

TO: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER

FROM: LISA BOGNUMA *LB*
FINANCE DIRECTOR

DATE: APRIL 19, 2013

AGENDA ITEM

E-1

APRIL 24, 2013

THIRD QUARTER FINANCIAL REPORT

ITEM

ACCEPT QUARTERLY FINANCIAL REPORT [RECOMMEND APPROVE AND ACCEPT]

BACKGROUND

The District's fiscal year is now 75% complete. The consolidated operating revenues are at 76.42% of the budget, operating expenditures are at 63.32% of the budget and general and administrative expenditures are at 58.97% of the budget.

Attached are the following which provide an overview of the first nine months of the fiscal year:

Page 1	Summary of Approved Budget Amendments
Page 2	Summary of Revenues, Expenses and Cash Balances by Fund
Page 3	Consolidated Balance Sheet
Page 4-5	Consolidated Income Statement
Page 6-7	Graphs for Consolidated Revenues and Expenses
Page 8-10	Graphs for major funds (Water, Town Sewer, and Blacklake Sewer)

Detailed information by fund is available in the office.

RECOMMENDATION

It is recommended that your Honorable Board accept report and direct Staff to file the quarterly financial report for the third quarter of fiscal year 2012-2013.

ATTACHMENT

- A. Third Quarter Financial Report

APRIL 24, 2013

ITEM E-1

ATTACHMENT A

NIPOMO COMMUNITY SERVICES DISTRICT
SUMMARY OF APPROVED BUDGET AMENDMENTS
FISCAL YEAR ENDING JUNE 30, 2013

THIRD QUARTER ENDING MARCH 31, 2013

DATE	DESCRIPTION	FUNDS	APPROVED BUDGET	APPROVED AMENDMENT	AMENDED BUDGET
2/27/13	BL Well # 4 Pump Replacement	805	\$200,000	\$13,000	\$213,000

SECOND QUARTER ENDING DECEMBER 31, 2012

DATE	DESCRIPTION	FUNDS	APPROVED BUDGET	APPROVED AMENDMENT	AMENDED BUDGET
	NONE				

FIRST QUARTER ENDING SEPTEMBER 30, 2012

DATE	DESCRIPTION	FUNDS	APPROVED BUDGET	APPROVED AMENDMENT	AMENDED BUDGET
	None				

NIPOMO COMMUNITY SERVICES DISTRICT
SUMMARY OF REVENUES AND EXPENSES BY FUND
NINE MONTHS ENDING MARCH 31, 2013

FUND	FUND #	YTD REVENUES	YTD EXPENSES	FUNDED REPLACEMENT	TRANSFERS B/W FUNDS	YTD SUPRLUS/ (DEFICIT)
Administration	110	283,017	(283,017)	0	0	0
Water	125	2,801,992	(2,034,524)	(424,500)	0	342,968
Water Rate Stabilization	128	437	0	0	0	437
Town Sewer	130	1,399,745	(662,437)	(296,250)	168,379	609,437
Town Sewer Rate Stabilization	135	582	0	0	0	582
Blacklake Sewer	150	320,824	(265,788)	(126,000)	0	(70,964)
Blacklake Sewer Rate Stabilization	155	55	0	0	0	55
Blacklake Street Lighting	200	13,371	(14,425)	0	0	(1,054)
Street Landscape Maintenance	250	6,953	(7,873)	0	0	(920)
Solid Waste	300	65,432	(56,152)	0	0	9,280
Drainage Maintenance	400	9,232	0	0	0	9,232
Supplemental Water Capacity Fees	500	1,020	0	0	0	1,020
Property Taxes	600	336,760	(100,611)	0	0	236,149
Water Capacity Fees	700	7,704	0	0	0	7,704
Town Sewer Capacity Fees	710	640	0	0	0	640
Funded Replacement-Water	805	11,360	0	424,500	0	435,860
Funded Replacement-Town Sewer	810	10,039	0	296,250	0	306,289
Funded Replacement-BL Sewer	830	608	0	126,000	0	126,608
Town Sewer Sinking Fund	880	6,018	0	0	(168,379)	(162,361)
TOTAL		5,275,789	(3,424,827)	0	0	1,850,962

CASH BALANCE OF EACH FUND
AS OF MARCH 31, 2013

FUND	FUND #	CASH BALANCE 3/31/2013
Administration	110	83,832
Water	125	2,462,982
Water Rate Stabilization	128	400,160
Town Sewer	130	509,312
Town Sewer Rate Stabilization	135	300,374
Blacklake Sewer	150	229,047
Blacklake Sewer Rate Stabilization	155	50,020
Blacklake Street Lighting	200	27,796
Street Landscape Maintenance	250	17,786
Solid Waste	300	280,618
Drainage Maintenance	400	14,237
Supplemental Water (Incl COP)	500	1,021,273
Property Taxes	600	2,345,242
Water Capacity Fees	700	3,185,638
Town Sewer Capacity Fees	710	401,310
Funded Replacement-Water	805	4,956,611
Funded Replacement-Town Sewer	810	4,361,845
Funded Replacement-BL Sewer	830	310,944
Sinking Fund-Town Sewer	880	2,435,189
Funds held by Trustee		7,387,651
TOTAL		30,781,867

NIPOMO COMMUNITY SERVICES DISTRICT
BALANCE SHEET - CONSOLIDATED
AS OF MARCH 31, 2013

ASSETS

Cash and Cash Equivalents	30,781,867.08
Accounts Receivable - Utility Billing	229,263.76
Unbilled Accounts Receivable	761,000.00
Property, Plant & Equipment	52,865,813.76
Accumulated Depreciation	(15,892,231.72)
Prepaid Expenses	22,927.67
Accrued Interest Receivable	15,518.73
Notes Receivable - BL Sewer - Current	19,569.83
Notes Receivable - BL Water Merger - Current	21,170.47
Reservation Fee	37,500.00
Loan Fees - SRF Loan	256,834.00
Accumulated Amortization - SRF Loan Fees	(213,951.04)
2003 Revenue COP's Bond Discount	178,100.60
2012 Revenue COP's Bond Discount	356,900.35
Accumulated Amortization - 2003 Bond Discount	(54,171.84)
Notes Receivable - BL Sewer - Long Term	128,829.37
Notes Receivable - BL Water Merger - Long Term	141,232.94
Total Assets	69,656,173.96

LIABILITIES

Accounts Payable	144,451.81
Other Payables	575.50
Refunds Payable	683.12
Construction Meter Deposits	4,000.00
Compensated Absences Payable	67,538.00
Deposits	229,064.95
P/R Tax and Workers Comp Payable	4,622.73
Deposit - NMWCA	165,900.00
Deposit - Maintenance Guarantee	3,657.55
Deposit - Pomeroy Rd Water Line	24,170.00
Deferred Revenue	6,300.00
Bond Premium - 2012 Revenue COP's	74,972.45
Notes Payable - Property Tax Fund - Current	19,569.83
Notes Payable - BL Water Merger - Current	21,170.47
SRF Loan #110 - Current Portion	34,868.35
SRF Loan #120 - Current Portion	42,180.25
2003 Revenue COP's - Current Portion	95,000.00
2012 Revenue COP's - Current Portion	160,000.00
Notes Payable - Property Tax Fund - Long Term	128,829.37
Notes Payable - BL Water Merger - Long Term	141,232.94
SRF Loan #110 Payable - Long Term Portion	209,210.10
SRF Loan #120 Payable - Long Term Portion	295,261.75
2003 Revenue COP's - Long Term Portion	3,140,000.00
2012 Revenue COP's - Long Term Portion	9,635,000.00
Total Liabilities	14,648,259.17

FUND EQUITY

Contributed Capital - Assets	10,808,776.78
Contributed Capital - Capacity Fees (CY)	60,908.75
Contributed Capital - Supplemental Water Fees (CY)	121,132.62
Contributed Capital - Capacity Fees (PY)	17,654,213.62
Contributed Capital - Supplemental Water Fees (PY)	3,161,065.25
Contributed Capital - Right of Way	70,100.00
Contributed Capital - Assessment Districts	1,154,575.00
Contributed Capital - Grants	2,396,665.66
Retained Earnings - Reserved (Funded Replacement)	11,528,478.96
Retained Earnings - Unreserved	5,751,035.12
CURRENT EARNINGS	2,300,963.03
Total Fund Equity	55,007,914.79
Total Liabilities and Fund Equity	69,656,173.96

UNAUDITED

NIPOMO COMMUNITY SERVICES DISTRICT
INCOME STATEMENT - CONSOLIDATED
FOR THE PERIOD ENDING MARCH 31, 2013

	<u>YTD ACTUAL</u>	<u>ANNUAL BUDGET</u>	<u>% OF BUDGET</u>
<u>OPERATING REVENUES</u>			
Water - Fixed Charge	694,212.44	925,000.00	75.05 %
Water - Usage	1,811,919.41	2,420,000.00	74.87 %
Construction Water	4,096.56	25,000.00	16.39 %
Fire System Fee	4,664.48	5,000.00	93.29 %
Sewer Charges	1,673,747.08	2,228,500.00	75.11 %
Fees and Penalties	31,933.36	43,000.00	74.26 %
Meters	2,475.00	1,700.00	145.59 %
Plan Check & Inspection Fees	100.00	800.00	12.50 %
Franchise Fees	64,786.74	93,000.00	69.66 %
Solid Waste Rate Deferral	(45,600.00)	(68,400.00)	66.67 %
Miscellaneous Income	240,019.28	37,600.00	638.35 %
Street Lighting Charges	13,304.00	18,904.00	70.38 %
Landscape Maintenance Dist Charges	6,913.50	8,820.00	78.38 %
Operating Transfers In - Funded Administration	274,777.17	491,401.00	55.92 %
Operating Transfers In - Funded Replacement	846,749.88	1,129,000.00	75.00 %
Total Operating Revenues	<u>5,624,098.90</u>	<u>7,359,325.00</u>	<u>76.42 %</u>
<u>OPERATING EXPENSES - OPERATIONS & MAINTENANCE</u>			
Wages and Benefits	454,993.45	873,429.00	52.09 %
Electricity	399,591.28	651,650.00	61.32 %
Chemicals	43,475.93	39,650.00	109.65 %
Lab Tests	47,384.36	103,500.00	45.78 %
Operating Supplies	27,040.51	47,100.00	57.41 %
Outside Services	70,280.14	87,700.00	80.14 %
Permits and Operating Fees	17,616.61	31,800.00	55.40 %
Repairs and Maintenance	155,708.21	213,000.00	73.10 %
Engineering	32,239.61	100,000.00	32.24 %
Fuel	20,304.14	30,300.00	67.01 %
Paging Service	6,099.71	11,100.00	54.95 %
Meter Replacement Program	18,459.97	50,000.00	36.92 %
Safety Program	9,450.98	12,140.00	77.85 %
Uniforms	6,979.89	11,000.00	63.45 %
Landscape Maintenance & Water	7,751.47	10,550.00	73.47 %
Conservation Program	19,252.43	57,000.00	33.78 %
Street Sweeping/Trash Collection	8,193.49	2,100.00	390.17 %
Operating Transfers Out - Funded Replacement	846,749.88	1,129,000.00	75.00 %
Subtotal - Operating Expenses Operations & Maint	<u>2,191,572.06</u>	<u>3,461,019.00</u>	<u>63.32 %</u>
<u>OPERATING EXPENSES - GENERAL AND ADMINISTRATIVE</u>			
Wages and Benefits	586,740.71	890,545.00	65.89 %
Audit	8,000.00	8,000.00	100.00 %
Bank Charges and Fees	4,311.85	8,800.00	49.00 %
Computer Expense	55,598.19	66,000.00	84.24 %
Dues and Subscriptions	11,024.25	16,500.00	66.81 %
Education and Training	5,358.79	10,000.00	53.59 %
Elections	9,372.57	6,000.00	156.21 %
Insurance - Liability	56,738.47	80,000.00	70.92 %
LAFCO Funding	20,342.48	22,000.00	92.47 %
Landscape and Janitorial	9,160.35	15,000.00	61.07 %
Legal - General Counsel	46,807.32	150,000.00	31.20 %

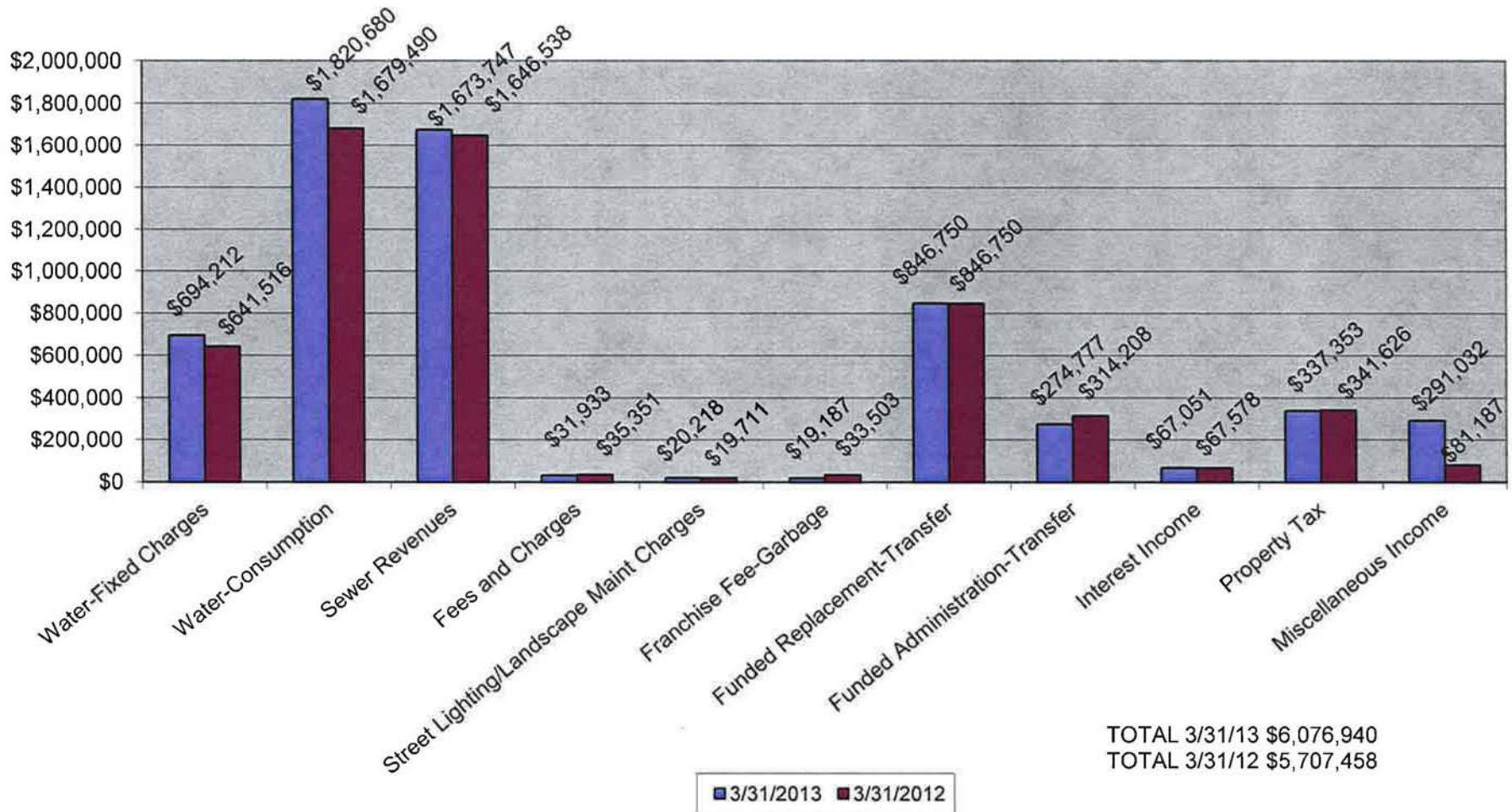
Continued on next page

NIPOMO COMMUNITY SERVICES DISTRICT
INCOME STATEMENT - CONSOLIDATED
FOR THE PERIOD ENDING MARCH 31, 2013

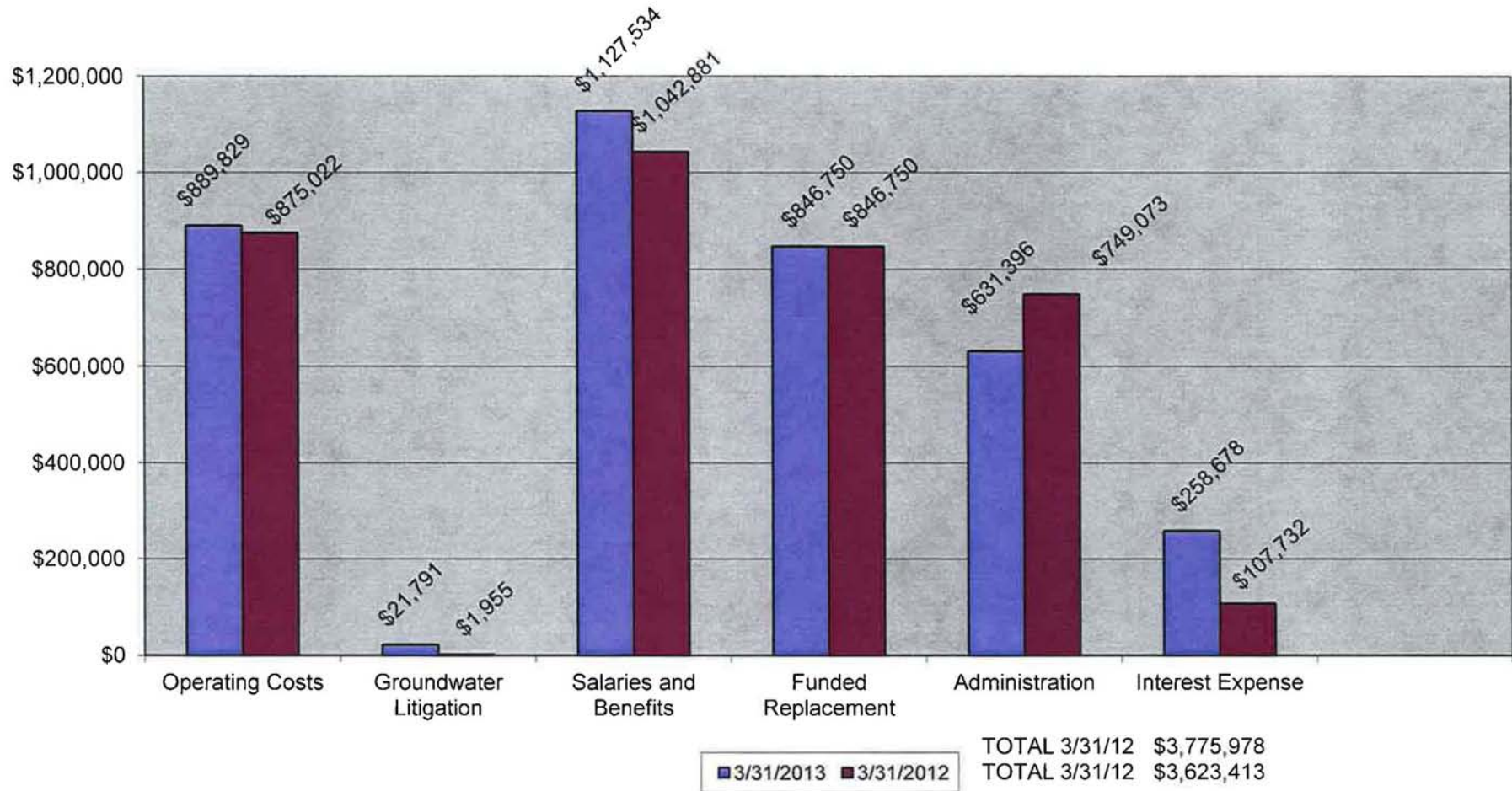
	YTD ACTUAL	ANNUAL BUDGET	% OF BUDGET
Legal - Water Counsel	21,790.52	10,000.00	217.91 %
Professional Services	53,136.07	190,000.00	27.97 %
Miscellaneous	1,977.09	7,000.00	28.24 %
Newsletters & Mailers	2,680.23	7,070.00	37.91 %
Office Supplies	8,032.20	13,920.00	57.70 %
Outside Service	10,963.23	20,000.00	54.82 %
Postage	13,956.02	26,000.00	53.68 %
Public Notices	7,375.47	7,900.00	93.36 %
Repairs and Maintenance	7,497.40	16,000.00	46.86 %
Property Taxes	1,011.06	1,045.00	96.75 %
Telephone	5,973.58	9,480.00	63.01 %
Travel and Mileage	5,734.37	12,000.00	47.79 %
Utilities	11,568.24	18,000.00	64.27 %
Operating Transfer Out - Funded Administration	274,777.17	491,401.00	55.92 %
Subtotal - Operating Expenses General & Admin	1,239,927.63	2,102,661.00	58.97 %
Total Operating Expenses	3,431,499.69	5,563,680.00	61.68 %
Total Operating Surplus/(Deficit)	2,192,599.21	1,795,645.00	122.11 %
 NON OPERATING INCOME			
Interest Income	67,050.98	110,630.00	60.61 %
Property Tax Revenues	337,352.90	513,664.00	65.68 %
Gain/Loss on Sale	15,330.00	0	.00 %
BL Sewer Surcharge	16,345.93	24,480.00	66.77 %
BL Water Surcharge	16,761.82	25,779.00	65.02 %
Total Non Operating Income	452,841.63	674,553.00	67.13 %
 NON OPERATING EXPENSES			
Interest Expense	258,677.81	517,723.00	49.96 %
Other Post Employment Benefits (OPEB)	85,800.00	114,406.00	75.00 %
Total Non Operating Expenses	344,477.81	632,129.00	54.49 %
Total Non Operating Surplus/(Deficit)	108,363.82	42,424.00	255.43 %
Total Operating & Non Operating Surplus/(Deficit)	2,300,963.03	1,838,069.00	125.18 %

UNAUDITED

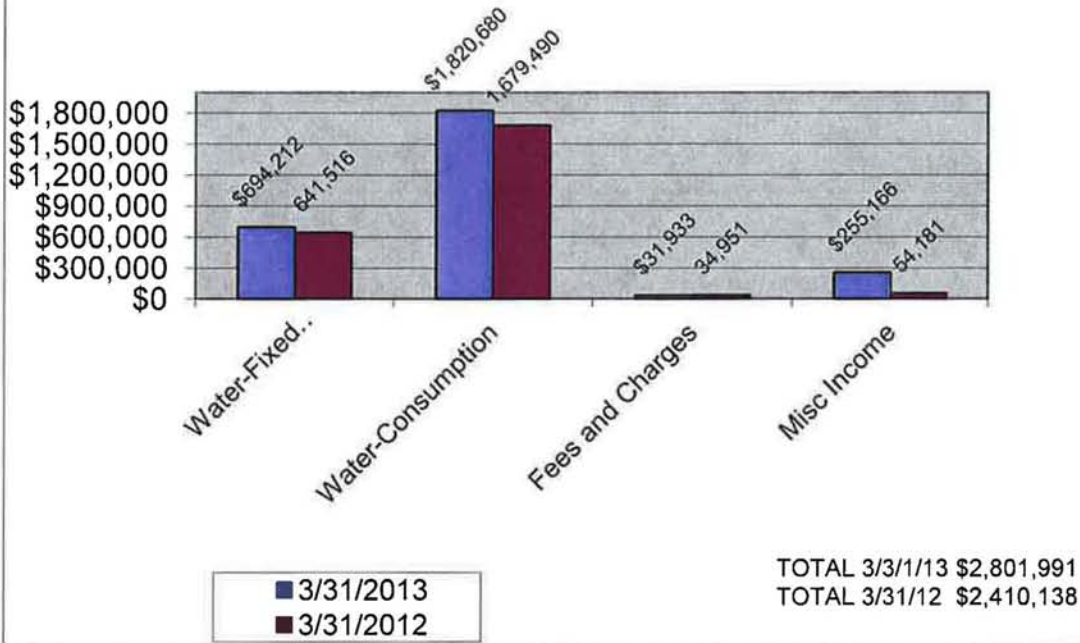
NIPOMO COMMUNITY SERVICES DISTRICT COMBINED REVENUES FOR ALL FUNDS NINE MONTHS ENDED MARCH 31, 2013 AND MARCH 31, 2012



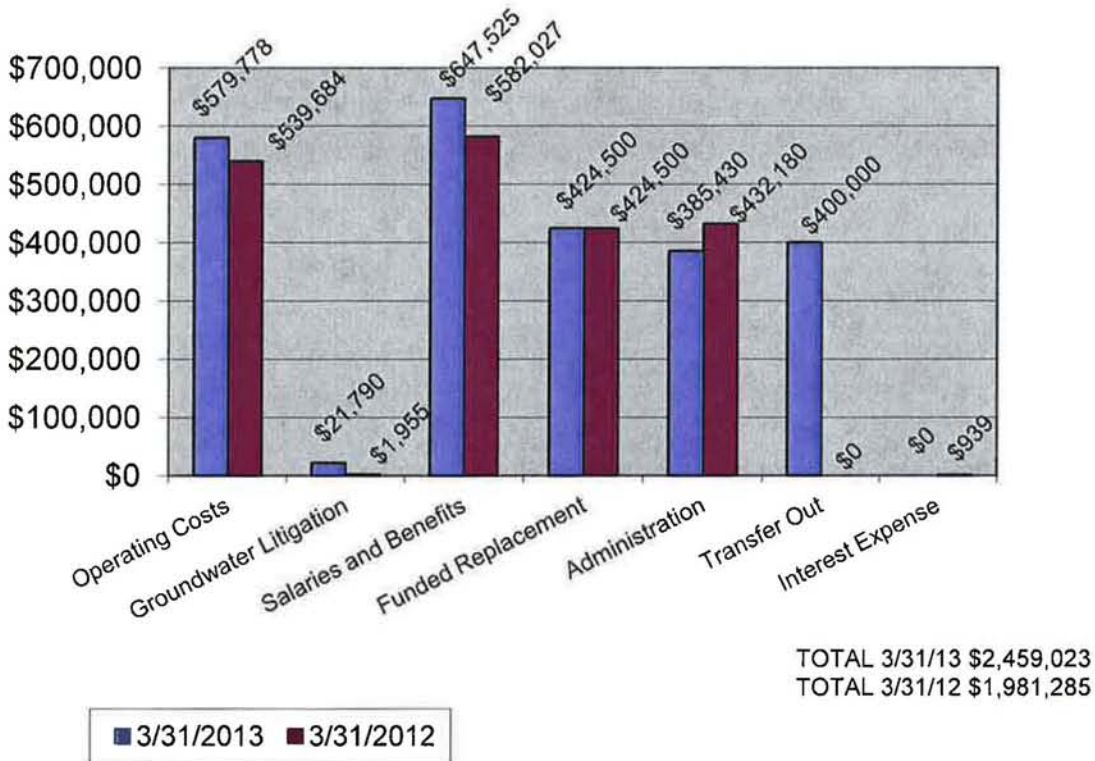
**NIPOMO COMMUNITY SERVICES DISTRICT
 COMBINED EXPENDITURES FOR ALL FUNDS
 NINE MONTHS ENDED
 MARCH 31, 2013 AND MARCH 31, 2012**



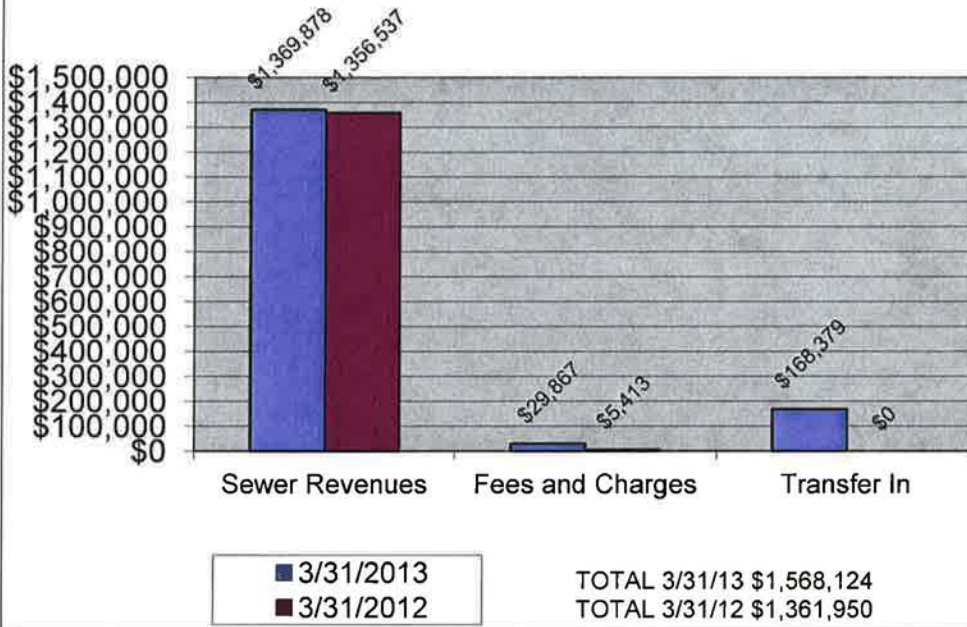
**NIPOMO COMMUNITY SERVICES DISTRICT
WATER FUND #125
REVENUES-MARCH 31 2013 AND MARCH 31, 2012**



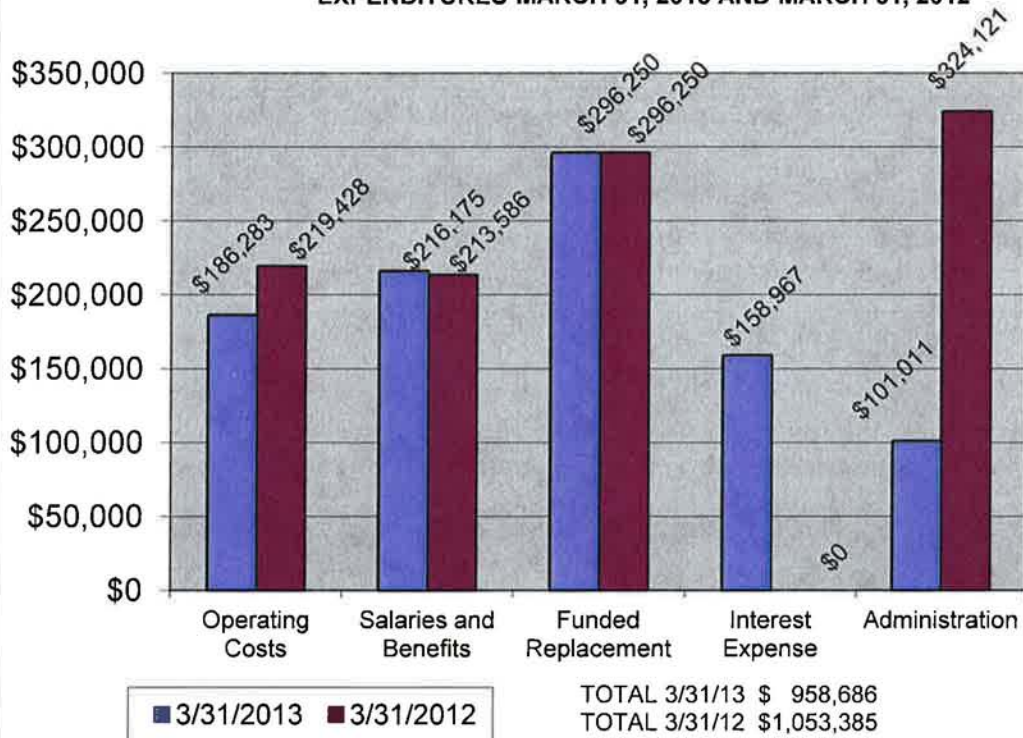
**NIPOMO COMMUNITY SERVICES DISTRICT
WATER FUND #125
EXPENDITURES-MARCH 31, 2013 AND MARCH 31, 2012**



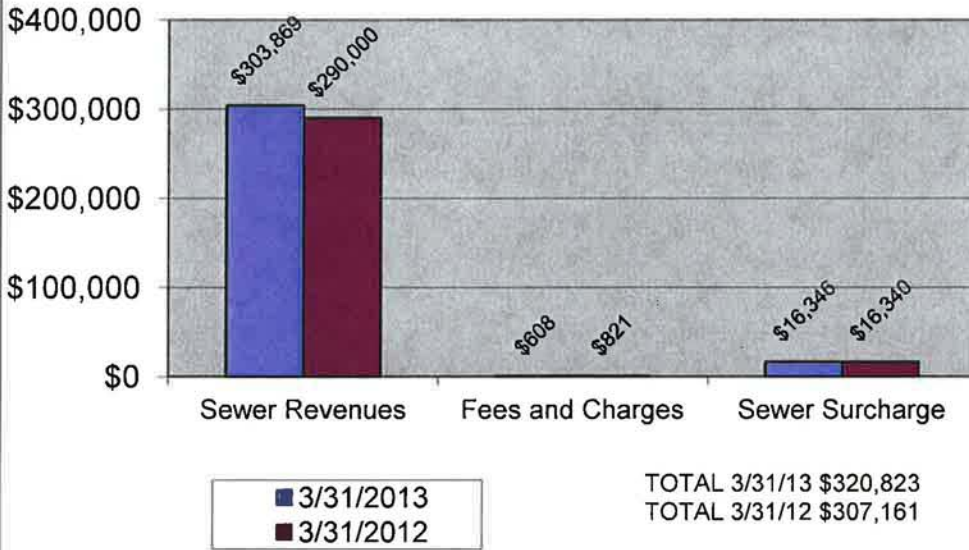
**NIPOMO COMMUNITY SERVICES DISTRICT
TOWN SEWER FUND #130
REVENUES-MARCH 31, 2013 AND MARCH 31, 2012**



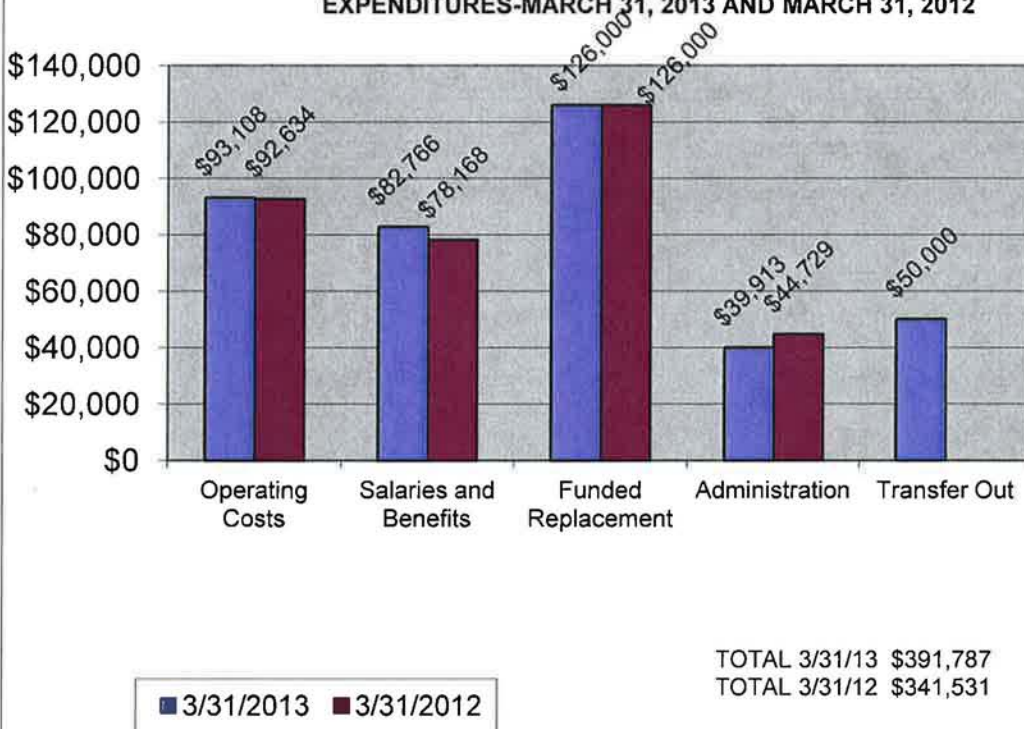
**NIPOMO COMMUNITY SERVICES DISTRICT
TOWN SEWER FUND #130
EXPENDITURES-MARCH 31, 2013 AND MARCH 31, 2012**



**NIPOMO COMMUNITY SERVICES DISTRICT
BLACKLAKE SEWER FUND #150
REVENUES-MARCH 31, 2013 AND MARCH 31, 2012**



**NIPOMO COMMUNITY SERVICES DISTRICT
BLACKLAKE SEWER FUND #150
EXPENDITURES-MARCH 31, 2013 AND MARCH 31, 2012**



TO: BOARD OF DIRECTORS
FROM: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER
DATE: APRIL 19, 2013



CONSIDER RESOLUTION DEFINING USE OF DISTRICT FUND #700 AND FUND #805 FOR SUPPLEMENTAL WATER PROJECT PHASE 1 CONSTRUCTION

ITEM

Consider Resolution 2013-Fund Authorization outlining water fund reserve allocations for Supplemental Water Project Phase 1 [RECOMMEND ADOPT RESOLUTION].

BACKGROUND

By policy, your Board establishes various reserve funds to provide funding for long and near term capital improvement projects including replacement projects, expansion projects, and unplanned expenses.

The proposed draft Resolution defines use of water fund reserves, specifically Fund #700 Water Capacity and Fund #805 Funded Replacement – Water, as components of the District's financing plan for Supplemental Water Project Phase 1.

FISCAL IMPACT

The reserve component of the Supplemental Water Project Phase1 proposed financing plan is as follows:

Fund Source	Amount Proposed for SWP Phase 1	Remaining Fund Balance
Fund #125 Water Fund	\$1,500,000	\$1,370,000
Fund #128 Water Rate Stabilization Fund	\$0	\$400,000
Fund #500 Supplemental Water Fund	\$1,000,000	\$138,000
Fund #600 Property Tax Fund	\$2,400,000	\$0
Fund #700 Water Capacity	\$1,404,000	\$1,500,000
Fund #805 Funded Replacement – Water Fund	\$4,000,000	\$1,000,000
Total	\$10,304,000	\$4,408,000

RECOMMENDATION

By motion and roll call vote (4/5th vote required) adopt Resolution 2013-Fund Authorization approving the use of Fund #700 and Fund #805 for Supplemental Water Project Phase 1.

ATTACHMENTS

- A. Resolution 2013-Fund Authorization

APRIL 24, 2013

ITEM E-2

ATTACHMENT A

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2013-_____**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT AUTHORIZING
USE OF FUNDS 700 AND 805 FOR FUNDING THE SUPPLEMENTAL
WATER PROJECT PHASE 1 AND MAKING FINDINGS THEREFORE**

WHEREAS, the Nipomo Community Services District ("District") is formed under the Community Services District Law (Govt. Code §61000 et seq.); and

WHEREAS, one of the powers of the District is to provide water for beneficial use for residents within District boundaries (Govt. Code §61100(a)); and

WHEREAS, the District was a stipulating party in the Santa Maria Groundwater litigation, lead case number CV770214, venue in the County of Santa Clara; and

WHEREAS, the litigation was settled by way of a stipulation. The stipulation provided that NCSD (District) is to deliver 2500 acre feet of supplemental water per year ("AFY") to the Nipomo Mesa Management Area (NMMA) of which the District is a part, and

WHEREAS, a Court has ordered the parties to comply with the stipulation; and

WHEREAS, the NMMA Technical Group, in its 2011 Annual Report, determined that the use of well water in the Nipomo Mesa Management Area is causing a depression creating conditions for sea water intrusion; and

WHEREAS, one purpose of the supplemental water project (the "Project") is to lessen the dependence upon wells for groundwater, which will become increasingly unreliable if the present trends continue; and

WHEREAS, the District contemplates development of Phase I of the Project, with a capacity of 650 AFY, by use of District funds and other means; and

WHEREAS, the District collects capacity charges from developers for appropriate purposes, including the development of water infrastructure capacity and supply, to support development of the District. Those funds are maintained in Fund 700; and

WHEREAS, the District Board of Directors finds that the use of these funds in connection with Phase 1 of the Project is consistent with the goals of Fund 700; and

WHEREAS, the District Board of Directors finds and determines that the use of capacity charges from Fund 700 for the Phase 1 Project provides supplemental water in sufficient capacity for District residents (*see Paland: 179 Cal.App.4th 1358, 102 Cal.Rptr.3d 270 (2009)*); and

WHEREAS, the District Board of Directors in its discretion has created Fund 805 titled Funded Replacement - Water; and

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2013-____**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT AUTHORIZING
USE OF FUNDS 700 AND 805 FOR FUNDING THE SUPPLEMENTAL
WATER PROJECT PHASE 1 AND MAKING FINDINGS THEREFORE**

WHEREAS, under the purpose section for Fund 805, it states the following:

“The reserves can be used for short term and long term purposes. The objective of the Funded Replacement Fund is to provide monies for the current and future replacement of existing capital assets as they reach the end of their useful lives.”

WHEREAS, the NMMA Technical Group has determined that the water basin underneath the District and the Nipomo Mesa is in a potentially severe condition; and

WHEREAS, this condition affects long term reliance upon use of the wells drawing from the basin for the District's water supply; and

WHEREAS, the Project will in part replace the need for some wells that the District relies upon by bringing supplemental water onto the Nipomo Mesa; and

WHEREAS, the Project will reduce the District's need to refurbish and repair existing District wells; and

WHEREAS, The Board of Directors finds that the use of Fund 805 funds is consistent with the purpose of Fund 805 as it will aid in prolonging useful life of existing capital assets, delaying the need for future replacement and repair of existing capital assets and replacing those assets with supplemental water infrastructure; and

WHEREAS, to the extent that it is determined that portions of the Project are not within the scope of Fund 805 then, pursuant to Govt. Code §61112, the District Board of Directors make the following findings in regards to the use of funds from Fund 805:

- A. Fund 805 was created at the discretion of the District Board of Directors.
- B. Fund 805 contains approximately 5 million dollars.
- C. The Board of Directors determines that the amount of 4 million dollars is not needed for the purposes for which Fund 805 is designated and further finds that Fund 805 at the end of this fiscal year will have a balance of approximately 1 million dollars. Therefore the Board of Directors authorizes the re-designation and removal payment of 4 million dollars from this fund.
- D. The Board finds that the use of Fund 805 funds is consistent with the purpose of the Fund and removal of these funds from Fund 805 for the purposes of the Project is appropriate and that the remaining balance of Fund 805 of 1 million dollars is satisfactory for the District's current replacement needs.

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2013-____**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
NIPOMO COMMUNITY SERVICES DISTRICT AUTHORIZING
USE OF FUNDS 700 AND 805 FOR FUNDING THE SUPPLEMENTAL
WATER PROJECT PHASE 1 AND MAKING FINDINGS THEREFORE**

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

1. The above recitation of facts and findings is true and correct and incorporated herein.
2. The District Board of Directors approves the use of Fund 700 capacity charges in the amount of \$1,744,000 for use for the Supplemental Water Project Phase 1.
3. The District Board of Directors approves the use of Fund 805 in the amount of \$4,000,000 for use for the Supplemental Water Project Phase 1.
4. The District Board of Directors authorizes the removal of \$4,000,000 from Fund 805 as the remaining balance is sufficient for current replacement needs.

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

AYES:
NOES:
ABSTAIN:
CONFLICTS:

the foregoing resolution is hereby passed and adopted this _____ day of April, 2013.

JAMES HARRISON
President, Board of Directors

ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN
Secretary to the Board

MICHAEL W. SEITZ
Deputy District Legal Counsel

TO: BOARD OF DIRECTORS
 FROM: MICHAEL S. LEBRUN *MSL*
 GENERAL MANAGER
 DATE: APRIL 19, 2013

AGENDA ITEM
E-3
APRIL 24, 2013

**CONSIDER FINANCING PLAN FOR
 SUPPLEMENTAL WATER PROJECT PHASE 1**

ITEM

Review the financing plan for Supplemental Water Project Phase 1 [RECOMMEND CONSIDER COMMITTEE RECOMMENDATION AND BY MOTION AND ROLL CALL VOTE APPROVE FINANCING PLAN FOR SUPPLEMENTAL WATER PROJECT PHASE 1].

BACKGROUND

On February 13, 2013, the Board of Directors authorized circulating bid documents for Supplemental Water Project Phase 1 and approved a Financing Plan based on the Engineer's Estimate for the Phase 1 project.

District received bids for the Phase 1 project the week of March 24. The total low bid exceeds the previously estimated project cost by 24%. Projected costs are outlined below.

Supplemental Water Project Phase 1, Cost Estimate

Description	Projected Cost (based on apparent low bidder)
Bid Package 1 - Santa Maria River Crossing	\$7,197,140
Bid Package 2 - Nipomo Area Pipeline Improvements	Not part of this Phase
Bid Package 3 - Blosser Road Waterline and Flow Meter	\$2,575,710
Bid Package 4 - Joshua Street Pump Station and Wellhead Chloramination Systems	\$4,344,710
Construction Subtotal	\$14,117,560
Construction Contingency (5%)	\$706,000
Estimated Construction Total	\$14,823,560
Right-of-Way (ROW) Acquisition	\$250,000
Design Engineering	\$450,000
Construction Management	\$1,736,000
Non-Construction Subtotal	\$2,436,000
Non-Construction Contingency (10%)	\$243,600
Estimated Total Non-Construction Costs	\$2,679,600
Estimated Total Cost	\$17,503,160

FISCAL IMPACT

On April 10, 2013 your Board reviewed a financing plan approach based on these projected costs and directed staff to proceed with further analysis. On April 17, your Board's Finance and Audit Committee reviewed and discussed the draft proposed finance plan outlined below.

Supplemental Water Project Phase 1, Financing Plan

Fund Source	Amount Proposed for SWP Phase 1	Remaining Fund Balance
DWR Proposition 84 Grant	\$2,200,000	Not Applicable
Certificates of Participation secured by existing property tax revenue	\$5,000,000	Not Applicable
Fund #500 Supplemental Water Fund	\$1,000,000	\$138,000
Fund #600 Property Tax Fund	\$2,400,000	\$0
Fund #805 Funded Replacement – Water Fund	\$4,000,000	\$1,000,000
Fund #125 Water Fund	\$1,500,000	\$1370,000
Fund #700 Water Capacity	\$1,404,000	\$1,500,000
Total From All Funding Sources	\$17,504,000	\$4,008,000

DISCUSSION OF FUNDS

The \$2.2 million California Department of Water Resources (DWR) grant was awarded to the District through San Luis Obispo County's Integrated Regional Water Management Grant application. The County is prepared to issue a grant agreement for disbursement of funds concurrent with your Board's award of construction contracts (scheduled for May 22, 2013).

Certificates of Participation (COP) – Your Board is scheduled to authorize issuing COPs on May 8, 2013. The issue would refinance the District's 2003 COPs and raise approximately \$5,000,000 in capital. The annual debt service for the combined issue would be approximately \$486,000. The District would pledge the existing annual property tax revenue stream of approximately \$500,000 per year for repayment of the debt.

The majority of Fund #500, Supplemental Water Fund, is designated for the project. Approximately \$75,000 of this fund is designated for desalinization supplemental water project. The desalinization designated funds would not be used on this project.

Fund #600, Property Tax Fund, is reserves generated by annual property tax revenues. Your Board made a finding on February 13, 2013, to use the reserves for the supplemental water project and pledge/dedicate the annual property tax revenue stream for repayment of the debt.

Fund #805, Funded Replacement – Water Fund, is designated for replacing existing water infrastructure. Use of this fund would be appropriate since the proposed supplemental water project would replace/offset current water sources (wells).

Fund #125 Water Fund, these funds represent current balance of the Water Fund in excess of District Reserve policy.

Fund #700 Water Capacity Fund, capacity funds are set aside for constructing new District infrastructure and adding capacity.

RECOMMENDATION

Staff recommends that your Board consider Finance and Audit Committee recommendation and by motion and roll call vote, approve the Financing Plan for Supplemental Water Project Phase 1.

ATTACHMENT

None

TO: BOARD OF DIRECTORS
FROM: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER
DATE: APRIL 19, 2013

AGENDA ITEM
E-4
APRIL 24, 2013

**CONSIDER WHOLESALE WATER SUPPLY AGREEMENT FOR
PURCHASE OF SUPPLEMENTAL WATER FROM
CITY OF SANTA MARIA**

ITEM

Approve a Wholesale Water Supply Agreement with City of Santa Maria. [RECOMMEND APPROVE AGREEMENT]

BACKGROUND

In 2004, the District entered into a Memorandum of Understanding (MOU) with the City of Santa Maria guiding the development of an intertie pipeline and future water sales. This MOU anticipated that the parties would execute a final Water Sales Agreement once the environmental review of the project was certified. In October 2009, your Board approved a final Wholesale Water Supply Agreement. The City of Santa Maria subsequently approved the Agreement in January 2010.

Since that time, the project has been redesigned for phased construction. The proposed Wholesale Agreement preserves the pricing structure of the 2010 Agreement and includes a more gradual 'take-down' or minimum-delivery schedule to reconcile with phased project construction.

The City is scheduled to consider this revised Agreement on May 7, 2013.

FISCAL IMPACT

There is no direct fee associated with the Agreement. The cost of complying with the requirements of the Agreement include, past litigation costs associated with the Groundwater Adjudication (\$3M), pipeline project design and development (\$4M), delivery infrastructure project capital costs (estimated at \$17.5M) and the cost of future water purchase as detailed in the Agreement.

A charge of approximately \$1.50 per unit (750 gallons) of water will be added to the cost of District water when delivery of supplemental water commences in late 2014. The charge is projected to remain at approximately \$1.50 per unit (unit = 750 gallons) while deliveries of supplemental water are at or below 1,000 acre-feet annually – a period of approximately 10-years.

A water fund rate and capacity charge study will be conducted following commencement of Supplemental Water Project Phase 1 construction.

STRATEGIC PLAN

Strategic Plan Goal 1.2 – Secure New Water Supplies

RECOMMENDATION

By motion and roll call vote, approve Wholesale Water Supply Agreement

ATTACHMENTS

- A. Draft proposed Wholesale Water Supply Agreement

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2013\130424 CSM WHOLESALE AGREEMENT .DOCX

APRIL 24, 2013

ITEM E-4

ATTACHMENT A

DRAFT PROPOSED AGREEMENT

WHOLESALE WATER SUPPLY AGREEMENT

This Wholesale Water Supply Agreement ("Agreement") is made and entered into as of _____ by and between the **CITY OF SANTA MARIA ("City")**, a California municipal corporation and charter City, and **NIPOMO COMMUNITY SERVICES DISTRICT ("NCSD")**, an independent special district formed under and pursuant to Section 61000, *et seq.* of the California Government Code. City and NCSD are sometimes individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the City provides retail potable water service to customers within its service area in the Santa Maria Valley, in northern Santa Barbara County. The City holds a contract with the Central Coast Water Authority to receive water from the State Water Project ("SWP"). City also holds rights to recharge from Twitchell Reservoir and rights to pump groundwater from the Santa Maria Groundwater Basin ("Santa Maria Basin"); and

WHEREAS, NCSD provides retail potable water service and sewer service within its established boundaries located in and around the Nipomo Mesa Management Area ("NMMA") of the Santa Maria Basin; and

WHEREAS, both the City and the NCSD are Parties to a certain groundwater adjudication lawsuit commonly referred to as the Santa Maria Groundwater Litigation (Santa Maria Valley Water Conservation District vs. City of Santa Maria, et al.; Superior Court of California, County of Santa Clara Case no. 1-97-CV-770214) (referred to herein as "Basin Litigation"). On August 3, 2005, the Court approved a Settlement Stipulation (referred to herein as "Stipulation") that was signed by the Parties, related to the Basin Litigation which, among other things, provides that "the NCSD and City shall employ their best efforts to timely implement the Nipomo Supplemental Water Project, subject to their quasi-judicial obligations specified for administrative action and in the California Environmental Quality Act." The Stipulation was later incorporated into the final Judgment; and

WHEREAS, on a long term basis, City has water available for use in the NMMA that is surplus to that needed to serve City's current and long-term future anticipated demands; and

WHEREAS, pursuant to the Stipulation, NCSD seeks to acquire a Supplemental Water supply (referred to herein as "Supplemental Water") to alleviate pressure on the NMMA from groundwater pumping and to meet current needs and projected demands of NCSD customers; and

WHEREAS, consistent with the Stipulation and Judgment, and subject to the terms and conditions of this Agreement, City is willing to sell and deliver to NCSD an established quantity of Supplemental Water on a wholesale basis.

NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

DRAFT PROPOSED AGREEMENT

1. **Purpose.** Consistent with the Stipulation and Judgment, the purpose of this Agreement is to formalize the terms and conditions by which City will provide Supplemental Water to NCSO, including an equivalent amount of capacity in City's water distribution system, for delivery to the NCSO water distribution system through the interconnection described in Paragraph 9, beginning on the Effective Date and continuing each year thereafter for as long as this Agreement remains in effect.

2. **Termination of MOU and Original Wholesale Water Supply Agreement.** City and NCSO executed a Memorandum of Understanding ("MOU") on September 7, 2004, to provide for the reservation of a Supplemental Water supply of up to three thousand (3,000) acre-feet per year ("AFY") in anticipation of the negotiation of the original Wholesale Water Supply Agreement ("Original Agreement"), executed on January 5, 2010. This Agreement shall supersede the terms of the MOU and Original Agreement, which shall terminate and be of no further force or effect. The initial reservation payment of \$37,500 made upon execution of the MOU has already been credited by City to the first quarterly invoice for water delivery pursuant to Paragraph 8.

3. **Term of Agreement.**

(a) **Contract Term.** The term of the Agreement shall commence on the Effective Date and end on June 30, 2085 ("Term"). Notwithstanding the Term, the delivery of Supplemental Water pursuant to this Agreement during any period on or after June 30, 2035, shall be subject to the renewal of the contract between the City and Central Coast Water Authority for SWP water. Furthermore, the terms of this Agreement shall be subject to renegotiation as described below in the event that the SWP contract or any subsequent SWP contract is not renewed or is renegotiated by the City and Central Coast Water Authority prior to June 30, 2035, and the terms of such renegotiation or renewal either (i) substantially impair the ability of City to continue to provide Supplemental Water in the quantities set forth in this Agreement; or (ii) the cost of continuing to provide Supplemental Water pursuant to the terms of this Agreement would create a significant financial burden on the City. In no event shall the City be required to deliver Supplemental Water at a financial loss following June 30, 2035, or in the event of a change in price due to a renegotiation occurring prior to June 30, 2035, as described in the foregoing sentence. Upon the occurrence of one of the foregoing events and within thirty (30) days of a written request from City to NCSO requesting renegotiation, the Parties shall negotiate in good faith and use their best efforts to equitably amend the terms of this Agreement to allow for the continued delivery of Supplemental Water on terms that are mutually beneficial to the Parties for the duration of the Term. The parties will meet in good faith in 2085 to determine whether to extend the term of the Agreement.

(b) **Dispute Resolution.** In the event of a dispute as to whether clause (i) and/or (ii) of Paragraph 3(a) have been triggered as a result of the renegotiation or non-renewal of the SWP contract, then such dispute shall be referred to the dispute resolution procedures referenced in Paragraph 19 of this Agreement. If a final finding is made as a result of such dispute resolution procedure that clause (i) and /or clause (ii) have been triggered, then the Parties shall negotiate in good faith pursuant to Paragraph 3(a). If the Parties cannot agree on the terms and conditions for equitably amending the terms of this Agreement to address a substantial impairment pursuant to clause (i) of Paragraph 3(a), then whether or not there is a feasible solution to address such substantial impairment may also be referred to the dispute resolution procedures referenced in Paragraph 19 of this Agreement. Notwithstanding the foregoing, the allocation of cost and/or any revision in the price of

DRAFT PROPOSED AGREEMENT

Supplemental Water to implement a solution or address the existence of an impairment or significant financial burden as set forth in Paragraph 3(a) shall be solely determined by the Parties on mutually acceptable terms and the dispute resolution procedure shall have no authority to order or impose any change with respect to such terms.

(c) **Effective Date.** The "Effective Date" shall mean the date that the NCSD interconnection described in Paragraph 9 has been completed and approved by City's technical staff as operationally ready for commencement of delivery of Supplemental Water.

(d) **Delivery Year.** Each "Delivery Year" shall commence on the Effective Date and any anniversary thereof during the Term and continue for a period of one (1) year.

4. Quantity of Supplemental Water.

(a) **Minimum Delivery.** In each Delivery Year during the Term of this Agreement, City shall deliver and NCSD shall purchase the following minimum quantity of Supplemental Water ("Minimum Quantity"):

<u>Delivery Years</u>	<u>Minimum Delivery Volume (AFY)</u>
1	645
2-5	800
6-10	1,000
11-Term	2,500

Any portion of the Minimum Quantity of Supplemental Water that is available for delivery by City in accordance with the mutually agreeable to delivery schedule referenced in Paragraph 9(e) and that is not taken by NCSD during a given Delivery Year shall be forfeit and shall not roll over to the next year. In the event that City, in its sole and absolute discretion, agrees to deliver unused Supplemental Water in a subsequent Delivery Year, such late delivery shall be an accommodation to NCSD and shall not constitute a waiver or amendment to the terms of this Agreement.

(b) **Additional Delivery.** NCSD may request delivery of Supplemental Water in excess of the Minimum Quantity up to an additional thirty-two hundred (3,200) acre feet per year. NCSD shall give City no less than thirty (30) days written notice of its desire to purchase additional Supplemental Water and the proposed schedule for such delivery. City shall make a good faith effort to comply with such request subject to (i) the availability of excess Supplemental Water from sources used for delivery of water to City's retail customers; and (ii) sufficient delivery capacity to fulfill such request at the NCSD interconnection using the City's existing water distribution system. Any such additional Supplemental Water shall be purchased and delivered on the same terms as the Minimum Quantity, provided, however, that if the cost of procuring and delivering additional Supplemental Water exceeds the cost of delivering the Minimum Quantity, City shall have the right to impose a surcharge to compensate City for such additional cost as a condition to delivery. City shall notify NCSD of the amount of any such surcharge prior to delivery of any additional Supplemental Water and NCSD shall have the right to withdraw its request. In no event shall City be required to undertake any capital cost or expansion of its existing infrastructure to provide additional Supplemental Water.

DRAFT PROPOSED AGREEMENT

5. **Reservation of Minimum Quantity.** Subject to the terms and conditions of this Agreement, City shall hold on reserve sufficient Supplemental Water each year, including an equivalent amount of capacity in City's water distribution system, for City to fulfill its obligation to deliver the Minimum Quantity to NCSD under this Agreement. City shall deliver such Supplemental Water to NCSD from sources used to provide water to City's retail customers. Notwithstanding the foregoing, during the term of the Agreement, City may substitute or combine new or additional replacement sources of water for the source of Supplemental Water, provided, however, that any substitute, combined or additional sources must be equivalent in deliverability, reliability, quality, pressure, and environmental impacts to the source being replaced. Disputes regarding this Paragraph shall be resolved pursuant to Paragraph 19.

6. **Purchase Price for Supplemental Water.** The purchase price for Supplemental Water delivered by City to NCSD shall be based on the "Base Rate" of the City's Water Consumption Rates. For fiscal year 2012-13, the Base Rate is two dollars and ninety seven cents (\$2.97) per one hundred (100) cubic feet of water (or \$1,293.73 per acre-foot of water). The Base Rate may be adjusted each fiscal year subject to approval by the City Council, consistent with applicable legal requirements. Any such adjustment in the purchase price shall go into effect in the next quarterly billing period.

7. **Costs of Delivery.** Except as expressly set forth in this Agreement, City shall be responsible for all costs and expenses related to providing Supplemental Water to NCSD at the NCSD interconnection pursuant to this Agreement. Notwithstanding the foregoing, the purchase price for Supplemental Water includes a cost component for energy costs incurred by City to supply Supplemental Water to the NCSD interconnection equal to two hundred and six dollars and eighty five cents (\$206.85) per acre foot ("Base Energy Cost"). In the event that the actual cost of energy incurred by City to supply Supplemental Water in any Delivery Year exceeds the Base Energy Cost, then City shall have the right to charge NCSD a premium equal to the difference between the actual cost and the Base Energy Cost. The Base Energy Cost shall be adjusted each Delivery Year by a percentage which is equivalent to fifty (50) percent of the increase or decrease, if any, in the Consumer Price Index-Energy Services (Electricity and Natural Gas)-Los Angeles-Riverside-Orange County or any successor index.

8. **Payments for Supplemental Water.** City shall bill NCSD on a quarterly basis in arrears for Supplemental Water delivered to NCSD's interconnection during the previous three (3) months. The amount payable by NCSD to City shall be based on the total quantity in acre-feet of Supplemental Water delivered during the quarter just ended multiplied by the then-current purchase price (as determined in Paragraph 6), plus any costs payable by NCSD pursuant to this Agreement. Notwithstanding the foregoing, to the extent that NCSD has taken less than the Minimum Quantity as of the final quarterly billing for a Delivery Year, City shall bill NCSD for the remainder of the Minimum Quantity whether or not such Supplemental Water has been delivered, provided that such water was made available for delivery to NCSD as provided in Paragraph 9. All invoices billed to NCSD shall be payable within thirty (30) days of the invoice date, provided that no charges are disputed. City shall have the right to charge late fees of up to five (5) percent of the overdue amount for any invoice that is not paid within such period. In the event NCSD disputes any charges on an invoice, the undisputed amount shall be paid consistent with this Paragraph and the original invoice shall be returned to City for correction and resubmission. If the parties are unable to reach an agreement regarding disputed charges, disputes shall be resolved pursuant to Paragraph 19.

DRAFT PROPOSED AGREEMENT

9. Delivery of Water.

(a) **Point of Delivery.** The physical point of delivery of Supplemental Water pursuant to this Agreement shall be the proposed interconnection between the City water distribution system and the NCSD water distribution system located at Taylor Street and Blosser Road or such other alternative location as may be approved by City and NCSD. All facilities constructed by NCSD will be used solely for the purpose of delivering Supplemental Water to NCSD. NCSD shall cooperate with the reasonable requests of City with respect to taking any action necessary to preserve the integrity of the City's water distribution system and the City shall do likewise for NCSD. The operation and maintenance of the NSCD Interconnection will be detailed in an Operation Memorandum of Understanding that will be approved by the City and NCSD prior to connection. City shall waive any fees for City permits related to construction of facilities for delivery of the water. If the parties cannot agree on the terms of the Operations Memorandum of Understanding then the disputed terms will be subject to the dispute resolution procedures referenced in Paragraph 19 of this Agreement.

(b) **Facilities.** NCSD shall be responsible for designing, constructing and operating the NCSD interconnect. The plans and specifications of the NCSD interconnect shall be subject to prior approval by City, which approval shall not unreasonably be withheld provided that such plans and specifications conform to applicable code provisions and any technical requirements imposed for connections to the City's water distribution system. NCSD shall also be responsible for obtaining any and all regulatory and environmental permits, licenses or other approvals necessary to construct and operate the NCSD interconnection. NCSD and/or any contractor working on the NCSD interconnect shall provide insurance coverage naming the City as an additional insured and the scope of such insurance coverage shall be subject to the reasonable approval of City's Risk Manager prior to commencement of any work.

(c) **Construction, Regulatory/Permit and Other Costs.** NCSD shall be solely responsible for all costs related to the construction and operation of the NCSD interconnection with City's retail water distribution system. NCSD shall also be solely responsible for all regulatory and/or permit compliance and costs with respect to the NCSD interconnection.

(d) **City Streets: License to Use Easements and Rights of Way.** The City shall provide NCSD a license, at no additional cost, to use such portions of City streets, easements, and right of ways as are reasonably necessary to build the NCSD interconnect and deliver the Supplemental Water to NCSD. Such license shall be non-revocable during the Term of this Agreement and shall automatically terminate upon the termination of this Agreement. The foregoing licenses shall not include the right of NCSD to make any alteration or improvement within such City streets, easements and rights of way except in compliance with Paragraph 9.

(e) **Delivery Schedule.** City will deliver the Supplemental Water to NCSD at the NCSD interconnection upon a mutually agreeable delivery schedule. The volume of delivery to the NCSD interconnection shall not exceed a maximum of two hundred seventy-five (275) acre-feet per month or a peak hour flow averaging twenty-five hundred (2,500) gallons per minute. Delivery pressure at the point of connection shall exceed sixty (60) psi during City's normal system operation, not including emergencies or incidents described in Paragraph 9(f). Before delivery begins, the District and City

DRAFT PROPOSED AGREEMENT

shall agree to an Operation Memorandum of Understanding (OMOU) to describe the specific procedures and limitation on the operations provided for in this Agreement.

(f) **Force Majeure.** If by reason of acts of God, earthquakes, droughts, floods, storms, explosion, fires, labor troubles, strikes, insurrection, riots, acts of the public enemy, or federal, or state, order, rule, or regulation, the City is prevented, in whole or in part, from the delivery of the Supplemental Water to NCSO, as provided herein, then City may reduce delivery of Supplemental Water up to the same percentage the City reduces water delivery to its retail customers.

(g) **Suspension.** The delivery of water may be suspended or curtailed during any period of public emergency or disaster that is declared by City. For the purposes of this Agreement, a public emergency or disaster shall not include ordinary measures taken during periods of drought or water shortage.

(h) **Obligations of City.** For the purposes of this Agreement and subject the limitations contained in this Paragraph 9, City shall have fulfilled its obligation to make Supplemental Water available for delivery so long as the amount of Supplemental Water purchased by NCSO is available at the NCSO interconnection for NCSO to take delivery of pursuant to a predetermined and mutually agreed upon delivery schedule.

10. **Water Quality.** City shall be responsible for ensuring that the quality of the Supplemental Water made available for delivery is of the same pressure and quality of water that City delivers to its residential customers. The quality of water which is delivered by the City to its residents complies with federal, state and local laws, regulations and permit requirements which are applicable to City, including standards applicable to wastewater discharge, as amended from time to time and subject to any compliance waiver granted to the City ("Quality Standards"). City shall provide NCSO with a copy of the Quality Standards (and any change thereto) which are applicable to City and NCSO shall be solely responsible for ensuring that the Quality Standards meet the federal, state and local laws, regulations and permit requirements for potable water delivery by NCSO to its customers, including the discharge of such water. To the extent that the quality standards which are applicable to NCSO exceed the Quality Standards, then NCSO shall be responsible for any necessary additional treatment of the Supplemental Water. City agrees to indemnify and hold NCSO harmless from any actual liability which arises as a result of the failure of Supplemental Water which is delivered to the NCSO interconnection to meet the Quality Standards. NCSO shall be solely responsible for any actual liability resulting from a change in water quality following the point of delivery (including any additional treatment undertaken by NCSO) and shall indemnify and hold City harmless from any actual liability which arises from any such change. City and NCSO shall promptly notify the other in the event that either becomes aware of a material adverse change in the quality of the Supplemental Water and shall cooperate to identify the cause of such change.

11. **Remarketing of Supplemental Water.** NCSO shall be free to remarket the Supplemental Water to other Parties within the NMMA without restriction to price and terms. NCSO assumes all responsibility for delivery of Supplemental Water from the NCSO interconnection to its customers and contracting Parties. City's obligations under this Agreement are solely with NCSO and no customer of NCSO nor other third party shall have the right to enforce the terms of this Agreement as a third party beneficiary. City shall not sell water to other parties or persons within NCSO's service

DRAFT PROPOSED AGREEMENT

area or sphere of influence, as amended from time to time, without first receiving the written approval of NCSD.

12. Regulatory Requirements.

(a) **Obligations of the City.** The implementation of this Agreement shall be subject to satisfaction by City of the regulatory requirements set forth herein. City shall, if necessary, undertake the following: (i) Obtain all permits, consents, entitlements and approvals necessary to enable the City to reserve and sell, and NCSD to purchase, the Supplemental Water that is the subject of this Agreement; and (ii) fully and completely comply with the requirements of the California Environmental Quality Act ("CEQA"), including, if it is determined that this transaction is subject to CEQA and not exempt from CEQA. The completion of an initial study, and (1) either (a) there shall have been adopted a negative declaration or a mitigated negative declaration, or (b) a final environmental impact report shall have been completed and certified, and (2) the time shall have expired within which a judicial proceeding may be instituted challenging the validity or completeness of any such determination of exemption, or adoption of a negative declaration or of a mitigated negative declaration, or approval of a final environmental impact report.

(b) **Obligations of NCSD.** NCSD shall be solely responsible for obtaining all regulatory approvals necessary in connection with purchasing and taking delivery of the Supplemental Water.

13. Service Area Integrity. Nothing in this Agreement is intended nor shall it be interpreted to waive the right of City to provide water service to current or future areas within or adjacent to its existing service area.

14. Representations or Warranties of City. City makes the following representations, warranties, and covenants to NCSD:

(a) **Power and Authority to Execute and Perform this Agreement.** The City has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

(b) **Availability of Resource.** Based on information which is currently known to City and City's current forecast of future use, on a long-term basis, City has water and the necessary infrastructure available to fulfill City's obligations under this Agreement that is surplus to that needed to serve City's current and long-term future anticipated demand.

(c) **Enforceability.** This Agreement constitutes a legal, valid, and binding obligation of the City, and is enforceable against the City in accordance with its terms.

15. Representations or Warranties of NCSD. NCSD makes the following representations, warranties, and covenants to City:

(a) **Power and Authority to Execute and Perform this Agreement.** NCSD has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

DRAFT PROPOSED AGREEMENT

(b) **Enforceability.** This Agreement constitutes a legal, valid, and binding obligation of NCSD, enforceable against NCSD in accordance with its terms.

16. **Default and Termination by City.** In the event NCSD fails to make any payment to City under this Agreement when due, or fails to perform any obligation otherwise required by this Agreement, City shall demand in writing that NCSD cure such non-performance. NCSD shall have thirty (30) days after receipt of such demand to cure. In the event NCSD fails to cure a default within the thirty (30) day period, City may suspend delivery of Supplemental Water and redirect such water to other uses for the duration of the suspension. City shall restore water delivery when NCSD has cured all outstanding defaults and paid all amounts due to the City in full. In the event that NCSD does not cure a default within one (1) year of suspension, then City may terminate this Agreement at any time thereafter.

17. **Default and Termination by NCSD.** NCSD shall have the right to terminate this Agreement, without recourse, if (i) the City is found to be in material breach of its obligations to deliver the Supplemental Water as set forth in this agreement; or (ii) upon written notice to City that NCSD is unable to pay for the Supplemental Water due to the majority protest procedures or other procedures referenced in Proposition 218; or (iii) upon three (3) years prior written notice to City, provided, however, that no such termination without cause shall become effective until the thirtieth (30th) anniversary of the Effective Date.

18. **Expiration of Term.** This Agreement shall terminate and be of no further force and effect as of the expiration of the Term.

19. **Dispute Resolution.** Except as otherwise limited by this Agreement, any dispute arising under this Agreement, including, without limitation, all disputes relating in any manner to the performance or enforcement of this Agreement, shall be resolved by binding arbitration in the County of Santa Barbara, California, pursuant to the comprehensive arbitration rules and procedures of Judicial Arbitration and Mediation Services ("JAMS") or any successor thereto, as amended or as augmented in this Agreement (the "Rules"). Arbitration shall be initiated as provided by the Rules, although the written notice to the other party initiating arbitration shall also include a description of the claim(s) asserted and the facts upon which the claim(s) are based. Arbitration shall be final and binding upon the parties and shall be the exclusive remedy for all claims subject hereto, including any award of attorney's fees and costs. Either party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. All disputes shall be decided by a single arbitrator. The arbitrator shall be selected by mutual agreement of the parties within thirty (30) days of the effective date of the notice initiating the arbitration. If the parties cannot agree on an arbitrator, then the complaining party shall notify JAMS and request selection of an arbitrator in accordance with the Rules. The arbitrator shall have only such authority to award equitable relief, damages, costs, and fees as a court would have for the particular claim(s) asserted. In no event shall the arbitrator award punitive damages of any kind. The parties acknowledge that one of the purposes of utilizing arbitration is to avoid lengthy and expensive discovery and allow for prompt resolution of the dispute. The arbitrator shall have the power to limit or deny a request for documents or a deposition if the arbitrator determines that the request exceeds those matters which are directly relevant to the claims in controversy. The parties may make a motion for protective order or motion to compel before the arbitrator with regard to the discovery, as provided in the Code of Civil Procedure.

DRAFT PROPOSED AGREEMENT

Notwithstanding the election by the parties to arbitrate their disputes, nothing contained herein shall prevent a party from filing an action in a court of competent jurisdiction to seek any form of equitable remedy or relief.

20. **Indemnity**. NCSO, its successors and assigns, shall hold harmless, defend and indemnify City, its officials, employees, agents, successors and assigns (all of which are herein referred to as the "City Indemnified Parties") from and against all liabilities, obligations, claims, damages, losses, actions, judgments, suits, costs and expenses, including but not limited to reasonable attorneys' fees (collectively, "Damages"), which may be imposed on, incurred by, or asserted against City Indemnified Parties as a result of (i) a breach of NCSO's obligations; or (ii) the conduct of NCSO's operations associated with the NCSO interconnection to City's retail distribution system and the subsequent delivery of Supplemental Water to NCSO's customers. Notwithstanding the foregoing, in no event shall NCSO be liable to indemnify a City Indemnified Party for (i) any Damages resulting from the negligence or willful misconduct of City; (ii) any third party claim brought in connection with regulatory approvals; or (iii) any claim brought in connection with the quality of the Supplemental Water as provided in Paragraph 10 above. This indemnification shall survive termination of the Agreement.

21. **Third Party Claims**. Promptly following notice of any "Third Party Claim" for which City is indemnified hereunder, City shall notify NCSO of such claim in writing. NCSO shall have a period of thirty (30) days following the receipt of such notice to notify City of whether NCSO elects to assume the defense thereof. If NCSO so notifies City that it elects to assume the defense, NCSO thereafter shall undertake and diligently pursue the defense of the Third Party Claim. NCSO shall not consent to entry of a judgment or enter into any settlement agreement, without the consent of City, which does not include a complete and unconditional release of City or which imposes injunctive or other equitable relief against City. City shall be entitled to participate in, but not control, the defense thereof, with counsel of its choice and at its own expense. If NCSO does not give the requisite notice, or fails to assume and diligently pursue the defense of such Third Party Claim, City may defend against such Third Party Claim in such manner as it may deem appropriate, at NCSO's expense, including without limitation settlement thereof on such terms as City may deem appropriate, and to pursue such remedies as may be available to City against NCSO. Notwithstanding the foregoing, City shall not consent to entry of a judgment or enter into any settlement agreement, without the consent of NCSO, which does not include a complete and unconditional release of NCSO.

22. **Notice of Claims**. The Parties shall promptly notify each other within ten (10) days of City or NCSO becoming aware of: (1) any claims or suits brought against City or NCSO which involve this Agreement or water supplied to NCSO pursuant to this Agreement, (2) any Third Party Claims, and (3) any force majeure event. Any such notice shall conform to the requirements specified in Paragraph 28 of this Agreement.

23. **Remedies Not Exclusive**. Remedies provided in this Agreement for enforcement of its terms are intended and shall be construed as cumulative rather than exclusive and shall not be deemed to deprive either Party from also using any other remedies provided by this Agreement or by law.

DRAFT PROPOSED AGREEMENT

24. **No Transfer of Rights**. The rights granted to NCSD hereunder constitute the right to take delivery of Supplemental Water only and shall not be interpreted as a sale, transfer, or assignment of any of City's water rights.

25. **Subject to Applicable Law**. The Parties acknowledge and agree that this Agreement and the rights and obligations of the Parties shall be subject to the laws governing municipal corporations and special districts as they now exist and as they may be amended or codified by the Legislature of the State of California.

26. **Entire Agreement**. This Agreement contains the entire understanding between NCSD and City with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between NCSD and City. This Agreement cannot be amended except in writing signed by both Parties.

27. **No Waiver**. Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

28. **Notices**. All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one (1) day after being deposited for next day delivery with an overnight courier. Each such notice or communication shall be addressed to the Parties at their respective addresses set forth next to their signatures below, or such other address as a Party notifies the other in writing.

29. **Headings; Paragraph References**. Captions and headings appearing in this Agreement are inserted solely as reference aids for the ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

30. **Separability**. If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

31. **Binding Effect Assignment**. This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. NCSD shall have the right to assign its rights under this Agreement with the written consent of City, provided, however, that the City shall not unreasonably withhold such consent and further provided that the assignee agrees to be bound by all of the obligations of NCSD set forth herein. Notwithstanding the foregoing, no assignment permitted hereunder shall permit the delivery of Supplemental Water to any property or development other than the Property without the written consent of the City, in its sole and absolute discretion.

DRAFT PROPOSED AGREEMENT

32. **Opinions and Determinations: Good Faith.** Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review or determination of either party hereto, such terms are not intended to and shall never be construed to permit such opinion, judgment, approval, review or determination to be arbitrary, capricious or unreasonable. The City and the NCS D shall each act in good faith in performing their respective obligations as set forth in this Agreement.

33. **Incorporation of Recitals.** Recitals A through F are incorporated herein by reference as though set forth at length.

34. **Attorneys Fees.** In the event that any legal proceeding other than the dispute resolution procedures referenced in Paragraph 19, above, is brought to enforce one or more of the terms of this Agreement, to restrain an alleged violation of this Agreement, or to determine the validity of this Agreement or any part, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If both Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the court.

35. **Governing Law and Venue.** This Agreement is a contract governed in accordance with the laws of the State of California. THE PARTIES HEREBY AGREE THAT VENUE FOR ANY ACTION BROUGHT TO ENFORCE THE TERMS OF THIS AGREEMENT SHALL BE IN A COURT OF COMPETENT JURISDICTION IN THE COUNTY OF SANTA BARBARA OTHER THAN A COURT LOCATED WITHIN THE CITY OF SANTA MARIA OR THE NORTHERN PORTION OF SANTA BARBARA COUNTY, CALIFORNIA, AND CONSENT TO THE JURISDICTION THEREOF.

IN WITNESS WHEREOF, the Parties have executed this agreement as of the date first written above.

[SIGNATURES ON FOLLOWING PAGE]

DRAFT PROPOSED AGREEMENT

CITY:

City of Santa Maria, a California municipal corporation and charter city

NCS D:

Nipomo Community Services District, a California public agency

By:

Name: Richard G. Sweet, P.E.
Title: Director of Utilities
Address: 2065 East Main Street
Santa Maria, CA 93454
Fax: (805) 928-7240
Phone: (805) 925-0951 ext. 7211

By:

Name: Jim Harrison
Title: President
Address: Post Office Box 326
Nipomo, CA 93444
Fax: (805) 929-1932
Phone: (805) 929-1133

APPROVED AS TO FORM:

Best, Best & Krieger LLP

APPROVED AS TO FORM:

District Counsel

By:

Jill Willis, Partner

By:

Michael W. Seitz, District Counsel

TO: MICHAEL S. LEBRUN
GENERAL MANAGER

M&L

FROM: PETER V. SEVCIK, P.E.
DIRECTOR OF ENGINEERING
& OPERATIONS

PVS

AGENDA ITEM

E-5

APRIL 24, 2013

DATE: April 18, 2013

**AUTHORIZE TASK ORDER FOR SOUTHLAND WWTF PHASE 1
IMPROVEMENT SUPERVISORY CONTROL AND DATA ACQUISITION
SYSTEM INTEGRATION PROJECT**

ITEM

Authorize Task Order for Southland WWTF Phase 1 Improvement Supervisory Control and Data Acquisition (SCADA) System Integration Project to Tesco Controls, Inc. in the amount of \$198,435 and authorize change order contingency in the amount of \$20,000 [RECOMMEND BY MOTION AND ROLL CALL VOTE APPROVE RESOLUTION AUTHORIZING STAFF TO EXECUTE TASK ORDER IN THE AMOUNT OF \$198,435 WITH TESCO CONTROLS, INC. AND AUTHORIZING CHANGE ORDER CONTINGENCY IN THE AMOUNT OF \$20,000].

BACKGROUND

In December 2011, at the conclusion of a Request for Proposals (RFP) process, the Board selected Tesco Controls, Inc. to provide process control and instrumentation system integration services for the District's Supervisory Control and Data Acquisition (SCADA) System Upgrade Project. The District's SCADA system monitors 27 remote sites including water wells, water storage tanks, water pressure reducing stations, sanitary sewer lift stations and both of the District's wastewater treatment plants. The purpose of the project was to replace the District's obsolete SCADA system. Implementation was completed in March 2013 and Tesco is currently supporting the District's new SCADA system.

In a separate contractor pre-qualification process and subsequent bid process for the Southland WWTF Phase 1 Improvement Project, the District pre-qualified and the general contractor, Cushman Contracting Corporation, selected Tesco Controls, Inc. to provide process control and instrumentation system integration services for the Southland WWTF Phase 1 Improvement Project. The project is currently under construction.

The contract documents for the Southland WWTF Phase 1 Improvement Project excluded SCADA system integration work. The intent was that the District would contract separately with Tesco Controls, Inc. to ensure that the same system would be implemented for the Southland WWTF Phase 1 Improvement Project as was implemented at all of the District's other facilities in order to maintain the integrity of the District's SCADA System and minimize the potential for multiple system integrators simultaneously working on the District's SCADA System.

Since Cushman was using Tesco for other parts of the Southland WWTF Phase 1 Improvement Project, staff attempted to negotiate a change order with Cushman to shift all of the SCADA system integration work related to the Southland WWTF Phase 1 Improvement Project to the construction contract with Cushman to facilitate coordination and scheduling of the work with the Southland WWTF Phase 1 Improvement Project. Unfortunately, the Change Order Proposal provided by Cushman included substantial overhead costs and greatly exceeded the District's budget for the Southland WWTF Phase 1 Improvement Project SCADA integration work.

Staff subsequently sought and received a proposal directly from Tesco for the Southland WWTF Phase 1 Improvement SCADA System Integration Project. The total amount of the proposal is \$198,435. Staff will directly oversee the SCADA integration work and coordinate with MNS Engineers, the District's construction manager for the Southland WWTF Phase 1 Improvement Project, to ensure that the SCADA integration work does not impact the schedule for the Southland WWTF Phase 1 Improvement Project. In accordance with the District's Purchasing Policy, Tesco Controls, Inc. is uniquely knowledgeable and qualified because similar/related services have been previously provided to the District.

FISCAL IMPACT

The approved FY 12-13 and the proposed FY 13-14 Budgets include funding for the Southland WWTF Phase 1 Improvement Project in the amount of \$200,000 for SCADA integration work related to the Southland WWTF Phase 1 Improvement Project and \$500,000 for construction contingencies.

STRATEGIC PLAN

Strategic Plan Goal 2.1 – Efficiently Operate Collection, Treatment and Disposal Works

RECOMMENDATION

Staff recommends that the Board, by motion and roll call vote, approve Resolution 2013-XXXX Southland WWTF SCADA Integration, authorizing staff to execute a Task Order for the Southland WWTF Phase 1 Improvement SCADA Integration Project with Tesco Controls, Inc. in the amount of \$198,435 and authorize a change order contingency in the amount of \$20,000.

ATTACHMENTS

- A. Tesco Cost Summary
- B. Resolution 2013-XXXX Southland WWTF SCADA Integration

APRIL 24, 2013

ITEM E-5

ATTACHMENT A



TESCO CONTROLS, INC.
 8440 FLORIN ROAD
 SACRAMENTO, CA 95828
 (916) 395-8800 // (916) 429-2817 F

COST SUMMARY SCHEDULE

Nipomo CSD - SCADA Upgrade
 Professional Services Summary

I.D.	Activity / Resource	Hours / Unit Quantity					40611X1 - COQ-01		
		Prj Mgr	Prj Engr	SCADA	PLC Prgr	Fid Engr	Subcntctr	Rate / Cost	Total
1	Project Kickoff	8		8				\$ 145.00	\$ 2,320.00
2	SCADA Workshop	8		8				\$ 145.00	\$ 2,320.00
3	Material (Hardware & Software) Submittals								
	Material (Hardware & Software) Submittals	2	24					\$ 145.00	\$ 3,770.00
	Programming/SCADA Screen Development Submittals	2		160				\$ 145.00	\$ 23,490.00
	Factory Testing Submittal	2	16	4				\$ 145.00	\$ 3,190.00
	Field Testing Submittal	2	16	4				\$ 145.00	\$ 3,190.00
4	Release & Procurement		8					\$ 145.00	\$ 1,160.00
5	SCADA Programming & Configuration								
	A) Coordination with Equipment Suppliers (Aeration Equip and Belt Thickener System), Computer/OS Setup, SCADA Software Setup, Configuration & General Programming, including I/O Tag Database, Alarm Database & Logging Configuration, Win-911 Programming, Library Dictionary & Definitions, Database/Historian Logging Setup & Configuration, and Networking/Communications Programming & Configuration.	16		80				\$ 145.00	\$ 13,920.00
	B) SCADA Programming PLC-1			100				\$ 145.00	\$ 14,500.00
	C) SCADA Programming PLC-2			100				\$ 145.00	\$ 14,500.00
	D) SCADA Programming PLC-3			100				\$ 145.00	\$ 14,500.00
	E) SCADA Report Development and Generation (25 Reports) (\$640 per report)						LS	\$ 16,000.00	\$ 16,000.00
6	Internal QA/QC								
	Project Manager	2						\$ 145.00	\$ 290.00
	SCADA Engineer			40				\$ 145.00	\$ 5,800.00
7	Unwitnessed Factory Testing								
	Project Manager							\$ 145.00	\$ 145.00
	SCADA Engineer			8				\$ 145.00	\$ 1,160.00
8	Witnessed Factory Testing								
	Project Manager	0						\$ _____	\$ _____
	SCADA Engineer			0				\$ _____	\$ _____
9	Onsite Activities								
	Onsite Network Equipment Setup, Terminations, Final Configuration, Test, Startup and Commissioning of (N) Comm./Networking Equipment Only.			24				\$ 145.00	\$ 3,480.00
	SCADA System Installation Work and onsite testing of installed Systems (QA/QC).			40				\$ 145.00	\$ 5,800.00
	Onsite Demonstration Acceptance Testing with PLC Systems in the field	8		80				\$ 145.00	\$ 12,760.00
10	21-Day Acceptance Testing/Final Adjustments								
	Coordination	4						\$ 145.00	\$ 580.00
	SCADA Fine-Tuning and Final Adjustments			24				\$ 145.00	\$ 3,480.00
11	Onsite SCADA Training								
	Operator Training (3 days)	2		24				\$ 145.00	\$ 3,770.00
12	Decommissioning/Removal of Existing SCADA Systems								
				2				\$ 145.00	\$ 290.00
13	Project Closeout								
	O&M Manuals, Records Docs and Punch List Items	30		20				\$ 145.00	\$ 7,250.00
14	Material and Equipment Cost								
	Communications hardware (i.e ethernet switches, Media converters)							\$ 5,520.00	\$ 5,520.00
	SCADA Software & Licenses							\$ 29,750.00	\$ 29,750.00
	Expenses and Other Project Costs							\$ 5,500.00	\$ 5,500.00
Totals:		86	64	826	0	0		\$	198,435.00

APRIL 24, 2013

ITEM E-5

ATTACHMENT B

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2013-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT
AUTHORIZING A TASK ORDER FOR THE SOUTHLAND WASTEWATER TREATMENT FACILITY PHASE 1
IMPROVEMENT SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEM INTEGRATION PROJECT
WITH TESCO CONTROLS INC.**

WHEREAS, Tesco Controls, Inc. was previously selected by the District to provide SCADA integration services for the SCADA System Upgrade Project and has completed the implementation of the SCADA System Upgrade Project; and

WHEREAS, the construction of the Southland WWTF Phase 1 Improvement Project is currently underway and the project needs to be integrated into the District's new SCADA system provided by Tesco Controls, Inc.; and

WHEREAS, the District desires to have Tesco Controls, Inc. provide SCADA integration services for the Southland WWTF Phase 1 Improvement Project to maintain the integrity of the District's new SCADA system; and

WHEREAS, District Purchasing Policy Resolution 2010-1201 provides for the procurement of professional services through non-competitive negotiations in limited situations; and

WHEREAS, Tesco Controls, Inc. is qualified pursuant to Section 8.4.30 of the District's Purchasing Policy, the cost of the services is reasonable, and Tesco Controls, Inc. is uniquely knowledgeable and qualified because similar/related services have been previously provided to the District.

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

- 1) The District Board of Directors does hereby direct District staff to execute a Task Order for the Southland WWTF Phase 1 Improvement SCADA Integration Project with Tesco Controls, Inc. in the amount of \$198,435 and authorizes the General Manager to approve change orders for a not-to-exceed total aggregate amount of \$20,000.
- 2) The above recitals are true and correct and constitute findings for the exclusive use of the Tesco Controls, Inc. to provide SCADA integration services for the Southland WWTF Phase 1 Improvement SCADA Integration Project.

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

AYES:
NOES:
ABSENT:
CONFLICTS:

The foregoing resolution is hereby adopted this 24th day of April 2013.

JAMES HARRISON
President, Board of Directors

ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN
Secretary to the Board

MICHAEL W. SEITZ
Deputy District Legal Counsel