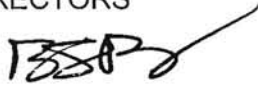


TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL 
DATE: OCTOBER 22, 2009

AGENDA ITEM
E-4
OCT. 28, 2009

**AWARD BID FOR MISTY GLEN WATERLINE CONNECTION AND
RETAIN CONSTRUCTION MANAGEMENT FIRM**

ITEM

Award bid for Misty Glen Waterline Connection Project to lowest responsive and responsible bidder and authorize execution of task order for construction management services [APPROVE RECOMMENDATION].

BACKGROUND

On October 1, 2009, bids were opened from seven (7) bidders. As illustrated in the attached Summary of Bids, the apparent low bidder was Pacific Engineering and Associates Inc. with a bid of \$62,998. Staff reviewed the apparent low bid and made a preliminary finding that the apparent low bid was non-responsive for the following reasons (not listed in any particular order):

- No evidence of prior experience constructing similar potable waterworks infrastructure
- No completion dates provided for projects completed in last three years
- Bid Bond was not signed by principal

Staff notified Pacific Engineering and Associates Inc. regarding Staff's determination that its bid was non-responsive (See attached letter dated October 6, 2009) and provided the bidder with the opportunity to submit a response that addressed each of the above issues. Pacific Engineering and Associates Inc. did not provide a written response within the five (5) days referenced in the letter and as of the date of this staff report has not responded to the October 6, 2009 letter.

The next low bidder was R. Baker, Inc. with a bid of \$76,989. Staff reviewed the bid and has determined that the bid is responsive and the bidder is responsible. A copy of R. Baker's bid is attached.

Staff obtained the attached proposal from Cannon for project construction engineering support, construction observation services and as-built documentation. The total estimated time and materials not-to-exceed cost is \$22,813. These services are necessary to assist staff during the construction phase of the project.

Regarding compliance with the California Environmental Quality Act (CEQA), the project involves the modification of existing facilities with no capacity increase and staff will file a Notice of Exemption for the project.

FISCAL IMPACT

The FY 09-10 Budget includes \$100,000 for this project (Fund 700 – Water Capacity Charge). To date, the District has expended approximately \$21,000 for design, PG&E electrical service fees, and pre-purchase of the pressure reducing valves and meter, leaving an available

balance of \$79,000 to complete the project. The funding required to complete the project is as follows:

Activity	Cost
Construction	\$76,989
Construction Management	\$22,813
Contingency	\$10,000
Total Remaining Costs	\$109,802

An additional \$31,000 is required to provide the balance of funding required to complete the project. Staff recommends that the Blume Street Looping Project, which was budgeted in FY 09-10 for \$52,000, be deferred and \$31,000 of the funding for the project be transferred to the Misty Glen Waterline Connection Project.

RECOMMENDATION

Staff recommends that your Honorable Board:

1. Award the bid for the project to R. Baker Inc. for \$76,989 and authorize General Manager to execute construction agreement
2. Authorize the General Manager to issue individual Change Orders for up to \$5,000 with an aggregate Change Order total not to exceed \$10,000
3. Authorize staff to file a Notice of Exemption for the project
4. Authorize the General Manager to execute a task order with Cannon for construction management services for the not-to-exceed amount of \$22,813 for the project
5. Direct staff to defer Blume Street project for FY 09-10 and transfer funding to Misty Glen Waterline Connection Project

ATTACHMENTS

Summary of Bids
Letter to Pacific Engineering dated October 6, 2009
R. Baker Inc. Bid
Cannon Proposal for Construction Management Services

NIPOMO COMMUNITY

BOARD MEMBERS

JAMES HARRISON, PRESIDENT
LARRY VIERHEILIG, VICE PRESIDENT
MICHAEL WINN, DIRECTOR
ED EBY, DIRECTOR
BILL NELSON, DIRECTOR



SERVICES DISTRICT

STAFF

BRUCE BUEL, GENERAL MANAGER
LISA BOGNUDA, FINANCE DIRECTOR/ASST. GM
JON SEITZ, GENERAL COUNSEL
PETER SEVCIK, P.E., DISTRICT ENGINEER

148 SOUTH WILSON STREET POST OFFICE BOX 326 NIPOMO, CA 93444 - 0326
(805) 929-1133 FAX (805) 929-1932 Website address: ncsd.ca.gov

October 6, 2009

Austin Lemmons
Pacific Engineering & Associates Inc.
3015 Coffee Road
Modesto, CA 95355

SENT VIA FACSIMILE
(209) 551-5849

SUBJECT: MISTY GLEN WATERLINE CONNECTION PROJECT
PRELIMINARY BID EVALUATION

Dear Mr. Lemmons:

The District has reviewed the apparent low bid submitted by your company for the referenced project and has made a preliminary finding that the bid was non-responsive for the following reasons (not listed in any particular order):

- No evidence of prior experience constructing similar potable waterworks infrastructure
- No completion dates provided for projects completed in last three years
- Bid Bond was not signed by principal

You may provide a response that addresses each of these issues within 5 days of receipt of this letter by fax (805-929-1932) or email (psevcik@ncsd.ca.gov).

Sincerely,

NIPOMO COMMUNITY SERVICES DISTRICT



Peter V. Sevcik, P.E.
District Engineer

C: Bruce Buel, NCS D General Manager
Jon Seitz, NCS D General Counsel

T:\STAFF FOLDERS-OFFICE\PETER\LETTERS\091006 PACIFIC ENGINEERING.DOC

CONTRACT PROPOSAL
TO
NIPOMO COMMUNITY SERVICES DISTRICT

FOR

MISTY GLEN WATERLINE CONNECTION PROJECT

Name of Bidder R. Baker, Inc.
Business Address PO Box 419, Arroyo Grande, CA 93421
Telephone (805)489-8711 Fax (805)489-1653

TO THE GOVERNING BODY OF THE NIPOMO COMMUNITY SERVICES DISTRICT

Pursuant to and in compliance with your Notice Inviting Bids for the project described above, and the other Contract Documents relating thereto, the undersigned Bidder, being fully familiar with the terms of the Contract Documents, the current general prevailing wage rates, local conditions affecting the performance of the Project, the character, quality, quantities and scope of the work, and the cost of the work at the place of performance, hereby proposes and agrees, within the time stipulated in the Contract Documents, to furnish to the Nipomo Community Services District all of the transportation, materials, equipment, tools, excavation, sheeting, shoring, bracing, supports, plant and other facilities, labor, services, permits, utilities, and other items necessary to conduct and complete said work, all in strict conformity with the Contract Documents, including Addenda Nos. 1, 2, and 3 on file at the District Office, for the total price of dollars (\$ 76,989.00), which is in agreement with the unit prices in the Bid Schedule, hereinafter set forth.

Bidder declares that the only persons or parties interested in this proposal are those named herein, and that this proposal is made without collusion with any person, firm or corporation. Bidder proposes and agrees, if the proposal is accepted, that Bidder will execute a contract with the District, in strict conformity to the Contract Documents, in the form set forth in the Contract Documents, and will perform the entire Work for the prices set forth in the attached Bid Schedule, upon which the award of contract is made.

NIPOMO COMMUNITY SERVICES DISTRICT
NIPOMO, CALIFORNIA

ADDENDUM NO. 1
TO
CONTRACT DOCUMENTS
FOR
MISTY GLEN WATERLINE CONNECTION PROJECT

The following revision is made to the Contract Documents:

PARAGRAPH C, DOMESTIC MATERIALS, GENERAL CONDITIONS SECTION GC-7, PAGE 36, IS DELETED IN ITS ENTIRETY AS INDICATED BELOW:

~~C. DOMESTIC MATERIALS~~

~~Only such unmanufactured materials as have been produced in the United States, and only such manufactured materials as have been manufactured in the United States substantially all from materials produced in the United States, shall be used in the performance of the contract, in accordance with the provisions of Section 4300 et seq. of the Government Code.~~

~~Any person who fails to comply with the provisions of these laws shall not be awarded any contract to which these statutes apply for a period of 3 years from the date of the violation.~~

Nipomo Community Services District

Peter V. Sevcik
Peter V. Sevcik, P.E.
District Engineer

9/25/2009
Date

THE BIDDER SHALL EXECUTE AND ATTACH THE FOLLOWING CERTIFICATION TO THE PROPOSAL.

BIDDER'S CERTIFICATION

I acknowledge receipt of the foregoing Addendum No. 1 to Contract Documents for Misty Glen Waterline Connection Project and accept all conditions contained therein:

Dated: 10/1/09

Bidder: R. Baker, Inc.

By: [Signature]

PROPOSED SUBCONTRACTORS

Pursuant to California Public Contract Code Section 4100 et seq., the following list gives the name, business address, and portion of work (description of work to be done) for each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvements, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specifically fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars (\$10,000), whichever is greater. Additional supporting data may be attached to this page. Each page shall be sequentially numbered, headed "Proposed Subcontractors," and shall be signed.

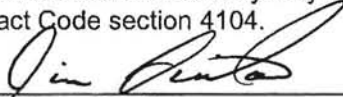
NAME	BUSINESS ADDRESS	DESCRIPTION AND COST OF WORK	% OF WORK	*STATUS
<i>None</i>				

***STATUS Required for federally funded projects only.**

- M = Minority Owned Business Enterprise
- W = Women Owned Business Enterprise
- DV = Disabled Veteran

The Prime Contractor shall perform at least 60% of the work with its own forces.

After the award of contract, substitutions of the above-listed proposed subcontractors may only be made with the prior approval of the District in accordance with Public Contract Code section 4104.



 Signature of Bidder

R. Baker, Inc.

 Company Name of Bidder

10/1/09

 Date

BIDDER INFORMATION

**NIPOMO COMMUNITY SERVICES DISTRICT
MISTY GLEN WATERLINE CONNECTION PROJECT**

<u>R. BAKER, INC</u> <i>Firm Name</i>	<u>(805) 489-8711</u> <i>Phone</i>
<u>PO BOX 419, ARROYO GRANDE, CA 93421</u> <i>Business Address</i>	<u>(805) 489-1653</u> <i>Fax</i>
<u>372751 A HAZ C16</u> <i>License #and Classification</i>	<u>40</u> <i>Years in Business</i>

Contact Person: GREG SHERER

Is this firm currently certified as a DBE by Caltrans? Yes No Cert. Number _____

Gross Annual Receipts for last year:
 < \$1 million <\$5 million <\$10 million <\$15 million >\$15 million

Type of Work/Services/Materials provided for this job:
 Contractor Supplier Manufacturer Trucking Broker
 Other (describe)

Contractor Specialty for this job:

- Roadway Construction
- Roadway Painting/Stripping
- Roadway Lighting & Electrical Signals
- Bridge & Tunnel Construction
- Water, Sewer, & Pipeline Construction
- Power & Communication Transmission Line (including conduit construction)
- Landscaping/Irrigation
- Other Heavy Const. (including parks, reclamation, reservoir, water & sewer treatment facilities)
- Masonry (including retaining walls and foundations)
- Concrete Retaining Walls
- Building Construction
- Recycled Water Storage Tank, Welding and Coating

This form can be duplicated if necessary to report all bidders (DBEs and non-DBEs) information

THIS FORM MUST BE SUBMITTED WITH BID

Sub-Contractors/Suppliers/Others

Groeniger & Company <small style="text-align: center;">Firm Name</small>	805-922-3331 <small style="text-align: center;">Phone</small>
1250 W Betteravia, Santa Maria, CA <small style="text-align: center;">Business Address</small>	805-922-3501 <small style="text-align: center;">Fax</small>
N/A <small style="text-align: center;">License #and Classification</small>	56 <small style="text-align: center;">Years in Business</small>
Contact Person: <u>Clark Stiles</u>	
Is this firm currently certified as a DBE by Caltrans? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Cert. Number _____	
Gross Annual Receipts for last year: <input type="checkbox"/> < \$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million <input checked="" type="checkbox"/> >\$15 million	
Type of Work/Services/Materials provided for this job: <input type="checkbox"/> Contractor <input checked="" type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Trucking <input type="checkbox"/> Broker <input type="checkbox"/> Other (describe)	
Contractor Specialty for this job: <input type="checkbox"/> Roadway Construction <input type="checkbox"/> Roadway Painting/Stripping <input type="checkbox"/> Roadway Lighting & Electrical Signals <input type="checkbox"/> Bridge & Tunnel Construction <input checked="" type="checkbox"/> Water, Sewer, & Pipeline Construction <input type="checkbox"/> Power & Communication Transmission Line (including conduit construction) <input type="checkbox"/> Landscaping/Irrigation <input type="checkbox"/> Other Heavy Const. (including parks, reclamation, reservoir, water & sewer treatment facilities) <input type="checkbox"/> Masonry (including retaining walls and foundations) <input type="checkbox"/> Concrete Retaining Walls <input type="checkbox"/> Building Construction <input checked="" type="checkbox"/> Other (describe) Supplier	

This form can be duplicated if necessary to report all bidders (DBEs and non-DBEs) information

THIS FORM MUST BE SUBMITTED WITH BID

Sub-Contractors/Suppliers/Others

Mid State Concrete	(805) 928-2855
<i>Firm Name</i>	<i>Phone</i>
1625 E. Donovan Rd. #C, Santa Maria, CA 93454	(805) 928-2114
<i>Business Address</i>	<i>Fax</i>
621781 A	18
<i>License #and Classification</i>	<i>Years in Business</i>
Contact Person: _____ N/A _____	
Is this firm currently certified as a DBE by Caltrans? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Cert. Number _____	
Gross Annual Receipts for last year: <input type="checkbox"/> < \$1 million <input checked="" type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million <input type="checkbox"/> >\$15 million	
Type of Work/Services/Materials provided for this job: <input type="checkbox"/> Contractor <input checked="" type="checkbox"/> Supplier <input checked="" type="checkbox"/> Manufacturer <input type="checkbox"/> Trucking <input type="checkbox"/> Broker <input type="checkbox"/> Other (describe)	
Contractor Specialty for this job: <input type="checkbox"/> Roadway Construction <input type="checkbox"/> Roadway Painting/Stripping <input type="checkbox"/> Roadway Lighting & Electrical Signals <input type="checkbox"/> Bridge & Tunnel Construction <input checked="" type="checkbox"/> 237110 - Water and Sewer Line Construction <input type="checkbox"/> Power & Communication Transmission Line (including conduit construction) <input type="checkbox"/> Landscaping/Irrigation <input type="checkbox"/> Other Heavy Const. (including parks, reclamation, reservoir, water & sewer treatment facilities) <input type="checkbox"/> Masonry (including retaining walls and foundations) <input type="checkbox"/> Concrete Retaining Walls <input type="checkbox"/> Building Construction <input checked="" type="checkbox"/> OTHER - Structural Steel and Precast Manufacturer	

This form can be duplicated if necessary to report all bidders (DBEs and non-DBEs) information

THIS FORM MUST BE SUBMITTED WITH BID

Sub-Contractors/Suppliers/Others

JENSEN PRECAST <small style="text-align: center;">Firm Name</small>	909-350-4111 <small style="text-align: center;">Phone</small>
14221 SAN BERNARDINO AVE, FONTANA, CA 92335 <small style="text-align: center;">Business Address</small>	909-350-0654 <small style="text-align: center;">Fax</small>
N/A <small style="text-align: center;">License #and Classification</small>	41 <small style="text-align: center;">Years in Business</small>
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <small style="text-align: center;">Is this firm currently certified as a DBE by Caltrans?</small>	<small style="text-align: center;">If yes, Certificate #</small>
Gross Annual Receipts for last year: <input type="checkbox"/> < \$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million <input checked="" type="checkbox"/> >\$15 million	
Type of Work/Services/Materials provided for this job: <input type="checkbox"/> Contractor <input checked="" type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Trucking <input type="checkbox"/> Broker <input type="checkbox"/> Other (describe)	
Contractor Specialty for this job: <input type="checkbox"/> Roadway Construction <input type="checkbox"/> Roadway Painting/Stripping <input type="checkbox"/> Roadway Lighting & Electrical Signals <input type="checkbox"/> Bridge & Tunnel Construction <input checked="" type="checkbox"/> Water, Sewer, & Pipeline Construction <input type="checkbox"/> Power & Communication Transmission Line (including conduit construction) <input type="checkbox"/> Landscaping/Irrigation <input type="checkbox"/> Other Heavy Const. (including parks, reclamation, reservoir, water & sewer treatment facilities) <input type="checkbox"/> Masonry (including retaining walls and foundations) <input type="checkbox"/> Concrete Retaining Walls <input type="checkbox"/> Building Construction <input checked="" type="checkbox"/> Other (describe) - SUPPLIER	

This form can be duplicated if necessary to report all bidders (DBEs and non-DBEs) information.

THIS FORM MUST BE SUBMITTED WITH BID

Sub-Contractors/Suppliers/Others

CALIFORNIA ELECTRIC SUPPLY (CED)	805-925-9585
<i>Firm Name</i>	<i>Phone</i>
901 S. BLOSSER RD, SANTA MARIA, CA 93458-4919	805-928-2302
<i>Business Address</i>	<i>Fax</i>
N/A	52
<i>License #and Classification</i>	<i>Years in Business</i>
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<i>If yes, Certificate #</i>
<p><i>Is this firm currently certified as a DBE by Caltrans?</i></p>	
<p>Gross Annual Receipts for last year: <input type="checkbox"/> < \$1 million <input type="checkbox"/> <\$5 million <input type="checkbox"/> <\$10 million <input type="checkbox"/> <\$15 million <input checked="" type="checkbox"/> >\$15 million</p>	
<p>Type of Work/Services/Materials provided for this job: <input type="checkbox"/> Contractor <input checked="" type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Trucking <input type="checkbox"/> Broker <input type="checkbox"/> Other (describe)</p>	
<p>Contractor Specialty for this job:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Roadway Construction <input type="checkbox"/> Roadway Painting/Stripping <input type="checkbox"/> Roadway Lighting & Electrical Signals <input type="checkbox"/> Bridge & Tunnel Construction <input checked="" type="checkbox"/> Water, Sewer, & Pipeline Construction <input type="checkbox"/> Power & Communication Transmission Line (including conduit construction) <input type="checkbox"/> Landscaping/Irrigation <input type="checkbox"/> Other Heavy Const. (including parks, reclamation, reservoir, water & sewer treatment facilities) <input type="checkbox"/> Masonry (including retaining walls and foundations) <input type="checkbox"/> Concrete Retaining Walls <input type="checkbox"/> Building Construction <input checked="" type="checkbox"/> Other (describe) - SUPPLIER 	

This form can be duplicated if necessary to report all bidders (DBEs and non-DBEs) information.

THIS FORM MUST BE SUBMITTED WITH BID

CONTRACTOR'S EXPERIENCE AND FINANCIAL QUALIFICATIONS

The following statements as to the experience and financial qualifications of the bidder are to be submitted with the Contract Proposal, as a part thereof. The truthfulness and accuracy of the information is guaranteed by the bidder.

The bidder has been engaged in the contracting business, under the present business name, for 37 years. Experience in work of a nature similar to that covered in the Proposal extends over a period of 40 years.

The names of all persons interested in the foregoing proposals as principals are as follows: (NOTE: If Bidder or other interested person is a corporation, state the legal name of the corporation, along with the names of the president, secretary, treasurer, and manager thereof; if a general partnership, state true name of the firm, also the names of all individual partners composing the firm; if a limited partnership, the names of all general partners and limited partners; and if Bidder or other interested person is an individual, state first and last names in full.)

Entity Name	Individual's Name	Title
R. Baker, Inc	Robert R. Baker	Pres, sec, Treas.
L	James E. Guiton	Vice President

Contractor's License Number: 372751

License Renewal Date: 4/30/11

List ALL Projects Completed in Last Three Years, with Contact Information
 Attach additional pages if needed

Project Name/Owner Name	Description of Work/Contract Amount	Contact Name and Telephone Number
	<i>see Attached.</i>	

List AT LEAST TWO Projects of Like Magnitude, Comparable Difficulty and Rates of Progress,
with Contact Information
 Attach additional pages if needed

Project Name/Owner Name	Description of Work/Contract Amount	Contact Name and Telephone Number
	<i>see Attached.</i>	

The bidder, as a contractor, has never failed to satisfactorily complete a contract awarded to the Contractor, except as follows: (name any and all exceptions and reasons therefor). Attach additional pages if needed.

Project Name/Owner Name	Description of Work	Explanation
<i>None</i>		

R. BAKER, INC LAST 3 YRS PROJECTS

JOB	DATE	JOB NAME/DESCRIPTION	CONTRACT
154	12/07 -5/08	Farroll Ave Waterline Upgrade - City of Arroyo Grande PO Box 1280, Santa Maria, CA 93456; Brian Shiffrar 922-9858	\$224,379.00
73	6/06 -7/07	Williams Street Storm Drain -City of Santa Maria 110 Cook St, Santa Maria 93445; David Whitehead 925-0951	\$589,474.37
80	8/06 - 4/07	Creston Steet Sewer-City of Santa Maria 110 Cook St, Santa Maria 93445; David Whitehead 925-0951	\$443,916.26
82	9/06 - 3/07	Santa Maria Street Overlay-Union Asphalt PO Box 1280, Santa Maria, CA 93456; Brian Shiffrar 922-9858	\$100,852.81
87	11/06-7/07	Kansas Ave Sewer Replacement, County of San Luis Obispo, CA Dept of Public Works, County Gov Ctr, Rm 207, San Luis Obispo, CA 93401	\$502,084.00
195	12/08-10/09	OCSD Sewer Repair & Replacement, Oceano, CA Wallace Group Dist Engineers, SLO, CA -Craig Taylor 544-4011	\$600,963.00
187	7/08-8/09	Chorro/Hathway Sewer & Water Rehab City of SLO City of SLO, Public Works Dept, CA Mark Williams 781-7195ph/781-7198fax	\$1,018,790.00
87	11/06-7/07	Kansas Ave Sewer Replacement, County of SLO, CA Dept of Public Works, SLO, CA 93401 Mike Boyce 235-3333	\$502,084.00
80	8/06 - 4/07	Creston Steet Sewer-City of Santa Maria 110 Cook St, Santa Maria 93445; David Whitehead 925-0951	\$443,916.26
155	12/07-8/08	Los Osos Well - Los Osos Community Svcs Dist 2122 9th Street, Los Osos, CA 93402; John Schemph 528-9370	398,696.00
169	4/08-12/08	Water Main Upgrade - Los Osos Comm Serv Dist 2122 9th Street, Los Osos, CA 93402; John Schemph 528-9370 / 528-9377 fax	281,242.00
171	5/08-3/09	Paso Robles Lift Sta #4 - City of Paso Robles City Engineer Ditas Esperanza 237-3861	335,000.00
132	4/07-6/07	Santa Ynez Waterline-Santa Ynez River Water Conservation District PO Box 157, Santa Ynez, CA 93460, Eric Tambini 688-6015 ph / 688-3078 fax	\$171,000.00
210	4/09-8/09	City of Guadalupe Water Main Repair & Replace RM Associates, City Engineer-Josh Bannister, 1505 N. Wishon, Fresno, CA	\$623,380.00

R. BAKER, INC COMPARABLE PROJECTS

JOB	JOB NAME / DESCRIPTION / OWNER / CONTACT	DATE	CONTRACT
73	Williams Street Storm Drain -City of Santa Maria 110 Cook St, Santa Maria 93454; David Whitehead 925-0951	6/06 -7/07	\$589,474.37
80	Creston Steet Sewer-City of Santa Maria 110 Cook St, Santa Maria 93454; David Whitehead 925-0951	8/06 - 4/07	\$443,916.26
82	Santa Maria Street Overlay-Union Asphalt PO Box 1280, Santa Maria, CA 93456; Brian Shiffrar 922-9858	9/06 - 3/07	\$100,852.81
38	Oceano Community Svcs Dist-Water Line Replacement 1655 Front St, Oceano, CA 93445-Garing Taylor & Assoc Phil Taylor	4/05-2/03	\$414,203.00
40	Santa Maria Cook/Oakley Sewer-City of Santa Maria 110 Cook St, Santa Maria 93454; David Whitehead 925-0951	5/05 - 3/06	\$688,245.32
890	Water Line-City of Santa Maria 110 Cook St, Santa Maria 93454; David Whitehead 925-0951	2/02 - 7/02	\$1,095,065.38
974	10" Water Line Repair-City of Santa Maria 110 Cook St, Santa Maria 93454; David Whitehead 925-0951	1/04 - 1/04	\$19,617.30
976	Miller Street Water Repair-City of Santa Maria 110 Cook St, Santa Maria 93454; David Whitehead 925-0951	12/03 - 12/03	\$23,420.37
145	City of Santa Maria Hanson Way Waterline - Union Asphalt PO Box 1280, Santa Maria, CA 93456; Brian Shiffrar 922-9858	9/07 - 2/08	\$201,097.41
154	Farroll Ave Waterline Upgrade - City of Arroyo Grande PO Box 1280, Santa Maria, CA 93456; Brian Shiffrar 922-9858	12/07 -5/08	\$224,379.00
155	Los Osos Well - Los Osos Community Services District 2122 9th Street, Los Osos, CA 93402; John Schemph 528-9370	12/07-8/08	\$395,186.59
169	Water Main Upgrade - Los Osos Community Services District 2122 9th Street, Los Osos, CA 93402; John Schemph 528-9370	4/08-12/08	\$281,242.00
187	Chorro/Hathway Sewer & Water Rehab City of SLO City of SLO, Public Works Dept, CA Mark Williams 781-7195	7/08-8/09	\$1,018,790.00
195	OCSD Sewer Repair & Replacement, Oceano, CA Wallace Group Dist Engineers, SLO, CA -Craig Taylor 544-4011	12/08-11/09	\$600,963.00
171	Paso Robles Lift Sta #4 - City of Paso Robles City Engineer Ditas Esperanza 237-3861	5/08-3/09	\$335,000.00
132	Santa Ynez Waterline-Santa Ynez River Water Conservation District PO Box 157, Santa Ynez, CA 93460, Eric Tambini 688-6015 ph / 688-3078 fax	4/07-6/07	\$171,000.00

BID SCHEDULE

Misty Glen Waterline Connection Project

Pursuant to NOTICE INVITING BIDS, and INFORMATION TO BIDDERS, the undersigned hereby proposes and agrees that on award by the Nipomo Community Services District in accordance with the provisions of the Contract Documents, to execute the Agreement, with necessary bonds and insurance, to furnish and install any and all transportation, materials, equipment, tools, excavation, utilities, sheeting, shoring, bracing and supports, plant and other facilities, and all management, superintendence, permits, labor and services for the Misty Glen Waterline Connection Project, in accordance with the Contract Documents therefor adopted and on file with the Nipomo Community Services District, within the time hereinafter set forth and at the price or prices set forth in this Bid as follows:

BID ITEM NO.	ITEM DESCRIPTION	EST. QUANTITY	UNIT COST	EXTENDED TOTAL AMOUNT
1.	Misty Glen Waterline Connection, in accordance with the plans and specifications, for the lump sum price of...	1 LS	\$ <u>76,989.⁰⁰ /LS</u>	\$ <u>76,989.⁰⁰</u>

TOTAL LUMP SUM PRICE:

Seventy Six Thousand Nine Hundred
 (written in words)

Eighty Nine _____ Dollars
 (written in words)

Bid amount of each of the above bid items must be filled in and completed in ink.

In the event of a conflict between numbers given in figures and in words, the words shall control. In the event of a conflict between a unit price and the extended price, the unit price correctly multiplied by the estimated quantity shall be used in calculating the total bid.

Signature of Bidder: *Jim Pinta*

Title: Vice President

Company Name (printed): R. Baker, Inc

PROPOSED MAJOR MATERIAL SUPPLIERS

The bidder is required to furnish the following information on major materials and manufacturers. No changes will be allowed in materials or manufacturers without the prior approval of the Engineer.

****NOT REQUIRED FOR MISTY GLEN WATERLINE CONNECTION PROJECT****

Item	Supplier
N/A	

[Handwritten Signature]
Signature of Bidder

R. Baker, Inc.
Company Name of Bidder

10/1/09
Date

NONCOLLUSION AFFIDAVIT
(TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID)

State of California

County of San Luis Obispo ss.

James Guiton, being first duly sworn, deposes and says that he or she is
Vice [title] President of R. Baker, Inc, the party making the foregoing
bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership,
company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that
the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid,
and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else
to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner,
directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price
of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that
of any other bidder, or to secure any advantage against the public body awarding the contract of anyone
interested in the proposed contract; that all statements contained in the bid are true; and, further, that the
bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the
contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any
corporation, partnership, company, association, organization, bid depository, or to any member or agent
thereof to effectuate a collusive or sham bid.

Signed: 

Date: 10/1/09

Bidder's Name: R. Baker, Inc.

BID BOND

R. Baker, Inc.

KNOWN ALL PERSONS BY THESE PRESENTS that, hereinafter called the PRINCIPAL, and Travelers Casualty and Surety Company of America, a corporation duly organized under the laws of the State of New Jersey, having its principal place of business at 11070 White Rock Rd., Rancho Cordova, Ca 95670 in the State of and authorized to do business in the State of California, hereinafter call the SURETY, are held and firmly bound unto the Nipomo Community Services District, hereinafter called the OBLIGEE, on order, in the sum of Ten Percent of Bid Amount Dollars (\$ 10% of Bid) (being at least ten percent (10%) of the total amount of PRINCIPAL's proposal) lawful money of the United States, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the PRINCIPAL has submitted its Proposal for the project entitled Misty Glen Waterline Connection Project to the OBLIGEE, said Proposal, by reference thereto; being hereby made a part hereof.

NOW, THEREFORE, if said Proposal is rejected or, in the alternate, if said Proposal is accepted and the PRINCIPAL signs and delivers a Contract and furnishes a Performance Bond and Payment Bond, in the form and within the time required by the Proposal and the Contract Documents, then this obligation shall become null and void, otherwise the same shall remain in full force and effect and upon default of the PRINCIPAL shall be forfeited to the OBLIGEE, it being expressly understood and agreed that the liability of the SURETY for any and all default of the PRINCIPAL shall be the amount of this obligation as herein stated, as liquidated damages. Such forfeiture and liquidated damages under this bond shall be without prejudice to the OBLIGEE'S right to pursue any excess actual damages from the PRINCIPAL for breach of contract or otherwise.

The SURETY, for value received, hereby agrees that the obligations of said SURETY and its bond shall not be impaired or affected by any extension of the time within which the OBLIGEE may accept such Proposal, and the SURETY hereby waives notice of any such extension.

In the event suit is brought upon this bond by the OBLIGEE and judgment is recovered, the SURETY shall pay, in addition to the sum set forth above, all costs incurred by the OBLIGEE in such suit, including reasonable attorney's fees and expert witness fees, to be fixed by the court.

Signed this 18th day of September, 2009

R. Baker, Inc.

PRINCIPAL
BY Jim Guiton VICE PRESIDENT
Travelers Casualty and Surety Company of America
SURETY

BY Myrna Smith
Myrna Smith, Attorney in Fact

Note: Signature of person executing for SURETY must be notarized and evidence of corporate authority attached.



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 219304

Certificate No. 002825413

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Myrna Smith, Leonore Woolpert, Gregory R. Morris, Kerry Pollock, Gene Garritano, and Barbara L. Sutton

of the City of San Luis Obispo, State of California, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 11th day of February, 2009.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 11th day of February, 2009, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2011.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 18th day of September, 2009.


Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

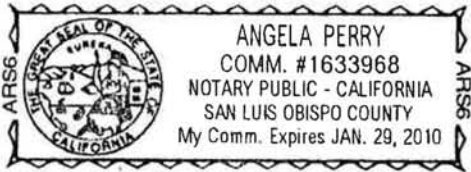
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

County of San Luis Obispo }

On 9/18/09 before me, Angela Perry
Date Here Insert Name and Title of the Officer

personally appeared Myrna Smith
Name(s) of Signer(s)



Place Notary Seal Above

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

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

Witness my hand and official seal.

Signature [Handwritten Signature]
Signature of Notary Public

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: Bid Bonds

Document Date: September 18, 2009 Number of Pages: 1

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Myrna Smith

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

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing:
Travelers Casualty and Surety Company of America

Signer's Name: _____

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

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

BID BOND

KNOWN ALL PERSONS BY THESE PRESENTS that, _____ hereinafter called the PRINCIPAL, and _____, a _____ corporation duly organized under the laws of the State of _____, having its principal place of business at _____ in the State of _____ and authorized to do business in the State of California, hereinafter call the SURETY, are held and firmly bound unto the Nipomo Community Services District, hereinafter called the OBLIGEE, on order, in the sum of _____ Dollars (\$ _____) (being at least ten percent (10%) of the total amount of PRINCIPAL's proposal) lawful money of the United States, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the PRINCIPAL has submitted its Proposal for the project entitled Misty Glen Waterline Connection Project to the OBLIGEE, said Proposal, by reference thereto; being hereby made a part hereof.

NOW, THEREFORE, if said Proposal is rejected or, in the alternate, if said Proposal is accepted and the PRINCIPAL signs and delivers a Contract and furnishes a Performance Bond and Payment Bond, in the form and within the time required by the Proposal and the Contract Documents, then this obligation shall become null and void, otherwise the same shall remain in full force and effect and upon default of the PRINCIPAL shall be forfeited to the OBLIGEE, it being expressly understood and agreed that the liability of the SURETY for any and all default of the PRINCIPAL shall be the amount of this obligation as herein stated, as liquidated damages. Such forfeiture and liquidated damages under this bond shall be without prejudice to the OBLIGEE'S right to pursue any excess actual damages from the PRINCIPAL for breach of contract or otherwise.

The SURETY, for value received, hereby agrees that the obligations of said SURETY and its bond shall not be impaired or affected by any extension of the time within which the OBLIGEE may accept such Proposal, and the SURETY hereby waives notice of any such extension.

In the event suit is brought upon this bond by the OBLIGEE and judgment is recovered, the SURETY shall pay, in addition to the sum set forth above, all costs incurred by the OBLIGEE in such suit, including reasonable attorney's fees and expert witness fees, to be fixed by the court.

Signed this _____ day of _____, 2009

PRINCIPAL _____

BY _____

SURETY _____

BY _____

See Attached

Note: Signature of person executing for SURETY must be notarized and evidence of corporate authority attached.

AGREEMENT

Misty Glen Waterline Connection Project

THIS CONTRACT FOR CONSTRUCTION is made and entered into this ____ day of _____, 2009, by and between the Nipomo Community Services District ("District" or "Owner") and _____, a California corporation, a partnership or an individual (circle one) located in _____, herein called Contractor, for performance of the **Misty Glen Waterline Connection Project** (the "Project").

The District and the Contractor agree as follows:

- (1) **CONTRACT PRICE:** The District agrees to pay, and the Contractor agrees to accept, in full payment for the Project, the sum of _____ dollars (\$_____) (the "Contract Price"), in accordance with the Contract Documents. The Contract Price may be adjusted only as provided in the Contract Documents.
- (2) **CONTRACT TIME:** The Contract Time shall be as set forth in the Special Provisions.
- (3) **COMPLIANCE WITH LAW:** The District is a public agency. All provisions of law applicable to public contracts are a part of this contract to the same extent as though set forth herein and will be complied with by the Contractor.
- (4) **CONTRACT DOCUMENTS:** The following Contract Documents relating to this Project are hereby made a part of and incorporated by reference into this Agreement:

- The Notice Inviting Bids
- Information for Bidders
- Contract Proposal including the Bid, Bid Schedule(s), Information Required of Bidder, Bid Bond, and all required certificates and affidavits
- Faithful Performance Bond
- Labor and Materials Payment Bond
- Contractor's Certificate Regarding Worker's Compensation
- General Conditions
- Special Provisions
- CalTrans Standard Specifications for Construction of Local Streets and Roads dated July 2002 CalTrans Standard Plans, current edition
- District Standard Specifications, current edition
- Standards of the American Water Works Association, current edition
- Plans and Construction Specifications (as listed in the Table of Contents) dated August 28, 2009 prepared by Cannon
- Pending SLO County Encroachment Permit (as listed in the Table of Contents)
- Addenda __ through __ issued before the time for submitting bids.
- Change Orders that may be issued in accordance with the Contract Documents after execution of the Agreement

Any work called for in one contract document not mentioned in another is to be performed and executed the same as if mentioned in all Contract Documents.

In the event of a direct conflict between the various Contract Documents, the documents shall control in the following order, with the first-listed document being given precedence over documents lower on the list:

- Change Orders, most recent first
- Addenda, most recent first
- Special Provisions
- This Agreement

- Plans and Specifications prepared by Cannon Associates
- General Conditions
- District Standard Specifications
- CalTrans Standard Specifications
- CalTrans Standard Plans
- Information for Bidders
- Notice Inviting Bids

This Agreement (including all documents referred to above and incorporated herein) represents the entire and integrated Agreement between District and Contractor for the Project and supersedes all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument as provided in the Contract Documents.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN TEN YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, PO BOX 26000, SACRAMENTO, CA 95826.

NIPOMO COMMUNITY SERVICES DISTRICT:

CONTRACTOR:

By: _____

By: _____
(Authorized Representative of Contractor)

Dated: _____

Printed Name: _____

ATTEST:

Title: _____
(Attach Acknowledgment for Authorized Representative of Contractor)

APPROVED AS TO FORM:

Dated: _____
(Contractor Signatures must be Notarized)

FAITHFUL PERFORMANCE BOND

KNOWN ALL PERSONS BY THESE PRESENTS:

WHEREAS, the Nipomo Community Services District, California (hereinafter referred to as "District") and _____ (hereinafter referred to as "Principal"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **Misty Glen Waterline Connection Project** (hereinafter referred to as the "Construction Contract"); the terms and conditions of which are incorporated herein by reference; and the terms of the Construction Contract require the Principal to furnish performance security.

NOW, THEREFORE, Principal and _____ ("Surety"), are hereby held and firmly bound unto the District in the amount of \$ _____, for payment of which Principal and Surety hereby bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if Principal (or its heirs, executors, administrators, successors, or assigns approved by the District) performs all of the covenants, conditions, and obligations of the Construction Contract, including but not limited to the obligation to indemnify, defend, and hold harmless the District, and the one year warranty period, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect.

The Surety's obligation under this bond shall arise after the District has provided written notice to the Surety, at the address set forth below, of the Principal's default under the Construction Contract, and the Principal's failure to cure the default in accordance with the terms of the Construction Contract.

The Surety hereby agrees, for value received, that its obligations under this bond shall in no way be impaired or modified by any modification to the Construction Contract by the District and the Principal, and the Surety hereby waives notice of any such modification.

In the event District makes a demand upon this bond, Surety shall pay the District's reasonable administrative fees and attorneys' fees and costs. In the event suit is brought upon this bond by District and District recovers judgment, the surety shall pay the attorneys fees and costs incurred by the prevailing parties in such suit, which fees and costs shall be in addition to the face amount of the bond.

IN WITNESS WHEREOF, the undersigned represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this document on behalf of the Principal and the Surety, and have caused this document to be executed by setting hereto their names, titles, and signatures.

CONTRACTOR, as Principal

SURETY

By: _____

By: _____

Its: _____

Its: _____

Address: _____

Address: _____

FAX: _____

FAX: _____

Note: Signature of person executing for surety must be notarized and evidence of corporate authority attached.

LABOR AND MATERIALS PAYMENT BOND

KNOWN ALL PERSONS BY THESE PRESENT:

WHEREAS, the Nipomo Community Services District (hereinafter referred to as "District" or "District") and _____ (hereinafter referred to as "Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **Misty Glen Waterline Connection Project** (hereinafter referred to as the "Construction Contract"); and

WHEREAS, Contractor is required by the terms of the Construction Contract to furnish a bond to secure payment for all work, labor, materials, equipment or services furnished in connection with the Construction Contract;

NOW, THEREFORE, Contractor, as principal, and _____ (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto Claimants, as defined herein, in the penal sum of _____ Dollars (\$ _____), lawful money of the United States, for the payment of which sum well and truly to be made as provided in this Payment Bond.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to District to pay for work, labor, materials, equipment, services, or other items furnished for use and actually used in the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to District, this obligation shall be null and void if Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds District harmless from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for work, labor, materials, equipment, services or other items furnished for use in the performance of the Construction Contract, provided District has promptly notified Contractor and Surety (at the address described below) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Contractor and Surety.

3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.

4. Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described below) and sent a copy, or notice thereof, to District, stating that a claim is being made under this Payment Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

4.2.1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to District, as required by and conforming with Civil Code sections 3252 and 3091; and

4.2.2 Not having been paid within 30 days of sending the required notice, have sent a written notice to Surety (at the address described below) and sent a copy to the District, stating that a claim is being made under this Payment Bond and enclosing a copy of the previous written notice furnished to Contractor.

5. When the Claimant has satisfied the conditions of Paragraph 4, Surety shall promptly and at Surety's expense take the following actions:

5.1 Send an answer to the Claimant, with a copy to District, within 20 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

5.2 Pay or arrange for payment of any undisputed amounts.

6. Surety's total obligation shall not exceed the amount of this Payment Bond, and the amount of this Payment Bond shall be credited for any payments made in good faith by Surety.

7. Amounts owed by District to Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under the Performance Bond. By Contractor furnishing and District accepting this Payment Bond, they agree that all funds earned by Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to the District's priority to use the funds for the completion of the work or the satisfaction of District's claims, including liquidated damages and indemnity, under the Construction Contract.

8. Surety shall not be liable to District, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. District shall not be liable for payment of any costs or expenses of any Claimants under this Payment Bond, and shall have under this Payment Bond no obligation to make payments to, give notices on behalf of, or otherwise have any obligation to Claimants under this Payment Bond.

9. Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

10. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction. The prevailing party in any such action shall be entitled to recover its attorneys' fees, to be taxed as costs.

11. Notice to Surety, District or Contractor shall be mailed or delivered to the address shown on the signature page.

12. This Payment Bond has been furnished to comply with Civil Code sections 3247 through 3252. Any provision in this Payment Bond conflicting with those statutory requirements shall be deemed deleted and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Payment Bond shall be construed as a statutory bond and not as a common law bond.

13. Upon request by any person or entity appearing to be a potential beneficiary of this Payment Bond, the Contractor shall promptly furnish a copy of this Payment Bond or shall permit a copy to be made.

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14. DEFINITIONS

14.1 Claimant: An individual or entity identified in California Civil Code sections 3181 or 3248.

14.2 Construction Contract: The agreement between District and Contractor identified above, including all Contract Documents and changes thereto.

CONTRACTOR, as Principal

SURETY

By: _____

By: _____

Its: _____

Its: _____

Address: _____

Address: _____

FAX: _____

FAX: _____

Note: Signature of person executing for surety must be notarized and evidence of corporate authority attached.

CONTRACTOR'S CERTIFICATE REGARDING WORKER'S COMPENSATION

Contract with the Nipomo Community Services District for the construction of:

Misty Glen Waterline Connection Project

Labor Code Section 3700:

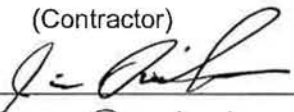
"Every employer, except the State, and all political subdivisions or institutions thereof, shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation by one or more insurers, duly authorized to write compensation insurance in this State.

(b) By securing from the Director of Industrial Relations a certificate on consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to employees."

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance. In accordance with the provisions of that code, I will comply with such provisions before commencing the performance of the work of this contract.

Dated: 10, 1, 2009

(Contractor)
By 
Vice President
(Official Title)

(SEAL)



RECEIVED

OCT 12 2009

NIPOMO COMMUNITY
SERVICES DISTRICT

October 6, 2009

Mr. Peter Sevcik, PE
District Engineer
Nipomo Community Services District
148 S. Wilson Street
Nipomo, CA 93444

**PROJECT: MISTY GLEN WATERLINE CONNECTION
CONSTRUCTION MANAGEMENT SERVICES**

Dear Peter:

This proposal presents our scope of work and fee estimate for providing construction management services to support the installation of a critical waterline connection at the intersection of Willow Road and Misty Glen. This connection will serve two important functions: it will provide a convenient (and less disruptive) tie-in point in advance of the County's Willow Road construction project, and it provides the pressure reducing and metering connection between the Town and Blacklake water systems.

It is our understanding that the District needs help to ensure that all improvements are constructed in compliance with the contract documents. We are very familiar with this type of construction and can provide the level of organization, communication, and dedication needed to oversee this project.

We are available to start immediately upon receiving your authorization to proceed. If you have any questions in the mean time, please feel free to call me at (805) 544-7407.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Kraemer", is written over a horizontal line.

Larry Kraemer, PE
Director, Public Infrastructure Division
C 44813



PROJECT UNDERSTANDING

The plans and specifications for the Misty Glen Waterline Connection Project form the basis of our understanding of the work involved. The project generally consists of mobilization, traffic control, saw-cutting, removal and disposal of trench asphalt pavement, earthwork, installation of new water system components, including, sand bedding, pipe, fittings, valves, vaults, meters, conduits, etc., backfill and compaction of trench, asphalt paving, and site restoration and cleanup.

Our role in this project is to act as the District's eyes and ears in the field during the construction and post-construction phases, and verify the Contractor is constructing the improvements in accordance with the plans and specifications. Our Construction Manager will represent the District at the construction site and coordinate with the Contractor and Geotechnical Engineer throughout the course of the project.

SCOPE OF WORK

The following scope of work is based on discussions with you and review of the Bid Documents.

TASK 1.0 CONSTRUCTION PHASE SERVICES

Task 1.1 Pre-Construction Conference

Cannon's Construction Manager will attend the pre-construction conference with the Contractor and District's team. We assume the meeting will take place at the District's Southland WWTP field office.

Task 1.2 Progress Pay Estimate

We will establish a progress pay schedule with the Contractor, in which progress pay estimates will be forwarded by the Contractor to Cannon on a monthly schedule. We will review the progress pay estimates and supporting materials, and forward the Contractor's progress pay estimates to the District. We will include recommendations regarding the payment to the Contractor. We will maintain a current estimate of the earned value of work performed and an estimate of the overall construction costs based on the contractor's bid.

Task 1.3 Submittal Management

The Submittal Management process will include tracking the shop drawings and submittals received from the Contractor. We will maintain a log of the shop drawings and manage the Submittal Management process, including:

- Record all submittals and shop drawings received from the Contractor;
- Ensure submittals are reviewed in a timely fashion and returned to the Contractor;
- Ensure the sample/submittal logs reflect the same critical submittal dates as the short term look ahead schedules;
- Ensure shop drawings have been reviewed and returned before associated work is begun;
- Update logs on a regular basis; and
- Maintain copies of all submittals.



We anticipate submittals on the following items:

- Traffic Control Plan
- Potholing Data
- Ductile Iron Pipe and Fittings
- 14-inch AWWA Butterfly Valves
- 10-inch, 8-inch, and 6-inch AWWA Resilient Seat Gate Valves
- Special Fittings, Couplings, Restraints, Nuts, Bolts, and Gaskets
- Precast Concrete Vaults
- Electrical Conduits and Materials
- Sand Bedding
- Aggregate Base
- Asphalt Concrete
- Concrete

Task 1.4 Change Order Management and Requests for Information (RFIs)

We will coordinate all efforts regarding change orders and RFIs submitted by the Contractor or requested by the District. Change order submittals will need to include supporting documentation. We will consider how submittals impact the project budget and schedule, and will prepare a recommendation for approval or disapproval of the submittal. Various activities for this task include the following:

- Coordinate responses to RFIs;
- Compile documentation including inspection reports, test reports, drawings, sketches, photographs, and other materials as required;
- Evaluate impacts of the proposed change on the Contractor's schedule and operations; prepare a written response summarizing the anticipated impact of the change;
- Evaluate price proposal submitted by the Contractor for reasonableness and accuracy of rates unit prices, construction quantities, and schedule impacts; and
- Maintain a tool for tracking change order proposals through the review and approval process. Should the need arise, we will prepare files for potential change orders or claims in order to compile supporting documentation.

Task 1.5 Construction Observation

Construction Observation services will include the following:

- Implement observation guidelines for monitoring the quality of the Contractor's work;
- Conduct field observation (as needed) and prepare documentation of construction tasks including, but not limited to, potholing, pipe, valve and fitting installation, vault, metering, and conduit installation, trench excavation, bedding and backfill, pavement replacement, testing, concrete;
- Issue a Non Conformance Report to the Contractor when we witnesses materials, erection or installation process, or inadequate quality that does not meet the requirements of the construction contract documents. The report will notify the Contractor of such deviation and inquire as to the Contractor's proposed corrective action; and
- Obtain delivery slips and tickets for materials delivered to the job site to use when checking payment requests.



We understand that the Construction Observer will not be responsible for site safety, including but not limited to, OSHA and traffic control requirements, as well as safety inspection, evaluation or supervision. We understand the responsibility of site safety lies with the Contractor. We will monitor the Contractor's general compliance with its safety program and advise the District of observed deficiencies.

We will provide NCSD a summary report of the work activities at the end of construction. The summary report will be based upon the daily work activity logs prepared by the Construction Observer and will contain printed color photos of images taken during construction.

The Bid documents state that the work must be completed within 45 consecutive calendar days. This equates to approximately 30 working days due to weekends and holidays. It is assumed that construction observation will be provided during actual working days and that each observation will vary between approximately 4 and 6 hours per day in length, including travel time and field observation report preparation. For purposes of this proposal, we've estimated that of the 30 working days, approximately 10 days will require 6-hour observation, 10 days at 4-hour observation, and the remaining 10 days not requiring field observation due to minimal activity.

Task 1.6 Materials Testing

We will retain the services of Earth Systems Pacific to provide materials testing during construction. This will include verification of bedding, pipe zone and trench backfill materials and achievement of required compaction results. A copy of their scope of services is attached.

We will coordinate with the materials sampling and testing engineer as required. We will review results of the testing materials. Following review, we will make recommendations for acceptance of work in general compliance of the contract documents, or make recommendations if remedial actions are needed to correct unacceptable portions of the Contractor's work.

Task 1.7 Reporting and Record Keeping

We will maintain records and provide detailed and accurate reports in accordance with District requirements.

TASK 2.0 POST-CONSTRUCTION PHASE SERVICES

Task 2.1 Final Inspection and Punch List

In conjunction with District staff, we will evaluate the street improvements to confirm general compliance or identify discrepancies and deficiencies in the work. We will prepare the Punch List to identify such items. Upon correction of the Punch List items by the Contractor, we will report completion of the project to the District and recommend final payment to the Contractor.

Task 2.2 As-Built Documentation

We will review as-built drawings provided by the Contractor and confirm the drawings reflect current project conditions. We will provide the District with a copy of the Contractor's as-built drawings.



WORK BUDGET

Fees are based on hourly rates and do not include agency checking and recording fees, or title company fees, or permit fees. All project meetings other than the meetings stated above will be billed on a time and materials basis. A detailed breakdown the fee estimate, including person-hours, rates, and costs, is included on the following page. The fees quoted in this proposal will remain valid for 60 days from this submittal date.

ESTIMATE OF TOTAL FEES

Task 1.0	Construction Phase Services	\$21,213
Task 2.0	Post-Construction Phase Services	<u>\$1,600</u>
Total Estimated Fees		\$22,813

CONSULTANT SERVICES AGREEMENT

Cannon has executed the District's Master Consultant Services Agreement on several projects and we are ready to sign an agreement for this project.



Cost Summary for
Misty Glen Waterline Connection - Construction Management Services
Nipomo Community Services District

WORKING BUDGET

	Construction Manager (Jeff S.)	Chief Engineer (Larry K.)	Construction Observer (Anthony S.)	Electrical Engineer IV (Gary W.)	Administrative Assistant (Lynn P.)	Total Hours	Fee Estimate Subtotal	Geotechnical Engineering	Reimbursable Expenses	Fee Estimate TOTAL
RATES	\$130	\$160	\$90	\$120	\$70					
	HOURS									
Task 1.0 Construction Phase Services										
1.1 Pre-Construction Conference	2	2	2			6	\$760			\$760
1.2 Progress Pay Estimate	2					2	\$260			\$260
1.3 Submittal Management	10			2	4	16	\$1,820			\$1,820
1.4 Change Order Management and Requests for Information (RFIs)	4				2	6	\$660			\$660
1.5 Construction Observation	20	8	100	4		132	\$13,360		\$800	\$14,160
1.6 Materials Testing **								\$3,553		\$3,553
1.7 Reporting and Record Keeping **										
Subtotal:										\$21,213
Task 2.0 Post-Construction Phase Services										
2.1 Final Inspection and Punch List	2		2			4	\$440			\$440
2.2 As-Built Documentation	4		4		4	12	\$1,160			\$1,160
Subtotal:										\$1,600
Total T&M Not-To-Exceed:										\$22,813

** Cannon will coordinate geotechnical testing and prepare field reports while performing the Construction Observation site visits (Task 1.5).



September 15, 2009

Mr. Jeff Spanbauer
Cannon Associates
1050 Southwood Drive
San Luis Obispo, CA 93401

PROJECT: MISTY GLEN WATERLINE CONNECTION
MISTY GLEN PLACE AND WILLOW ROAD
NIPOMO, CALIFORNIA

SUBJECT: Estimate of Costs for Compaction Testing Services

REF.: Contract Documents for Nipomo Community Services District, Misty
Glen Waterline Connection, San Luis Obispo, California, by Cannon,
dated 8/27/09 (4 sheets) and Traffic Control Plan dated 8/11/09 (1 sheet)

Dear Mr. Spanbauer:

As requested, this estimate of the costs to provide compaction testing services has been prepared for the Misty Glen Place waterline connection project in Nipomo, California. Our scope of work was based upon a review of the referenced contract documents and our recent telephone conversations.

This proposed scope of work is for compaction testing of trench bedding and backfill, and aggregate base prior to placement of asphalt concrete (AC) patches. We understand that one source of imported bedding and shading sand will be utilized, and that the native soil will be utilized to backfill trenches from the shading to subgrade. Compaction tests will be taken in the field using nuclear equipment (ASTM D 6938); laboratory maximum density will be determined in accordance with ASTM D 1557. Our technicians will test at locations as directed by the client's field inspector, and will request contractor assistance, if needed, for excavation of test holes or traffic control. We have assumed that the AC will not require testing of any kind, and that the contractor will be responsible for providing all material certifications for backfill materials. Inspection of backfill and compaction operations, pipe placement and connections, hydrants, pressure and chlorine/bacteria testing, etc., will be performed by others. For estimation purposes, we have assumed a total of five visits will be required. Laboratory testing, project management and report preparation associated with these services will also be provided. We have assumed that one compaction report will be provided for the entire project at the end of construction, and that our project engineer will be required to attend only one meeting (pre-construction) at the site during the project.

It is our understanding that this project is subject to California Prevailing Wage Law.



Our anticipated scope of services and estimated costs are as follows:

I. Compaction Testing. A total of 4 hours of billable time per day have been assumed for a total of 5 days.

Field technician	20 hrs. @ \$89.50/hr.	\$1,790.00
Nuclear density tests	25 tests @ \$10.00/ea.	250.00
Mileage	200 miles @ \$0.75/mile	<u>150.00</u>

Subtotal, Compaction Testing **\$2,190.00**

II. Laboratory Testing, Engineering Support and Report Preparation. A total of 3 maximum density tests have been assumed for the site soils, imported backfill bedding/shading sand and aggregate base. One compaction report at the end of the project is planned. The tests will be located by station and offset using the referenced plans. We have assumed attendance by the project engineer at one meeting (pre-construction) only at the site.

Maximum Density/ Optimum Moisture Tests	3 tests @ \$170.00/ea.	\$510.00
Project Engineer	4 hrs. @ \$125.00/hr.	500.00
Mileage	40 miles @ \$0.75/mile	<u>30.00</u>

Subtotal, Laboratory Testing, Engineering Support, etc. **\$1,040.00**

ESTIMATED TOTAL **\$3,230.00**

CONDITIONS

The fees and conditions of this proposal will remain in effect for a period of 90 days from the date of issue. Our technicians and inspectors will attempt, wherever possible, to combine inspections or test multiple areas during site visits, in order to keep the final bill as low as possible. However, as the presence of our personnel at the site will depend upon the contractor's schedule and the progress of the work, the fees presented above are to be considered as estimates only, and shall not be construed as guaranteed maximum fees. The invoices will reflect the actual amount of time spent and service performed, and may be greater or less than the estimated amounts.

The client or client's agent is to supply latest plans and specifications, and notify us of any changes pertinent to the performance of testing and observations. The client or client's agent is responsible for contacting this firm when testing services are required. Earth Systems Pacific will test at locations deemed appropriate to provide the client with information regarding the acceptability of the tested areas. Previously failed areas may be retested after rework, if required.



Misty Glen Waterline Connection
Nipomo, California

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September 15, 2009

Charges for retests due to failing results, or when tests are requested but the contractor is not ready and does not cancel scheduled testing are not included in the estimate and will be billed at the hourly rates listed previously. This firm shall not be responsible for backcharging contractors for retests or re-inspections. All visits for compaction testing will be subject to a 2-hour minimum charge, billed in ½-hour increments. This estimate is based on the assumption that all services will be provided during normal working hours (Monday through Friday, 0700 to 1700), and that all maximum density tests will be completed under normal turnaround conditions. Services provided beyond these hours or for rush laboratory work will be subject to overtime or rush charges as per our current Fee Schedule.

Routine project supervision by an engineer has been included in the above quotation. However, please note that the above quotation does not include charges for meetings (other than the pre-construction meeting), plan reviews, site visits to address problem areas, or other such services. Fees for such services will be charged at the Prevailing Wage Fee Schedule rates in effect at the time of the services request.

If the client finds the proposed scope of work, terms, and fees satisfactory, the return of the attached Work Order, signed and dated by the party responsible for payment, will constitute authorization for work on the project to begin. This agreement can be terminated by either party upon notification in writing. Earth Systems Pacific's responsibility for the project will end upon completion of the services described herein or termination of the agreement, unless authorization to perform additional work and agreement for payment thereof is provided by the client.

Thank you for your consideration of our firm for this project. If you have any questions or require additional information, please contact me at your convenience.

Sincerely,

Earth Systems Pacific

Fred J. Potthast, P.E., G.E.
Vice President

Attachments: Work Order
Terms

Doc. No.: 0909-045.PRP/rw

OCT. 28, 2009

JON S. SEITZ
MICHAEL W. SEITZ

SHIPSEY & SEITZ, INC.
A LAW CORPORATION
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JON S. SEITZ
District Legal Counsel
Nipomo Community Services District

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

MEMORANDUM

TO: NCSD BOARD OF DIRECTORS
RE: AB 2882 (SECTION 370 ET SEQ. OF THE CALIFORNIA WATER CODE)
FROM: JON S. SEITZ, DISTRICT LEGAL COUNSEL
DATE: OCTOBER 21, 2009

Exhibit "A" - AB 2882 (§§ 370 through 374 of the Water Code)
Exhibit "B" - (Legislative Analyst Analysis)
Exhibit "C" - Section 375 of the Water Code

AB 2882 (Exhibit "A") effective January 1, 2009, authorizes water providers, such as Nipomo Community Services District, (subject to the Prop 218 Protest Procedures) to employ allocation-based conservation water pricing that rewards conservation and penalizes overuse of water.

The AB 2882 requirements include:

- Conservation rates must be based on metered water use,
- The base rate must reflect a water volume " that provides a reasonable amount of water for the customer's needs and property characteristics",
- A conservation charge can be imposed above the rate for overuse, but must be designed to recover the incremental costs associated with the supply of water to those who consume more than the base amount. (see Exhibit "A" Section 372(a)).

AB 2882 provides a discussion regarding the "considerations" that a water agency can use to comply with the California Constitutional (Prop 218) requirement that "The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel". AB 2882 states that "proportional cost" shall be determined after considering customer classes that reflect service characteristics, demand patterns and other factors; base water amounts, metered volume of water consumed, and the tiered water rate structures established by a water agency. (see

AB 2882
NCSD Board of Directors
October 21, 2009
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Exhibit "A" Section 373(b)).

It is unlikely that the Courts will interpret AB 2882 as providing the exclusive frame work for establishing tiered water rates. AB 2882 (Water Code Section 374(b)) states "[t]he authority granted in this chapter is in addition to other authority that a public entity has to use rate structure design to foster the conservation of water". For example see Water Code Section 375 and case law (Exhibit "B") that allows local agencies such as the Nipomo Community Services District to imposed water conservation through rate structure design. (see additionally Water Code Section 370(c)(d) & (e) further clarifying that AB 2882 is not the exclusive frame work for imposing tiered water rate structures).

As of the date of this memo, I can not find any case law interpreting the scope of AB 2882. My computer research suggest that the water rate structure used by the Irvine Ranch Water District is a good example of an AB 2882 water rate structure.

END OF MEMORANDUM

WATER CODE

Chapter 3.4. Allocation-Based Conservation Water Pricing

§ 370. Legislative findings and declarations

The Legislature hereby finds and declares all of the following:

(a) The use of allocation-based conservation water pricing by public entities that sell and distribute water is one effective means by which waste or unreasonable use of water can be prevented and water can be saved in the interest of the people and for the public welfare, within the contemplation of Section 2 of Article X of the California Constitution.

(b) It is in the best interest of the people of California to encourage public entities to voluntarily use allocation-based conservation water pricing, tailored to local needs and conditions, as a means of increasing efficient uses of water, and further discouraging wasteful or unreasonable use of water under both normal and dry-year hydrologic conditions.

(c) The Legislature intends that allocation-based conservation water pricing is an alternative method that can be used by public entities to encourage water users to conserve water, increase efficient uses of water, and further discourage waste of water. The Legislature does not intend to limit the discretion of public entities to evaluate and select among different methods for conserving water or to create a presumption that the election to not use a particular method is a waste or unreasonable use of water by the public entity.

(d) Nothing in this chapter is intended to limit, or dictate, the design of rate structures that public entities may use to promote conservation by water users.

(e) Nothing in this chapter directs, or otherwise compels, a public entity to use allocation-based conservation water pricing.

§ 371. Definitions

For purposes of this chapter, the following terms have the following meanings:

(a) "Allocation-based conservation water pricing" means a retail water rate structure that meets all of the criteria in Section 372.

(b) "Basic charge" means a volumetric unit charge for the cost of water service other than any fixed costs that are recovered through meter charges or other fixed charges other than incremental costs that are recovered through conservation charges. A basic charge may include the cost of generally applicable conservation measures assumed in establishing basic use allocations.

(c) "Conservation charge" means a volumetric unit charge for incremental costs.

(d) "Incremental costs" means the costs of water service, including capital costs, that the public entity incurs directly, or by contract, as a result of the use of water in excess of the basic use allocation or to implement water conservation or demand management measures employed to increase efficient uses of water, and further discourage the wasteful or unreasonable use of water, and may include any of the following:

(1) Conservation best management practices, conservation education, irrigation controls and other conservation devices, and other demand management measures.

(2) Water system retrofitting, dual plumbing and facilities for production, distribution, and all uses of recycled water and other alternative water supplies.

(3) Projects and programs for prevention, control, or treatment of the runoff of water from irrigation and other outdoor water uses. Incremental costs shall not include the costs of stormwater management systems and programs.

(4) Securing dry-year water supply arrangements.

(5) Procuring water supplies to satisfy increments of water use in excess of the basic use allocations for the customers of the public entity, including supply or capacity contracts for water supply rights or entitlements and related energy costs for water delivery.

(e) "Public entity" means a city, whether general law or chartered, county, city and county, special district, agency, authority, any other municipal public corporation or district, or any other political subdivision of the state that provides retail water service and that is an urban water supplier, as defined in Section 10617.

§ 372. Public entity employment of allocation-based conservation water pricing; criteria; structure

(a) A public entity may employ allocation-based conservation water pricing that meets all of the following criteria:

(1) Billing is based on metered water use.

(2) A basic use allocation is established for each customer account that provides a reasonable amount of water for the customer's needs and property characteristics. Factors used to determine the basic use allocation may include, but are not limited to, the number of occupants, the type or classification of use, the size of lot or irrigated area, and the local climate data for the billing period. Nothing in this chapter prohibits a customer of the public entity from challenging whether the basic use allocation established for that customer's account is reasonable under the circumstances. Nothing in this chapter is intended to permit public entities to limit the use of property through the establishment of a basic use allocation.

(3) A basic charge is imposed for all water used within the customer's basic use allocation, except that at the option of the public entity, a lower rate may be applied to any portion of the basic use allocation that the public entity has determined to represent superior or more than reasonable conservation efforts.

(4) A conservation charge shall be imposed on all increments of water use in excess of the basic use allocation. The increments may be fixed or may be determined on a percentage or any other basis, without limitation on the number of increments, or any requirement that the increments or conservation charges be sized, or ascend uniformly, or in a specified relationship. The volumetric prices for the lowest through the highest priced increments shall be established in an ascending relationship that is economically structured to encourage conservation and reduce the inefficient use of water, consistent with Section 2 of Article X of the California Constitution.

(b)(1) Except as specified in subdivision (a), the design of an allocation-based conservation pricing rate structure shall be determined in the discretion of the public entity.

(2) The public entity may impose meter charges or other fixed charges to recover fixed costs of water service in addition to the allocation-based conservation pricing rate structure.

(c) A public entity may use one or more allocation-based conservation water pricing structures for any class of municipal or other service that the public entity provides.

§ 373. Revenues; schedule of charges and metered volumes

(a) Revenues derived from allocation-based conservation water pricing shall not exceed the reasonable cost of water service including basic costs and incremental costs. This chapter does not limit the sources of funding for incremental costs to charges for water use.

(b) Revenues derived from allocation-based conservation water pricing shall not exceed the proportional cost of service attributable to the customer's parcel, as

determined by giving consideration to all of the following:

(1) Customer classes established in consideration of service characteristics, demand patterns, and other factors.

(2) Basic use allocations.

(3) Meter size.

(4) Metered volume of water consumed.

(5) The public entity's discretionary allocation of incremental costs between and among the increments of water use subject to conservation charges, as permitted by paragraph (4) of subdivision (a) of Section 372 to meet the requirement of that section.

(c) In establishing the schedule of charges and metered volumes for the increments of water use subject to conservation charges, the public entity may also consider both of the following:

(1) Customer overuse characteristics, including ratios between overuse volumes and basic use allocations, variations in demand and consumption patterns, or other characteristics of overuse experienced by the public entity.

(2) The extent to which the pricing structure of the increments will be effective in minimizing or eliminating the need for other measures to curtail potential overuse.

CREDIT(S)

§ 374. Ongoing usage; authority of chapter; rates and charges

(a) Allocation-based conservation water pricing under this chapter may be used on an ongoing basis and shall not require any finding of emergency or other water shortage conditions.

(b) The authority granted in this chapter is in addition to any other authority that a public entity has to use rate structure design to foster the conservation of water.

(c) The imposition and revision of rates and charges by a public entity under this chapter shall be subject to the procedures otherwise required by law for the public entity's water rates.

ANALYSIS : Under existing law, Proposition 218, local agencies must meet specific requirements in order to increase fees or charges for property related services. These requirements are:

1. Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.
2. Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.
3. The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.
4. No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and must be imposed consistent with Prop 218's requirements for assessments.
5. No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.
6. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area.

The California Supreme Court, in its July 24, 2006 decision on Bighorn-Desert View Water Agency v. Verjil, determined that water service charges are "property related fees."

Also under existing law, any public entity that supplies water may, by ordinance or resolution, adopt and enforce a water conservation program. For water delivered for non-agricultural uses, the ordinance or resolution may specifically require the installation of water-saving devices that are designed to reduce water consumption. The ordinance or resolution may also encourage water conservation through rate structure design.

This bill authorizes a public entity to employ an allocation-based conservation water pricing structure that meets all of the following criteria:

1. Billing is based on metered water use.
2. A basic use allocation is established for each customer account that provides a reasonable amount of water for the customer's needs and property characteristics. Factors used to determine the basic use allocation may include the number of occupants, the

CONTINUED
AB 2882
Page 2

Exhibit "B"

type or classification of use, the size of lot or irrigated area, and the local climate data.

3. A basic charge is imposed for all water used within the customer's basic use allocation, except that at the option of the public entity, a lower rate may be applied to any portion of the basic use allocation that the public entity has determined to represent superior or more than reasonable conservation efforts.
4. A conservation charge is imposed for increments of water use in excess of the basic use allocation.
5. The conservation charge for each increment shall provide revenue not to exceed the incremental cost of that increment of water service.
6. The increments may be fixed or may be determined on a percentage or any other basis, without limitation on the number of increments, or any requirement that the increments or conservation charges be sized, or ascend uniformly, or in a specified relationship.

The bill requires that revenues derived from allocation-based conservation water pricing be limited as follows:

1. Revenues shall not exceed the reasonable cost of water service including basic costs and incremental costs. (This chapter does not limit the sources of funding for incremental costs to charges for water use.)
2. Revenues shall not exceed the proportional cost of service attributable to the customer's parcel, as determined by giving consideration to all of the following:
 - A. Customer classes established in consideration of service characteristics, demand patterns, and other factors.
 - B. Basic use allocations.
 - C. Meter size.
 - D. Metered volume of water consumed.
3. Revenues shall not exceed the proportional cost of service attributable to the increments of water use subject to conservation charges. The public entity may establish proportionality between the cost of service and increments of water usage subject to conservation charges either on an aggregate basis, by the total metered volume of water consumed within all increments subject to conservation charges, or separately within each increment.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

WATER CODE

DIVISION 1. GENERAL STATE POWERS OVER WATER

Chapter 3.5. Water Conservation Programs

§ 375. Public entities; water supplies; ordinance or resolution adoption

(a) Notwithstanding any other provision of the law, any public entity which supplies water at retail or wholesale for the benefit of persons within the service area or area of jurisdiction of the public entity may, by ordinance or resolution adopted by a majority of the members of the governing body after holding a public hearing upon notice and making appropriate findings of necessity for the adoption of a water conservation program, adopt and enforce a water conservation program to reduce the quantity of water used by those persons for the purpose of conserving the water supplies of the public entity.

(b) With regard to water delivered for other than agricultural uses, the ordinance or resolution may specifically require the installation of water-saving devices which are designed to reduce water consumption. **The ordinance or resolution may also encourage water conservation through rate structure design.**

(c) For the purposes of this section, "public entity" means a city, whether general law or chartered, county, city and county, special district, agency, authority, any other municipal public corporation or district, or any other political subdivision of the state.

1. Rate structure

Municipal utility district's rate structure increasing price of water per cubic foot for increased usage is not "special tax" within meaning of constitutional prohibition against special tax without two-thirds vote of qualified electors of cities, counties, and special districts; structure was response to state-mandated water-resource conservation requirements and was not designed to replace property taxes, and any consumer had option of reducing consumption. *Brydon v. East Bay Mun. Utility Dist.* (App. 1 Dist. 1994) 29 Cal.Rptr.2d 128, 24 Cal.App.4th 178, review denied. Waters And Water Courses 198

In pursuing constitutionally and statutorily mandated conservation program, cost allocations for municipal services are to be judged by standard of reasonableness with

some flexibility permitted to account for system-wide complexity. *Brydon v. East Bay Mun. Utility Dist.* (App. 1 Dist. 1994) 29 Cal.Rptr.2d 128, 24 Cal.App.4th 178, review denied. Waters And Water Courses 203(1)

Municipal utility district's rate structure increasing cost of water per cubic foot for increased usage was not arbitrary, capricious, or discriminatory and had evidentiary support, even though single-family residences in two regions used less than 50% of total water provided to districts' single-family consumers, but paid over 75% of drought surcharges, and even though water conservation continued at 29% when rate structure was suspended and increased to only 34% upon reinstatement of the structure. *Brydon v. East Bay Mun. Utility Dist.* (App. 1 Dist. 1994) 29 Cal.Rptr.2d 128, 24 Cal.App.4th 178, review denied. Waters And Water Courses 203(6).