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COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PUBLIC WORKS

AGREEMENT FOR DELIVERY OF RECYCLED WATER

This Agreement for Delivery of Recycled Water ("Agreement") is entered into this 18 th day of FEBRUARY, 2013, by and between the COUNTY OF SAN LUIS OBISPO ("COUNTY") and Earl May ("CONTRACTOR").

WHEREAS, COUNTY is constructing a wastewater collection system and treatment facility (hereafter, the "PROJECT") in the unincorporated community of Los Osos, California which will produce disinfected tertiary-treated non-potable recycled water ("RECYCLED WATER") that meets or exceeds all standards for the use of non-potable tertiary-treated water for use on agricultural commodities, including, without limitation, those standards set forth in Title 22 of the California Code of Regulations ("TITLE 22");

WHEREAS, a condition of the California Coastal Commission's Coastal Development Permit ("CDP") approving the PROJECT requires the COUNTY to dispose of, or provide to reusers, all RECYCLED WATER, after treatment necessary for the intended use, at locations within the Los Osos Groundwater Basin ("Basin") in a manner consistent with a Los Osos Basin Recycled Water Management Plan to be approved by the Commission;

WHEREAS, the COUNTY intends to dispose of, or provide to reusers, said RECYCLED WATER in a manner that will promote its beneficial reuse in a manner consistent with the CDP, TITLE 22, and any other applicable laws and regulations including, as to the CONTRACTOR, those laws and regulations for use of tertiary-treated water on agricultural commodities for irrigation purposes;

WHEREAS, the CONTRACTOR currently uses water pumped from the Basin and delivered by CONTRACTOR wells, to irrigate the property identified by APN Number 074-225-021 at 2181 Blue Heron View Lane, Los Osos, CA (PROPERTY), and the CONTRACTOR is willing to reduce such use of water by using the COUNTY's RECYCLED WATER from the PROJECT to irrigate said CONTRACTOR PROPERTY;

WHEREAS, the road perpendicular to Clark Valley Road that CONTRACTOR uses to access the CONTRACTOR PROPERTY is commonly known as Blue Heron View Lane;

WHEREAS, as part of the PROJECT, the COUNTY will be constructing and maintaining a RECYCLED WATER distribution system in the COUNTY right of way and within other County property rights; and

WHEREAS, the parties understand that no RECYCLED WATER shall be available for delivery under this Agreement until after the PROJECT is completed and fully operational.

NOW, THEREFORE, it is mutually agreed between the parties hereto, as follows:

1. **AMOUNT OF RECYCLED WATER** - Pursuant to the provisions set forth herein, the COUNTY will deliver to CONTRACTOR PROPERTY five (5) acre feet of RECYCLED WATER per calendar year for irrigation purposes meeting TITLE 22 standards, any standards for use of non-potable tertiary-treated water on agricultural lands for irrigation purposes, and any other applicable standards the COUNTY is required to meet under applicable law. The delivery of more than five (5) acre feet of RECYCLED WATER may be allowable if the RECYCLED WATER is available.

2. **CONSTRUCTION AND MAINTENANCE OF FACILITIES** - Prior to PROJECT completion, the COUNTY will construct and maintain at CONTRACTOR PROPERTY one connection point to the COUNTY's RECYCLED WATER distribution system. The connection point shall be at a mutually agreed location on the CONTRACTOR's PROPERTY at or near the edge of Blue Heron View Lane (hereafter, the "point of delivery").

   2.1. COUNTY will maintain all facilities offsite of the CONTRACTOR PROPERTY up to, and including, the point of delivery, while CONTRACTOR will maintain all irrigation and other facilities on the CONTRACTOR PROPERTY.

3. **DELIVERY AND METERING** - RECYCLED WATER will be furnished at the point of delivery at a reasonably constant pressure of at least sixty (60) pounds per square inch ("psi"). If a greater pressure than established in this section is required by CONTRACTOR, the cost of providing such greater pressure shall be borne by CONTRACTOR. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire and use of RECYCLED WATER to fight fire, earthquake or other catastrophe shall excuse COUNTY from this provision for such reasonable period of time as may be necessary to restore service. CONTRACTOR

may take the five (5) acre feet of RECYCLED WATER at any time during the calendar year.

3.1. COUNTY shall furnish, install, operate, and maintain at its own expense, at the point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of RECYCLED WATER delivered to CONTRACTOR. To the extent practical, the meter house or pit and all required devices and equipment shall be constructed so as to not unreasonably interfere with the use of the CONTRACTOR PROPERTY or the health, safety and welfare of CONTRACTOR. The metering equipment shall be read by the COUNTY at least quarterly for delivery verification purposes. An appropriate official of both the COUNTY and CONTRACTOR shall, at all reasonable times, have access to the meter for the purpose of verifying its readings.

3.2. CONTRACTOR hereby acknowledges that the COUNTY shall have the right to use Blue Heron View Lane for the purposes of constructing, operating, and maintaining those portions of the COUNTY's RECYCLED WATER distribution system related to the delivery of RECYCLED WATER to the point of delivery, including but not limited to pipes, metering equipment, and other facilities and appurtenances. CONTRACTOR also hereby authorizes the COUNTY to use for such purposes all portions of Blue Heron View Lane to the full extent of the CONTRACTOR's express or implied property interests in Blue Heron View Lane.

3.3. Any paved portion of Blue Heron View Lane that may be cut into by the COUNTY for purposes under this Agreement shall be repaired in accordance with COUNTY Public Improvement Standards.

4. **RECYCLED WATER RATES AND BILLING** – The rates for RECYCLED WATER shall be tiered as follows:

$100 per acre foot, for first five (5) acre feet
After first five (5) acre feet of RECYCLED WATER = $75 per acre foot

4.1. Quarterly, COUNTY shall provide CONTRACTOR with a billing statement setting forth the amount of RECYCLED WATER furnished to CONTRACTOR during the preceding three (3) month period. Each quarter the CONTRACTOR shall pay for the amount of RECYCLED WATER used at the rates set forth above.

4.2. CONTRACTOR shall pay COUNTY, no later than sixty (60) days after receipt of the billing statement, for the delivery and use of RECYCLED WATER.

4.3. The rate charged for RECYCLED WATER shall be based upon one acre foot (or 325,851 gallons) of RECYCLED WATER. CONTRACTOR shall pay COUNTY for the delivery and use of RECYCLED WATER. Any fractional amount of an acre foot shall be prorated and billed by the amount of RECYCLED WATER used, measured in gallons.

4.4. COUNTY reserves the right to increase the rate for RECYCLED WATER once every year to account for inflation. The COUNTY may only increase the rate by the annual Consumer Price Index for All Urban Consumers (CPI-U) for the Los Angeles-Riverside-Orange County region. The COUNTY may also at any time reduce the rates charged for RECYCLED WATER.

4.5. If the CONTRACTOR believes that the amount of RECYCLED WATER it has been billed for by the County for any quarter is inaccurate in any way, the CONTRACTOR shall so notify the COUNTY in writing within sixty (60) days of date of the bill in question. Unless the CONTRACTOR provides such written notification to the COUNTY within sixty (60) days, the amount of RECYCLED WATER delivered in said quarter shall be deemed to be an accurate amount that was based upon an accurate meter. The CONTRACTOR will not be able to claim any adjustments, credits, or offsets to any billing statement unless it provides the COUNTY in writing the reasons why the CONTRACTOR believes the reading is inaccurate within the prescribed sixty (60) day period.

4.6. Whenever the COUNTY receives a timely written notice from the CONTRACTOR pursuant to section 4.6 above, the COUNTY shall test and, if necessary, recalibrate the metering equipment. The COUNTY also agrees to test and, if necessary, recalibrate such metering equipment whenever requested by CONTRACTOR, but not less frequently than once every six (6) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate.

4.7. A reading of any meter disclosed by test to be inaccurate shall be corrected and the usage amounts since the last accurate meter reading will be adjusted if warranted. If any meter fails to register for any period, the amount of RECYCLED WATER furnished during such period shall be deemed to be the amount of RECYCLED WATER

delivered in the corresponding period immediately prior to the failure, unless COUNTY and CONTRACTOR agree upon a different amount.

5. **TERM** - The term of this Agreement shall be for ten (10) years from the effective date of this Agreement.

   5.1. The term of this Agreement shall be renewed automatically at the end of its term for an additional ten (10) year term unless a party has provided written notice of termination as provided in 5.2 below. This automatic renewal shall apply to both the initial ten (10) year term and each successive ten (10) year term. There is no limit as to how many times this extension may be granted, however, COUNTY reserves the right to renegotiate RECYCLED WATER rates and delivery amounts.

   5.2. After the Agreement has been in effect for five (5) years, either party may terminate this Agreement for any reason upon providing six (6) months written notice to the other party.

   5.3. In the event COUNTY cannot deliver RECYCLED WATER meeting the quality standards and price structure required by this Agreement to CONTRACTOR, and the COUNTY has not undertaken concrete steps towards curing such breach within sixty (60) days of receiving written notice thereof from the CONTRACTOR, CONTRACTOR at its sole option may terminate this Agreement.

6. **CONTRACTOR RIGHTS AND RESPONSIBILITES** - CONTRACTOR agrees to abide by all applicable laws governing the CONTRACTOR's use of the RECYCLED WATER that exist during the term of this Agreement, including but not limited to any applicable orders, rules or regulations of California Regional Water Quality Control Board, California Department of Public Health, the California Coastal Commission, or any other regulatory body regulating the use of RECYCLED WATER within the Basin, including, but not limited to, any orders, rules or regulations adopted by the COUNTY that are consistent with applicable laws.

   Nothing in this Agreement validates, invalidates or otherwise affects any rights the CONTRACTOR may have to (1) drill and operate water wells on CONTRACTOR PROPERTY; (2) enter into agreement(s) to allow third parties to drill and operate water wells on CONTRACTOR PROPERTY; or (3) to terminate any agreement(s) allowing a third party to drill and operate water wells on CONTRACTOR PROPERTY. Similarly, nothing in this Agreement excuses the CONTRACTOR or any third party from

complying with any applicable laws relating to any such rights, including obtaining any and all required permits and authorizations.

7. **INDEMNITY** – CONTRACTOR shall defend, indemnify and hold harmless the COUNTY, its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities or other losses that may be asserted by any person or entity, including CONTRACTOR, and that arise out of or are made in connection with the acts or omissions, relating to the performance of any duty, obligation, or work hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the COUNTY, its officers and employees. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the COUNTY, its officers and employees.

   The preceding paragraph applies to any theory of recovery relating to said act or omission by the CONTRACTOR, or its agents, employees, or other independent contractors directly responsible to CONTRACTOR, including, but not limited to the following:

   1. Violation of statute, ordinance, or regulation.

   2. Professional malpractice.

   3. Willful, intentional or other wrongful acts, or failures to act.

   4. Negligence or recklessness.

   5. Furnishing of defective or dangerous products.

   6. Premises liability.

   7. Strict Liability.

   8. Inverse condemnation.

   9. Violation of civil rights.

   10. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting payroll taxes, when the CONTRACTOR is not an independent contractor.

It is the intent of the parties to provide the COUNTY the fullest indemnification, defense, and hold harmless rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this contract and the remaining language shall be given full force and effect.

8. **COMPLETION OF PROJECT AS CONDITIONED PRECEDENT** – The completion of the PROJECT by the COUNTY is a conditioned precedent to any obligation of the COUNTY or CONTRACTOR under this Agreement. If PROJECT is not completed within seven (7) years, this Agreement shall be considered null and void.

9. **TRANSFERABILITY** – The COUNTY may transfer or assign this Agreement to any public entity or agency. Subject to COUNTY Board of Supervisor approval (which shall not be unreasonably withheld) the CONTRACTOR may transfer or assign this Agreement to any other entity that owns or operates CONTRACTOR PROPERTY. The COUNTY may transfer or assign this Agreement to any entity or agency. Any such transfer or assignment by COUNTY or CONTRACTOR may require additional provisions or amendments before being transferred or assigned.

10. **CORRESPONDENCE** - Any and all correspondence regarding specific requirements of this Agreement or for general communication between COUNTY and CONTRACTOR shall be mailed to the addresses and individuals below:

    County of San Luis Obispo
    Attn: Director of Public Works
    County Government Center, Room 206
    San Luis Obispo, CA 93408

    Earl May
    2181 Blue Heron View Lane
    Los Osos, CA 93402

11. **JURISDICTION AND VENUE** – Any dispute that arises under or relates to this Agreement shall be resolved in the Superior Court of the State of California. In any such litigation, COUNTY and CONTRACTOR shall each be responsible for its respective attorney's fees and costs.

12. **CONSTRUCTION** - Headings in this Agreement are for convenience only, and shall have no bearing on interpreting the provisions hereof. If any provisions of this Agreement are held by a court to be void or unenforceable, the same shall in no way affect the other provisions of this

Agreement, the application of any such provision in another circumstance, or the validity or enforceability of this Agreement as a whole. It is the parties' intention to comply with all applicable laws and regulations that relate to the parties obligations under this Agreement, and all such applicable laws and regulations are incorporated herein by reference, and take precedent over any inconsistent language otherwise contained herein. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the court shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

13. **LIMITATION OF DAMAGES** - Under no circumstances shall the COUNTY be liable to the CONTRACTOR for any amounts the CONTRACTOR has to pay for water (either potable or non-potable) from a source other than the COUNTY that is above the amounts it would have paid the COUNTY under this Agreement. It is the intent of the parties that the COUNTY shall not be liable to the CONTRACTOR for any additional water charges the CONTRACTOR pays in the event the COUNTY fails to deliver water to the CONTRACTOR that meets the requirements of this Agreement. Nothing in this Agreement precludes the CONTRACTOR from recovering from the COUNTY any other types of damages otherwise legally recoverable incurred by the CONTRACTOR as a result of any breach of this Agreement by the COUNTY, including but not limited to a failure by the COUNTY to deliver RECYCLED WATER to the CONTRACTOR that meets the requirements of this Agreement.

14. **INSURANCE** - CONTRACTOR retains all responsibility and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the PROPERTY, including the maintenance of adequate comprehensive general liability insurance coverage. CONTRACTOR shall keep the PROPERTY free of any liens arising out of the work performed for, materials furnished to, or obligations incurred by CONTRACTOR. The CONTRACTORS shall name COUNTY, its officers, agents, and employees as additional insured parties for the comprehensive general liability insurance and is responsible for guaranteeing that a copy the certificate is submitted to the Public Works Department within thirty (30) days of Agreement signature.

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have executed this Agreement the date and year first above written.

COUNTY OF SAN LUIS OBISPO

BY: _____ DATED _____
Chairperson of the Board of Supervisors
County of San Luis Obispo
State of California

ATTEST:

BY: _____ DATED _____
County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo
State of California

APPROVED AS TO FORM AND LEGAL EFFECT:
RITA NEAL, County Counsel

BY: _____ DATED 3/1/2013
Deputy County Counsel

COUNTY OF SAN LUIS OBISPO PUBLIC WORKS DEPARTMENT

BY: _____ DATED 2/24/2013
Director of Public Works

CONTRACTOR

BY: _____ DATED 2/18/2013