

TO: BOARD OF DIRECTORS  
FROM: MICHAEL S. LEBRUN *MSL*  
GENERAL MANAGER  
DATE: MAY 18, 2012

**AGENDA ITEM  
B  
MAY 23, 2012**

NIPOMO COMMUNITY SERVICE DISTRICT PUBLIC FACILITIES CORPORATION

**AUTHORIZATION OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
REVENUE CERTIFICATES OF PARTICIPATION (SOUTHLAND  
WASTEWATER PROJECT) SERIES 2012**

**ITEM**

It is recommended that the Board of Directors of the Nipomo Community Service District Public Facilities Corporation (PFC):

1. Adopt the following resolution:

Resolution of the Board of the Nipomo Community Services District Public Facilities Corporation Approving Certain Documents in Connection with the Execution and Delivery of Not to Exceed \$10,000,000 Revenue Certificates of Participation (Southland Wastewater Project) Series 2012.

2. Reconvene to the Nipomo Community Services District.

**BACKGROUND**

The operation of the District's Southland WWTF is regulated by the Regional Water Control Board (RWQCB). In 2006, the District received a Notice of Violation (NOV) from the RWQCB regarding the Waste Discharge Requirements Order No. 97-75 that was in effect at the time for the Southland Wastewater Treatment Facility (WWTF). Permit limitations for biological oxygen demand and total suspended solids had been exceeded and were noted in the NOV. The District was required to respond to the NOV with actions for improving the quality of plant effluent in order to meet discharge limitations.

In response to the NOV the District retained AECOM (formerly Boyle Engineering) to prepare a Master Plan to address the NOV. The Southland WWTF Master Plan (WWTF Master Plan), as amended, provides for a three phase improvement project to ensure that the upgraded WWTF will operate efficiently and effectively in compliance with applicable State Discharge Permit. The WWTF Master Plan recommends the use of Biolac® technology as part of the WWTF upgrade project.

The Phase 1 project will replace the current 0.9 million gallon per day (MGD) pond plant with a new treatment plant that will include an influent lift station, influent screening system, grit removal system, Biolac® aeration basin to treat wastewater, a clarifier, gravity belt thickener, two concrete lined sludge drying beds, controls & blower building, and a non-potable plant water system and potentially the provision of additional facilities at the WWTF for wastewater disposal. Phase I improvements will increase the level of treatment at the Southland Wastewater Treatment Facility while maintaining the existing discharge capacity of 0.9 million gallons per day. Additionally the Phase I project will facilitate the additional phases of construction required for future flows and loadings at the WWTF.

On December 14, 2011, the Board adopted a resolution making CEQA project findings, adopting a statement of overriding considerations, adopting a project mitigation monitoring plan, approving the Southland WWTF Phase 1 Improvement Project.

A new State Discharge Permit was approved by the RWQCB on February 2, 2012 for the WWTP. The newly adopted Permit is based on the WWTF Master Plan and the Parkson Biolac® system.

Design of the Phase I project is complete. Notice inviting construction bids for Phase I has been provided and bid proposals were received on May 3, 2012.

The net proceeds of the Certificates, along with funds of the Enterprise in the amount of \$2.6 million from the Town Sewer Replacement Fund and \$0.5 million from the Town Sewer Capital Improvement Fund, will complete Phase I of the proposed Project, estimated at approximately \$12 million.

It is now proposed to finance a portion of the Project by executing and delivering the not to exceed \$10,000,000 Revenue Certificates of Participation (Southland Wastewater Project) Series 2012 (the "Certificates"). The District and PFC will enter into an Installment Sale Agreement whereby the District will agree to purchase the portion of the Wastewater system funded by the Certificates from Net Revenues of the Town Division wastewater system (the "Enterprise"). The Installment Payments will be structured to correspond to the debt service on the Certificates. The Certificates will be issued on parity with the two existing District loans totaling \$692,000 from the State Water Resources Control Board (the "SWRCB Loans"). The SWRCB Loans are payable from Net Revenues on a parity with the proposed Installment Payments to be made under the Installment Sale Agreement. The term of the debt is proposed to be 30 years and will be structured to assure that the annual payments, together with the remaining SWRCB Loans will be level. Total annual debt payments are expected to be approximately \$600,000 per year. SWRCB loan payments total \$77,048 through 2020.

A standard bond debt service reserve fund will also be funded from Certificate proceeds. A reserve fund serves to enhance to the bond rating, cover the last debt payment and satisfy investor concerns. The District will also create rate stabilization fund from existing funds of the Enterprise to manage the need for future rate increases.

Standard and Poor's Corporation has given the Town Sewer Enterprise a "AA" rating. This is a strong rating and is the first rating for the Town Sewer Enterprise. Certificates are proposed to be sold in early June with a bond closing in late June. The interest rate on the debt is expected to be under 4.00%.

District and PFC Board action today will authorize the Staff to complete the financing by authorizing the sale, execution, and delivery of the Certificates.

District Staff, Special Counsel and Financial Advisor have been working on this financing program since last year and it is proposed to sell the Certificates by competitive bid the week of June 11th to whichever underwriting firm offers the District the lowest interest cost. The bid will be held over the internet using the Parity Bond bidding platform. All active bond underwriting firms in California and nationally will have an opportunity to bid and will have access to the Notice of Sale and Official Statement. Given the strong AA bond rating and essential nature of wastewater Certificates, we expect strong interest from a number of underwriting firms and three to five bids. The alternative to a competitive sale is to offer the Certificates to a single

underwriter under a negotiated sale process. For essential service type bonds or obligations with strong ratings, competitive sales have historically produced superior results.

It is appropriate at this meeting to consider for adoption the resolutions authorizing the execution and delivery of the Certificates. Resolutions for the District and PFC are attached which would authorize the execution and delivery of not to exceed \$10,000,000 of revenue Certificates by the District. The Certificates will be sold on a competitive basis at a true interest cost of not to exceed 4.95%. The resolutions also approve the various documents in connection with the execution and delivery of the Certificates. Fulbright & Jaworski L.L.P., has acted as special counsel and disclosure counsel, C.M. de Crinis & Co., as financial advisor, and The Bank of New York Mellon Trust Company, N.A., as trustee.

General Summary of Security: Certificates are secured by revenues received by the PFC from the District, namely the Installment Payments under the Installment Sale Agreement. Each owner of the Certificates will have a proportionate share of an undivided interest in the installment payments. The installment payments have an interest and principal component and will be payable semiannually. Under the Installment Sale Agreement, the District pledges its Net Revenues to the payment of the Installment Payments. Net Revenues are gross revenues minus operating and maintenance costs. The District covenants to maintain its rates and charges at a specified level to have sufficient Net Revenue to make Installment Payments. There is also a reserve fund securing the Certificates.

Trust Agreement: The Trust Agreement is one of the key legal documents that lays out the legal structure and terms of the financing. It specifies payment dates, maturity dates of the Certificates; revenues and accounts specifically pledged to the repayment of the Certificates; flow of funds; default and remedy provisions; defeasance provisions in the event the Certificates are prepaid; and covenants of the PFC and the District. The Trust Agreement is drafted by Special Counsel and executed by the PFC, the District and Trustee.

Installment Sale Agreement: The Installment Sale Agreement is the other key legal document that contains the pledge of Net Revenues by the District to make installment payments. It specifies payment dates; revenues and accounts specifically pledged to the repayment of the Certificates; parity obligation tests; rate covenants and further covenants of the PFC and the District. It is drafted by Special Counsel and executed by the PFC and the District.

Official Statement: The Official Statement describes the security and discloses potential risks to prospective investors. It will generally describe the sources of payment for the Certificates, the nature of the improvement project, the financial condition of the District's water enterprise, the economic and demographic characteristics of the District, and inherent known risk factors associated with the security. It's important that this document not contain any material misstatements or omissions. The Preliminary Official Statement (often referred to as the "POS") is distributed by the underwriter to prospective investors prior to the bond sale so that they can make informed purchase decisions. The POS should be as close to final as possible with the actual terms of the pricing (interest rates and principal amounts) left necessarily blank. The Final Official Statement will be prepared shortly after the bond sale and must be available in time for bond closing. The POS and FOS are drafted by Special Counsel, acting as disclosure counsel and is executed by the District.

Agency Agreement: This agreement provides that the PFC appoints the District as its agent to construct the portion of the Project financed by the Certificate proceeds. This document is drafted by Special Counsel and executed by the District, the PFC and the Trustee.



Assignment Agreement: Under the Assignment Agreement, the Corporation assigns its rights under the Installment Sale Agreement to the Trustee, including the right to receive the Installment Payments. It is prepared by Special Counsel and executed by the Corporation and the Trustee.

Notice of Sale and Bid Form: The Certificates will be sold on a competitive basis at a true interest rate of not to exceed 4.95% and with an underwriter's discount of not to exceed 1% and a principal amount of not to exceed \$10,000,000. The sale of the Certificates is scheduled for early June using the Parity Bond bidding platform at which time the General Manager will award the Certificates to the best bidder. The bid form on the Parity system is submitted by potential underwriters electronically on the day of the bond sale, and specifies the actual principal amounts, interest rates and prices at which the Certificates will be purchased. In it, the underwriter commits to purchase the Certificates at closing at the agreed upon prices and amounts subject to certain closing conditions. The best bidder will also be required to provide a good faith deposit of \$100,000.

More specific details of the financing can be found in the drafts of the documents referenced above. It is appropriate at this meeting to consider for adoption the resolutions of the District and PFC authorizing the execution and delivery of the Certificates.

### **FISCAL IMPACT**

Total annual debt payments for the Certificates are expected to be approximately \$600,000 per year for a term of thirty years payable from the Net Revenues of the Town Division Wastewater Enterprise.

### **RECOMMENDATION**

Staff recommends that the Board of Directors of the Nipomo Community Services District Public Facility Corporation adopt Resolution 2012-XXXX approving:

- AN INSTALLMENT SALE AGREEMENT
- AN AGENCY AGREEMENT
- A TRUST AGREEMENT
- AN ASSIGNMENT AGREEMENT
- A PRELIMINARY OFFICIAL STATEMENT
- NOTICE OF SALE

then

Reconvene to the Nipomo Community Services District.

### **ATTACHMENTS**

1. TRUST AGREEMENT\*
2. INSTALLMENT AGREEMENT\*
3. AGENCY AGREEMENT\*
4. ASSIGNMENT AGREEMENT
5. PRELIMINARY OFFICIAL STATEMENT\*
6. NOTICE OF SALE AND INTENTION TO SELL\*

\*SEE ITEM E-1 OF NCSD PORTION OF AGENDA FOR ATTACHMENT

**NIPOMO COMMUNITY SERVICES DISTRICT  
PUBLIC FACILITIES CORPORATION  
RESOLUTION NO. 2012-05**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO  
COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES  
CORPORATION APPROVING CERTAIN DOCUMENTS IN  
CONNECTION WITH THE EXECUTION AND DELIVERY OF NOT TO  
EXCEED \$10,000,000 NIPOMO COMMUNITY SERVICES DISTRICT  
REVENUE CERTIFICATES OF PARTICIPATION (SOUTHLAND  
WASTEWATER PROJECT) SERIES 2012.**

**WHEREAS**, the Nipomo Community Services District (the "District") owns and operates that certain Town Division Wastewater System referred to herein as the "Enterprise"; and

**WHEREAS**, it has been proposed that the Nipomo Community Services District Public Facilities Corporation (the "Corporation") assist the District in providing funds to finance a portion of the Phase 1 upgrade to the District's Southland Wastewater Treatment Facility (the "Project") by causing the execution and delivery of the Revenue Certificates of Participation (Southland Wastewater Project) Series 2012 (the "Certificates"); and

**WHEREAS**, it has been proposed that the Certificates be sold on a competitive basis in accordance with the terms and provisions of Notice of Sale for the Certificates, the proposed form of which has been presented to the Board of Directors of the Corporation (the "Board"); and

**WHEREAS**, the documents specified below have been filed with the District and the members of the Board, with the aid of its staff, have reviewed said documents; and

**WHEREAS**, the Corporation has duly considered the execution and delivery of the Certificates, and wishes at this time to approve the execution and delivery of the Certificates.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Nipomo Community Services District Public Facilities Corporation:

**Section 1.** The Revenue Certificates of Participation (Southland Wastewater Project) Series 2012 (the "Certificates") are hereby authorized to be executed and delivered pursuant to the provisions of the Trust Agreement, as hereinafter defined.

**Section 2.** The below enumerated documents are hereby approved, and the Chairperson, the Executive Director, or the written designee of any such official, is hereby authorized and directed to execute said documents, with such changes, insertions and omissions as may be approved by such officials, with the advice of counsel to the Corporation and Bond Counsel, and the Secretary or Assistant Secretary is hereby authorized and directed to attest to such official's signature:

**Nipomo Community Services District  
Public Facilities Corporation  
Resolution No. 2012-05**

**A Resolution of the Board of Directors of the Nipomo Community Services  
District Public Facilities Corporation Approving Certain Documents in  
Connection with the Execution and Delivery of Not to Exceed \$10,000,000  
Nipomo Community Services District Revenue Certificates of Participation  
(Southland Wastewater Project) Series 2012.**

- (a) an Installment Sale Agreement, by and between the District, as purchaser, and the Corporation, as seller, (the "Installment Sale Agreement"), pursuant to which the District will purchase from the Corporation the portion of the Project financed by the Certificates;
- (b) an Agency Agreement, by and between the Corporation and the District (the "Agency Agreement"), relating to the construction of the Project;
- (c) a Trust Agreement, by and among the Corporation, the District and The Bank of New York Mellon Trust Company, N. A., as trustee (the "Trustee"), relating to the execution and delivery of the Certificates, evidencing the direct, undivided, fractional interests of the owners thereof in installment payments to be made by the District under the Installment Sale Agreement (the "Trust Agreement"); and
- (d) an Assignment Agreement, by and between the Corporation and the Trustee pursuant to which the Corporation will assign its rights under the Installment Sale Agreement to the Trustee.

**Section 3.** The Corporation hereby approves the preparation of an Official Statement describing the financing, together with any changes therein or additions thereto deemed advisable by the Chairperson, the Executive Director, or the written designee of any such official.

**Section 4.** The Corporation hereby approves the Notice of Sale in the form thereof on file with the Secretary, together with such additions, deletions or changes therein as shall be approved by the District, such approval to be conclusively evidenced by the execution and delivery thereof. Sealed proposals shall be received at the time and place provided for in the Notice of Sale. The form of the Notice of Intention to Sell, on file with the Secretary, together with such additions thereto and changes therein as may be approved by the District, is hereby approved, and use of the Notice of Intention to Sell in connection with the offering and sale of the Certificates is hereby authorized and approved.

**Section 5.** The Corporation hereby approves the Preliminary Official Statement relating to the Certificates, substantially in the form on file with the Secretary and presented to the Board at this meeting, with such revisions, amendments and completions as shall be approved by the Chairperson or the Executive Director with the advice of counsel to the District and Bond Counsel, in order to make the Preliminary Official Statement final as of its date, except for the omission of certain information, as permitted by Section 240.15c2-12(b)(1) of Title 17 of the Code of Federal Regulations ("Rule 15c2-12"), and any certificate relating to the finality of the Official Statement under Rule 15c2-12. The Chairperson, the Executive Director, or the written designee of any such official, is authorized and directed to approve the final Official Statement, dated as of the date of the sale of the Certificates, and a statement that the facts

Nipomo Community Services District  
Public Facilities Corporation  
Resolution No. 2012-05

**A Resolution of the Board of Directors of the Nipomo Community Services District Public Facilities Corporation Approving Certain Documents in Connection with the Execution and Delivery of Not to Exceed \$10,000,000 Nipomo Community Services District Revenue Certificates of Participation (Southland Wastewater Project) Series 2012.**

contained in the final Official Statement, and any supplement or amendment thereto (which shall be deemed an original part thereof for the purpose of such statement) were, at the time of sale of the Certificates, true and correct in all material respects and that the final Official Statement did not, on the date of sale of the Certificates, and does not, as of the date of delivery of the Certificates, contain any untrue statement of a material fact with respect to the Corporation or omit to state material facts with respect to the Corporation required to be stated where necessary to make any statement made therein not misleading in the light of the circumstances under which it was made. The Chairperson, the Executive Director, or the written designee of any such official, shall take such further actions prior to the execution of the final Official Statement as are deemed necessary or appropriate to verify the accuracy thereof. The execution of the final Official Statement, which shall include such changes and additions thereto deemed advisable by the Chairperson, the Chief Administrative Officer, or the written designee of any such official, shall be conclusive evidence of the approval of the final Official Statement by the Corporation.

**Section 6.** The final Official Statement, when prepared, is approved for distribution in connection with the offering and sale of the Certificates.

**Section 7.** The Chairperson, the Executive Director, the Secretary, the Assistant Secretary and all other appropriate officials of the Corporation are hereby authorized and directed to execute and/or attest such other agreements, documents and certificates as may be necessary to effect the purposes of this resolution and the financing herein authorized.

**Section 8.** This resolution shall take effect immediately.

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

AYES:

NOES:

ABSTAIN:

ABSENT:

the foregoing resolution is hereby passed and adopted on this \_\_\_\_ day of \_\_\_\_\_, 2012.

**Nipomo Community Services District  
Public Facilities Corporation  
Resolution No. 2012-05**

**A Resolution of the Board of Directors of the Nipomo Community Services  
District Public Facilities Corporation Approving Certain Documents in  
Connection with the Execution and Delivery of Not to Exceed \$10,000,000  
Nipomo Community Services District Revenue Certificates of Participation  
(Southland Wastewater Project) Series 2012.**

\_\_\_\_\_  
JAMES HARRISON  
Chairperson of the Board

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
MICHAEL S. LEBRUN  
Secretary to the Board

\_\_\_\_\_  
JON S. SEITZ  
Corporation Legal Counsel



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ASSIGNMENT AGREEMENT

by and between

NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION,  
as Corporation

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Trustee

Dated as of June 1, 2012

Relating to

\$ \_\_\_\_\_  
REVENUE CERTIFICATES OF PARTICIPATION  
(SOUTHLAND WASTEWATER PROJECT)  
SERIES 2012

## ASSIGNMENT AGREEMENT

This Assignment Agreement is dated as of June 1, 2012 by and between the NIPOMO COMMUNITY SERVICES DISTRICT PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under the laws of the State of California (the "Corporation") and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association duly organized and existing under and by virtue of the laws of the United States of America, as trustee (the "Trustee");

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

### SECTION 1. Assignment.

The Corporation, for good and valuable consideration in hand received, does hereby unconditionally sell, assign and transfer to the Trustee without recourse, for the benefit of the owners of the Revenue Certificates of Participation (Southland Wastewater Project) Series 2012 (the "Certificates") to be executed and delivered by the Trustee pursuant to the Trust Agreement dated as of June 1, 2012 by and among the Nipomo Community Services District (the "District"), the Corporation and the Trustee (the "Trust Agreement"), all of its rights, title, and interest in the Installment Purchase Agreement relating to the construction and sale of certain wastewater system facilities by the District from the Corporation, dated as of June 1, 2012, by and between the District and the Corporation (the "Installment Purchase Agreement") including the Corporation's right to receive all Series 2012 Installment Payments (as defined in the Installment Purchase Agreement) from the District under the Installment Purchase Agreement (but not including the right to be indemnified pursuant to the Installment Purchase Agreement and the right of the Corporation to receive notices thereunder). This assignment is absolute and is presently effective, and all Installment Payments shall be applied and the rights so assigned shall be exercised by the Trustee provided in the Trust Agreement.

### SECTION 2. Acceptance.

The Trustee hereby accepts the foregoing assignment for the benefit of the owners of the Certificates, subject to the terms and provisions of the Trust Agreement, and all Series 2012 Installment Payments shall be applied and the rights so assigned shall be exercised by the Trustee as provided in the Trust Agreement.

### SECTION 3. Conditions.

This Assignment Agreement shall confer no rights and shall impose no obligations upon the Trustee beyond those expressly provided in the Trust Agreement.

### SECTION 4. Partial Invalidity.

If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the Trustee or the Corporation shall be contrary to law, then

such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The Trustee and the Corporation hereby declare that they would have executed this Assignment Agreement, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

SECTION 5. California Law.

THE ASSIGNMENT AGREEMENT SHALL BE CONSTRUED AND GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

SECTION 6. Execution in Counterparts.

This Assignment Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment Agreement by their officers thereunto duly authorized as of the day and year first written above.

NIPOMO COMMUNITY SERVICES  
DISTRICT PUBLIC FACILITIES  
CORPORATION

By: \_\_\_\_\_  
Chairperson

THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Trustee

By: \_\_\_\_\_  
Authorized Officer