") by Resolution. The Directors shall not consider the Resolution 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

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

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; and

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

C. Maintenance Guarantee.

Owner shall provide the District with a maintenance bond, letter of credit 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

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

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, management and administrative costs, and engineering, legal and other costs incurred relating to the repair. 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, 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 Notice of Acceptance is mailed to the Owner. 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.

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 the following have occurred:

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

- A. The District has adopted a Resolution of Acceptance of the Improvements as provided herein; and
- 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.
- C. Building permits have been issued by the County of San Luis Obispo for residential and commercial units.

24. Construction Water

Prior to acceptance the District may provide construction water 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 shall indemnify and hold harmless the District, the District's Engineer and their consultants, and each of their 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, 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, regardless of whether or not it is caused in part by any act or omission (active, passive or comparative negligence included), or a party indemnified hereunder.

B. Without limiting the generality of the foregoing indemnity, such 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;
- 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

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

have been a contributing cause in any degree whatsoever.

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

C. After acceptance of the Improvements, Owner shall remain obligated to eliminate any defect in design, construction defects or dangerous condition caused by the design. The provisions of this paragraph shall remain in full force and effect for ten (10) years following the acceptance by District of the Improvements. It is the intent of this paragraph that Owner shall be responsible for all liability for design and construction of the Improvements installed or work done pursuant to this Agreement.

D. The Owner shall 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. The 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 NCSD, against any responsibility or liability in contravention of Civil Code §2782.

H. Neither termination of this Agreement or District's Acceptance of the Improvements shall release Owner from its obligations to indemnify 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.

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

26. **Insurance Requirements**

A. General.

Construction shall not commence or continue until or unless there is in full force and effect all required insurance. The 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.

The types of insurance the Owner and Contractor shall obtain and maintain are Workers' Compensation Insurance and Liability Insurance, all as set for herein.

Workers' Compensation Insurance and Liability Insurance shall be maintained in effect for the full guarantee period.

Insurers must be authorized to do business and have an agent for service of process in California and have at least an "A" policyholder's rating and a financial rating of at least Class XI in accordance with the most current 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 for District's approval.

B. Worker's Compensation Insurance.

The Owner shall provide a certificate(s) of insurance certifying that his Contractor has obtained for the period of the Contract full Workers' Compensation Insurance coverage for all persons whom he employs or may employ in carrying out the work under the Agreement. This insurance shall be in strict accordance with the requirements of the most current and applicable State Workers' Compensation Insurance Laws.

C. Liability Insurance.

The Owner or any Contractor carrying out the construction of the Improvements shall carry commercial general liability 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 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.

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

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.

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

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

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 and satisfactory arrangements for the corrections thereof be made, 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

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

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, Applicant hereby agrees that it shall reimburse District for the cost of such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees incurred by District. Owner shall comply with all provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101 et seq. as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein.

29. Ineligible Contractors

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

30. Assignment.

The provisions of this Agreement shall apply to and bind the successors, grantees, and assigns of the respective parties, but no assignment or transfer of this Agreement, or any part hereof, or interest herein by the Owner shall be valid until and unless approved by the District in writing. Such approval shall 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 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.

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 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

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

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 Resolution of Acceptance of the Improvements, all risk of loss or injury or destruction to the Improvements shall be upon the Owner. On or after the date of the Notice of Acceptance, 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

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

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 6064
Nipomo, California 93412
Attn: General Manager

Owner:

Carl + Debra Holloway
561 S. Oak Glen
Nipomo, CA 93444

Attn: _____

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

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

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.

A. Owner represents and warrants that: (a) 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

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN
THE NIPOMO COMMUNITY SERVICES DISTRICT
AND
CARL R. AND DEBRA L. HOLLOWAY

organizational documents.

B. Owner and the undersigned jointly and severally shall 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
Michael Winn, President
Board of Directors

Owner:
By: Carl R. Holloway
[Signatures must be notarized]

Owner:
By: Debra L. Holloway
[Signatures must be notarized]

Attest:

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of San Luis Obispo } ss.

On March 27, 2007, before me, Donna K. Johnson, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared Carl R. and Debra L. Holloway,
Name(s) of Signer(s)

- personally known to me
- 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/it 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.

WITNESS my hand and official seal.
Donna K. Johnson
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Plan Check and Inspection Agreement Tract 2642

Document Date: March 27, 2007 Number of Pages: 19

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

- Signer's Name: _____
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____

Signer Is Representing: _____



TO: BOARD OF DIRECTORS

FROM: BRUCE BUEL



DATE: SEPT. 19, 2008

AGENDA ITEM

D-6

SEPT. 24, 2008

AC PIPE DISPOSAL POLICY

ITEM

Approve proposed policy regarding abandonment in place of Asbestos-Cement Mains [Adopt Policy].

BACKGROUND

SLO County Public Works Department has requested that NCSD assume ownership responsibility for abandoned AC pipe. As an alternative, the Dept. has indicated that it will require NCSD to remove all abandoned AC pipe when the Dept. issues encroachment permits. Such a requirement would be cost prohibitive. Attached is a draft policy prepared by staff.

RECOMMENDATION

Staff recommends that the Board adopt the attached policy and authorize staff to forward a copy to SLO County Public Works.

ATTACHMENTS

- Draft Policy

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\BOARD LETTER 2008\AC PIPE DISPOSAL.DOC

EXHIBIT A

NCSD POLICY

REGARDING

DISPOSAL OF ASBESTOS-CEMENT (AC) PIPE

NCSD's standard operating procedure will be to abandon AC pipe in-place when replacing water and sewer facilities. The District will maintain ownership of the abandoned mains and will continue to mark any such mains in response to USA requests. If any such abandoned mains conflict with any future County project, NCSD will assist the County in locating the main in the right-of-way and, if necessary, in removing those portions of the abandoned main in conflict with the proposed works.

T:\DOCUMENTS\STAFF FOLDERS\BRUCE\POLICIES\AC PIPE DISPOSAL.DOC

JON S. SEITZ
MICHAEL W. SEITZ

SHIPSEY & SEITZ, INC.
A LAW CORPORATION
1066 PALM STREET
POST OFFICE BOX 953
SAN LUIS OBISPO, CALIFORNIA 93406
(805) 543-7272 FAX (805) 543-7281
JON S. SEITZ
District Legal Counsel
Nipomo Community Services District

JOHN L. SEITZ
(1924-1986)
GERALD W. SHIPSEY
(RETIRED)

STAFF REPORT

TO: BOARD OF DIRECTORS
NIPOMO COMMUNITY SERVICES DISTRICT

RE: SECOND AMENDMENT TO GENERAL MANAGER'S CONTRACT

FROM: JON S. SEITZ, DISTRICT LEGAL COUNSEL

DATE: SEPTEMBER 24, 2008
AGENDA ITEM D-7

The negotiations with Bruce Buel, District General Manager, have reached conclusion as follows:

1. The General Manager's contract is extended to August 31st, 2011.
2. Subject to receiving a performance review of "meets or exceeds expectations" pursuant to paragraph 5(B) of the existing contract, the General Manager will be compensated at one hundred twenty-eight thousand seven hundred and fifty dollars (\$128,750) per year commencing September 1, 2009.
3. Subject to receiving a performance review of "meets or exceeds expectations" pursuant to paragraph 5(B) of the existing contract, the General Manager will be compensated at one hundred thirty-two thousand six hundred and twelve dollars (\$132,612) per year commencing September 1, 2010 and through the remainder of the contract.

Additionally, the District has agreed to meet and confer with the General Manager during the months of September, 2010, through February, 28, 2011, to discuss possible extension of the contract.

Recommendation:

Option A – Approve the contract amendment and authorize the Board President to sign on behalf of the District. (Option A will be considered approved as part of the consent agenda unless pulled for separate consideration)

Option B – Amend or modify Option A.