

MAY 22, 2013

ITEM E-1

ATTACHMENT C

ESCROW DEPOSIT AND TRUST AGREEMENT

Dated as of June 1, 2013

by and among

NIPOMO COMMUNITY SERVICES DISTRICT
PUBLIC FACILITIES CORPORATION

and

NIPOMO COMMUNITY SERVICES DISTRICT,

and

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

Relating to the Refunding of:

\$4,000,000

NIPOMO COMMUNITY SERVICE DISTRICT
REVENUE CERTIFICATES OF PARTICIPATION
(PIPELINE AND WATER STORAGE PROJECT)
SERIES 2003

ESCROW DEPOSIT AND TRUST AGREEMENT

This ESCROW DEPOSIT AND TRUST AGREEMENT (this "Agreement"), made, entered into and dated as of June 1, 2013, by and among NIPOMO COMMUNITY SERVICES DISTRICT, a special district duly organized and existing under and pursuant to the laws of the State of California (the "District"), 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., as Escrow Agent and as Paying Agent, Registrar and Transfer Agent (the "Escrow Agent");

WITNESSETH:

WHEREAS, the District has heretofore caused the execution and delivery of its Nipomo Community Services District Revenue Certificates of Participation (Pipeline and Storage Facility Project) Series 2003 (the "Series 2003 Certificates") in the total aggregate principal amount of \$4,000,000 of which \$ _____ remains outstanding; and

WHEREAS, the Board of Directors of the District has determined that it is in the best interests of the District that the Series 2003 Certificates be defeased and refunded by prepaying the unpaid installment payments due under that certain 2003 Installment Purchase Agreement, dated as of May 1, 2003 (the "Series 2003 Installment Purchase Agreement"), by and between the District and the Corporation; and

WHEREAS, in order to accomplish such refinancing, the District has determined to issue its Water Revenue Refunding Bonds, Series 2013A (the "Bonds") in the aggregate principal amount of \$[principal amount], pursuant to and in accordance with Article 11 of Chapter 3 of Division 2 of Title 5 of the Government Code of the State of California (the "Bond Law"), and secured by an Indenture of Trust, dated as of June 1, 2013 (the "Indenture"), by and between the District and the Escrow Agent, as trustee; and

WHEREAS, the Trust Agreement, dated as of May 1, 2003 (the "Series 2003 Trust Agreement"), by and among the District, the Corporation and BNY Western Trust Company, predecessor to the Escrow Agent, pursuant to which the Series 2003 Certificates were executed and delivered, provides that the Series 2003 Certificates are subject to prepayment on any date on or after September 1, 2006; and,

NOW, THEREFORE, in consideration of the mutual premises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. As used herein, the following terms shall have the following meanings:

"Closing Date" means June ___, 2013.

“Code” means the Internal Revenue Code of 1986.

“Escrow Agent” means The Bank of New York Mellon Trust Company, N.A., and its successors and assigns, and any other corporation or institution that may at any time be substituted in its place as provided in Section 15 hereof.

“Escrow Fund” means the Escrow Fund established and held by the Escrow Agent pursuant to Section 3 hereof.

“Escrow Requirements” means an amount sufficient to prepay the \$_____ principal amount of Series 2003 Installment Payments which will remain outstanding and be prepaid on the Prepayment Date, as set forth in Exhibit A attached hereto.

“Prepayment Date” means _____, 2013.

“Series 2003 Trustee” means the Escrow Agent as trustee under the Series 2003 Trust Agreement.

“Series 2003 Trust Agreement” means the Trust Agreement, dated as of May 1, 2003, by and among the District, the Corporation and the Escrow Agent, as trustee for the Series 2003 Certificates.

SECTION 2. The District and Corporation hereby appoints The Bank of New York Mellon Trust Company, N.A., as the Escrow Agent under this Agreement for the benefit of the holders of the Series 2003 Certificates. The Escrow Agent hereby accepts the duties and obligations of Escrow Agent under this Agreement and agrees that the irrevocable instructions to the Escrow Agent herein provided are in a form satisfactory to it. The applicable and necessary provisions of the Series 2003 Installment Agreement and the Series 2003 Trust Agreement, including particularly the prepayment provisions thereof, are incorporated herein by reference. Reference herein to, or citation herein of, any provisions of the Series 2003 Installment Agreement or Series 2003 Trust Agreement shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if the same were fully set forth herein.

SECTION 3. Pursuant to this Agreement, there is hereby created a special and irrevocable trust fund designated the “Escrow Fund,” to be held by the Escrow Agent separate and apart from all other funds and accounts, and used only for the purposes and in the manner provided in this Agreement.

SECTION 4. The District herewith deposits, or causes to be deposited, with the Escrow Agent into the Escrow Fund, to be held in irrevocable trust by the Escrow Agent and to be applied solely as provided in this Agreement, the sum of \$_____, as follows:

(i) from the proceeds of the Series 2013 Certificates, the sum of \$_____; and,

(ii) from the Series 2003 Certificate Payment Fund, the sum of \$_____; and,

(iii) from the Series 2003 Reserve Fund, the sum of \$_____.

SECTION 5. The District and Corporation represent that any moneys or investments remaining in the funds and accounts of the Series 2003 Certificates under the Series 2003 Trust Agreement which are not required to make the foregoing deposits are to be transferred on the Closing Date, or as soon as practicable thereafter, to the 2003 Trustee for deposit into the Prepayment Fund under the Series 2003 Trust Agreement.

SECTION 6. The Escrow Agent acknowledges receipt of the moneys described in Section 4. The Escrow Agent agrees to retain the amount of \$_____ in cash in the Escrow Fund. Such amounts shall be applied by the Escrow Agent to the payment of the Escrow Requirements for the equal and ratable benefit of the holders of the Series 2003 Certificates.

SECTION 7. The District has caused schedules to be prepared relating to the sufficiency of the cash on deposit to pay the Escrow Requirements.

SECTION 8. The District hereby irrevocably instructs the Escrow Agent, as Series 2003 Trustee to mail, at least thirty (30) days prior to the Prepayment Date, a notice of prepayment of the Series 2003 Installment Payments in substantially the form set forth in Exhibit B hereto, as required under the Series 2003 Trust Agreement.

SECTION 9. The District irrevocably instructs the Escrow Agent to pay to the Series 2003 Trustee, on the Prepayment Date, from amounts held in the Escrow Fund, the amount of \$_____, being the prepayment price of the outstanding \$_____ aggregate principal amount of the Series 2003 Installment Payments called for prepayment on the Prepayment Date, including prepayment premium, if any, plus interest accrued thereon to the Prepayment Date.

SECTION 10. The District hereby directs and the Escrow Agent hereby agrees that the Escrow Agent will take all the actions required to be taken by it hereunder, in order to effectuate this Agreement. The liability of the Escrow Agent for the payment of the Escrow Requirements shall be limited to the application, in accordance with this Agreement, of the amounts on deposit available for such purposes in the Escrow Fund.

SECTION 11. The District represents that, concurrently with the initial deposit of the uninvested funds set forth in Section 4 hereof, the Series 2003 Trust Agreement shall be deemed defeased and the Owners of the Series 2003 Certificates shall have no further claim on the Net Revenues, other than the amounts in Escrow Fund.

SECTION 12. The trust hereby created shall be irrevocable and the holders of the Series 2003 Certificates shall have an express lien limited to all moneys in the Escrow Fund, including the interest earnings thereon, until paid out, used and applied in accordance with this Agreement.

SECTION 13. This Agreement is made pursuant to and in furtherance of the Series 2003 Trust Agreement and for the benefit of the District and the holders from time to time of the Series 2003 Certificates and it shall not be repealed, revoked, altered, amended or supplemented without the written consent of all such holders and the written consent of the

Escrow Agent, the District and the Corporation; provided, however, that the District, the Corporation and the Escrow Agent may, without the consent of, or notice to, such holders enter into such amendments or supplements as shall not be inconsistent with the terms and provisions of this Agreement, for any one or more of the following purposes:

(a) to cure an ambiguity or formal defect or omission in this Agreement;

(b) to grant to, or confer upon, the Escrow Agent for the benefit of the holders of the Series 2003 Certificates, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such holders or the Escrow Agent; and,

(c) to transfer to the Escrow Agent and make subject to this Agreement additional funds, securities or properties.

The Escrow Agent and Series 2003 Trustee shall be entitled to conclusively rely upon an unqualified opinion of nationally recognized bond counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification or addition affects the rights of the holders of the Series 2003 Certificates, or that any instrument executed hereunder complies with the conditions and provisions of this Section.

SECTION 14. In consideration of the services rendered by the Escrow Agent under this Agreement, the District agrees to and shall pay to the Escrow Agent its fees, plus expenses, including all reasonable expenses, charges, counsel fees and other disbursements incurred by it or by its attorneys, agents and employees in and about the performance of their powers and duties hereunder, and the Escrow Agent shall have no lien whatsoever upon any of the moneys in the Escrow Fund for the payment of such proper fees and expenses.

SECTION 15. The Escrow Agent at the time acting hereunder may at any time resign and be discharged from the trusts hereby created by giving not less than 60 days' written notice to the District, the Corporation and the Series 2003 Trustee, specifying the date when such resignation will take effect in the same manner as a notice is to be mailed pursuant to Section 8 hereof, but no such resignation shall take effect unless a successor Escrow Agent shall have been appointed by the holders of the Series 2003 Certificates or by the District as hereinafter provided and such successor Escrow Agent shall have accepted such appointment, in which event such resignation shall take effect immediately upon the appointment and acceptance of a successor Escrow Agent.

The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing, delivered to the Escrow Agent, the District, the Corporation and the Series 2003 Trustee and signed by the holders of a majority in principal amount of the Series 2003 Certificates.

In the event the Escrow Agent hereunder shall resign or be removed, or be dissolved, or shall be in the course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in the case the Escrow Agent shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor Escrow Agent may be

appointed by the holders of a majority in principal amount of the Series 2003 Certificates, by an instrument or concurrent instruments in writing, signed by such holders, or by their attorneys in fact, duly authorized in writing; provided, nevertheless, that in any such event, the District shall appoint a temporary Escrow Agent to fill such vacancy until a successor Escrow Agent shall be appointed by the holders of a majority in principal amount of the Series 2003 Certificates, and any such temporary Escrow Agent so appointed by the District shall immediately and without further act be superseded by the Escrow Agent so appointed by such holders.

In the event that no appointment of a successor Escrow Agent or a temporary successor Escrow Agent shall have been made by such holders or the District pursuant to the foregoing provisions of this Section within 60 days after written notice of the removal or resignation of the Escrow Agent has been given to the District, the holder of any of the Series 2003 Certificates or any retiring Escrow Agent may apply to any court of competent jurisdiction for the appointment of a successor Escrow Agent, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Escrow Agent.

No successor Escrow Agent shall be appointed unless such successor Escrow Agent shall be a corporation or institution with trust powers organized under the laws of the United States of America or any state, and shall have at the time of appointment capital and surplus of not less than \$50,000,000. For purpose of this Section 16, a corporation or institution with trust powers organized under the laws of the United States of America or any state shall be deemed to have combined capital and surplus of at least \$50,000,000 if it has a combined capital surplus of at least \$20,000,000 and is a wholly-owned subsidiary of a corporation having a combined capital and surplus of at least \$50,000,000.

Every successor Escrow Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and to the District and the Corporation, an instrument in writing accepting such appointment hereunder and thereupon such successor Escrow Agent without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, immunities, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of such successor Escrow Agent or the District execute and deliver an instrument transferring to such successor Escrow Agent all the estates, properties, rights, immunities, powers, trusts, duties and obligations of such predecessor hereunder; and every predecessor Escrow Agent shall deliver all securities and moneys held by it to its successor. Should any transfer, assignment or instrument in writing from the District be required by any successor Escrow Agent for more fully and certainly vesting in such successor Escrow Agent the estates, properties rights, immunities, powers, trusts, duties and obligations hereby vested or intended to be vested in the predecessor Escrow Agent, any such transfer, assignment and instrument in writing shall, on request, be executed, acknowledged and delivered by the District.

Any corporation or association into which the Escrow Agent, or any successor to it in the trusts created by this Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or reorganization to which the Escrow Agent or any successor to it shall be a party or any successor to a substantial portion of the Escrow Agent's corporate trust business, shall, if it meets the qualifications set forth in the fifth paragraph of this Section and if it is otherwise

satisfactory to the District, be the successor Escrow Agent under this Agreement without the execution or filing of any paper or any other act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 16. The Escrow Agent shall have no power or duty to invest any funds held under this Agreement except as provided in Section 6 hereof. The Escrow Agent shall have no power or duty to transfer or otherwise dispose of the moneys held hereunder except as provided in this Agreement.

SECTION 17. To the extent permitted by law, the District hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Escrow Agent and its successors, assigns, agents, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against, the Escrow Agent at any time (whether or not also indemnified against the same by the District or any other person under any other agreement or instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Agreement, the establishment hereunder of the Escrow Fund, the acceptance of the funds and securities deposited therein, the purchase of any securities to be purchased pursuant hereto, the retention of such securities or the proceeds thereof and any payment, transfer or other application of moneys or securities by the Escrow Agent in accordance with the provisions of this Agreement. The District shall not be required to indemnify the Escrow Agent against the Escrow Agent's own negligence or willful misconduct or the negligence or willful misconduct of the Escrow Agent's successors, assigns, agents and employees or the material breach by the Escrow Agent of the terms of this Agreement. In no event shall the District, the Corporation or the Escrow Agent be liable to any person by reason of the transactions contemplated hereby other than to each other as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Agreement and the resignation and removal of the Escrow Agent.

SECTION 18. The recitals of fact contained in the "Whereas" clauses herein shall be taken as the statements of the District or the Corporation, and the Escrow Agent assumes no responsibility for the correctness thereof. The Escrow Agent makes no representation as to the sufficiency of the securities to be purchased pursuant hereto and any uninvested moneys to accomplish the prepayment of the Series 2003 Installment Payments pursuant to the Series 2003 Installment Agreement or to the validity of this Agreement as to the District and Corporation and, except as otherwise provided herein, the Escrow Agent shall incur no liability in respect thereof. The Escrow Agent shall not be liable in connection with the performance of its duties under this Agreement except for its own negligence or willful misconduct, and the duties and obligations of the Escrow Agent shall be determined by the express provisions of this Agreement. Anything in this Agreement notwithstanding, in no event shall the Escrow Agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of such loss or damage and regardless of the form of action. The Escrow Agent may consult with counsel, who may or may not be counsel to the District, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or

omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering, or omitting any action under this Agreement, such matter (except the matters set forth herein as specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of nationally recognized bond counsel) may be deemed to be conclusively established by a written certification of the District. Whenever the Escrow Agent shall deem it necessary or desirable that a matter specifically requiring a certificate of a nationally recognized firm of independent certified public accountants or an opinion of nationally recognized bond counsel be proved or established prior to taking, suffering, or omitting any such action, such matter may be established only by such a certificate or such an opinion. The Escrow Agent shall incur no liability for losses arising from any investment made pursuant to this Agreement.

No provision of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers.

SECTION 19. This Agreement shall terminate upon the later of the payment of the prepayment price of all of the outstanding Series 2003 Certificates on the Prepayment Date in the amount set forth in Section 9 of this Agreement. Upon such termination, all moneys remaining in the Escrow Fund after payment of all fees and expenses of the Escrow Agent shall be transferred to the Escrow Agent, as trustee for deposit into the Bond Fund under the Indenture.

SECTION 20. This Agreement is made in the State of California under the Constitution and laws of the State of California and is to so be construed.

SECTION 21. If any one or more of the covenants or agreements provided in this Agreement on the part of the District, the Corporation or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

All the covenants, promises and agreements in this Agreement contained by or on behalf of the District or the Corporation or by or on behalf of the Escrow Agent shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

SECTION 22. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed by their duly authorized officers as of the date first-above written.

NIPOMO COMMUNITY SERVICES DISTRICT

By _____
General Manager

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.,
as Escrow Agent and Series 2003 Trustee

By _____
Authorized Officer

**Exhibit A
Escrow Requirement**

**Series 2003 Certificates
Prepayment Date
(_____, 2013)**

Series 2003 Installment Payments to be <u>Prepaid at Par</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total Due</u>
---	---------------------------------------	--------------------------------------	-------------------------

Exhibit B

Form of Notice of Prepayment

**NIPOMO COMMUNITY SERVICES DISTRICT
REVENUE CERTIFICATES OF PARTICIPATION
(PIPELINE AND STORAGE FACILITY PROJECT)
SERIES 2003**

NOTICE IS HEREBY GIVEN by the Nipomo Community Services District (the "District"), to the owners of the certificates listed below (the "Certificates"), caused to be executed and delivered pursuant to the Trust Agreement, dated as of May 1, 2003 (the "Trust Agreement"), by and among the District, the Nipomo Community Services District Public Facilities Corporation (the "Corporation"), and The Bank of New York Mellon Trust Company, N.A., as successor to BNY Western Trust Company, that the Certificates identified below representing undivided interests in the Installments Payments due under the Installment Purchase Agreement, dated as of May 1, 2003 (the "Installment Purchase Agreement"), by and between the District and the Corporation, have been scheduled for optional prepayment on _____, 2013 (the "Prepayment Date"), pursuant to the provisions of the Installment Purchase Agreement and the Trust Agreement.

The Certificates scheduled for prepayment have the maturity date, principal component amount, CUSIP Number and prepayment price as set forth below:

<u>Maturity</u> <u>September 1</u>	<u>Principal</u> <u>Component</u>	<u>CUSIP</u>	<u>Prepayment</u> <u>Price</u>
			100%
			100
			100
			100
			100
			100
			100

Owners of the Certificates should surrender said Certificates on the prepayment date at the following address:

By Mail, Hand or Overnight:

The Bank of New York Mellon Trust Company, N.A.
Corporate Trust Operations

Any questions may be directed to:

The Bank of New York Mellon Trust Company, N.A.

Corporate Trust Department

Telephone: _____

IMPORTANT NOTICE. Under the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (the "Act"), The Bank of New York Mellon Trust Company, N.A., as paying agent (the "Paying Agent"), may be obligated to withhold 28% of the prepayment price from any Certificate holder who has failed to furnish the Paying Agent with a valid taxpayer identification number and a certification that such Certificate holder is not subject to backup withholding under the Act. Certificate holders who wish to avoid the application of these provisions should submit a completed Form W-9 when presenting their Certificates. If you have any questions, please call The Bank of New York Mellon Trust Company, N.A. at _____.

Neither the District, the Corporation or the Paying Agent shall be held responsible for the selection or use of the CUSIP number, nor is any representation made as to its corrections indicated in this Notice of Prepayment. It is included solely for convenience of the owners of the Certificates.

Failure to receive this Notice of Prepayment or any immaterial defect contained herein shall not affect the sufficiency of the prepayment proceedings as provided in the Trust Agreement.

Dated: May __, 2013

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