

**DROUGHT BUFFER WATER AGREEMENT BETWEEN
SAN LUIS OBISPO COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT AND
AVILA BEACH COMMUNITY SERVICES DISTRICT**

This agreement is made this _____ day of _____, _____ by and between the San Luis Obispo County Flood Control and Water Conservation District, hereinafter referred to as "District," and the Avila Beach Community Services District, hereinafter referred to as "Contractor."

WITNESSETH:

WHEREAS, the District and the State of California, on February 26, 1963, entered into an agreement entitled "Water Supply Contract Between the State of California Department of Water Resources and San Luis Obispo County Flood Control and Water Conservation District," which agreement has been amended from time to time, whereby the State of California will furnish a water supply to the District; and

WHEREAS, the District and the Contractor on May 15, 1992, entered into an agreement entitled "Water Supply Agreement between San Luis Obispo County Flood Control and Water Conservation District and Avila Beach Community Services District," whereby the District will furnish a water supply to the Contractor; and

WHEREAS, there may occur from time to time a shortage or shortages in the quantity of project water available to the District and thus to the Contractor; and

WHEREAS, Contractor has requested an increased allocation of project water to enhance deliveries in such times of shortages.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED BY DISTRICT AND CONTRACTOR AS FOLLOWS:

Article 1. Definitions.

All terms shall have the same definitions as defined in the said Water Supply Agreement. The following terms shall be as defined.

(a) "District's Total Drought Buffer Water" shall mean the total amount of: (i) District's Project Water which District allocates to the Contractor by this agreement, plus (ii) the amounts of District's Project Water which District allocates to all Other Drought Buffer Water Contractors.

(b) "Contractor's Drought Buffer Water" shall mean the District's Project Water made available to Contractor by this agreement.

(c) "Other Drought Buffer Water Contractor" shall mean any other public water distribution agency, having the power to do so, which enters into an agreement with the District

Article 5. Relationship to Water Supply Agreement.

Contractor acknowledges and agrees that this agreement is subject to the obligations and limitations imposed on District by the Water Supply Agreement and all existing and future amendments to the Water Supply Agreement and is intended to be in conformance and harmony with it. The Contractor hereby expressly agrees to the provisions of the Water Supply Agreement and all existing and future amendments thereto and further expressly agrees that nothing in this agreement shall be deemed to require the District to perform an obligation in conflict with the Water Supply Agreement. Contractor further agrees that District's rights to enter into amendments to the Water Supply Agreement is not, and shall not be restricted or impaired, in any way, by this agreement.

Article 6. Relationship to Water Treatment Agreement.

Contractor acknowledges and agrees that this agreement is subject to the obligations and limitations imposed on District by the Water Treatment Agreement and all existing and future amendments to the Water Treatment Agreement and is intended to be in conformance and harmony with it. The Contractor hereby expressly agrees to the provisions of the Water Treatment Agreement and all existing and future amendments thereto and further expressly agrees that nothing in this agreement shall be deemed to require the District to perform an obligation in conflict with the Water Treatment Agreement. Contractor further agrees that District's rights to enter into amendments to the Water Treatment Agreement is not, and shall not be restricted or impaired, in any way, by this agreement.

All water delivered to Contractor by the terms of this agreement will be subject to the terms and conditions of the Water Treatment Agreement including responsibility to pay for treatment of any Drought Buffer Water that is delivered to Contractor.

Article 7. Service Agreement.

Parties agree that this is an agreement for service, and only contractual rights are created by this agreement, and that it does not create an entitlement to, nor does it convey to the Contractor any property right or interest in District's Project Water.

Article 8. Drought Buffer Water Amount.

Commencing with the first January 1 after the effective date of this agreement, the District will make available to Contractor 100 acre feet per year subject to the limitations in Article 10. below of District's Project Water which amount is referred to in this agreement as the Contractor's Drought Buffer Water Amount.

Article 9. Reduction of Deliveries.

If there are temporary or permanent water shortages, as defined in Article 10 of the Water Supply Agreement, any deliveries to the Contractor under this agreement will be reduced. The Contractor's Drought Buffer Water Amount will be reduced by the same percentage that the supply of Contractor's Water Service Amount is reduced.

setting forth the Contractor's Annual Drought Buffer Obligation, whichever is later, the Contractor shall pay to the District sixty percent (60%) of its Annual Drought Buffer Obligation. The Contractor shall pay the remainder of such Annual Drought Buffer Obligation on or before July 1 of that year.

(c) Adjustments in Contractor's Annual Drought Buffer Obligation.

At the end of each year, the Contractor's Annual Drought Buffer Obligation shall be recalculated by substituting the actual charges made by the State Department of Water Resources to the District for the Variable Operation, Maintenance, Power, and Replacement components of said Delta Water Charge and Transportation Charge, the Off-Aqueduct Power Facilities, the Revenue Bond Surcharge and Other Charges for the District's estimates of these charges and the actual quantities of water delivered for any scheduled quantities used in calculating the Contractor's Annual Drought Buffer Obligation pursuant to the provisions of subdivision (a) of this Article. Any adjustment in the Contractor's payments required to reflect this recalculation shall be made in the Contractor's first payment to District due after said recalculation. Interest rates used in the computation of these adjustments shall be the same as those used by the State Department of Water Resources in the adjustments made for the District's obligation for that year for District's Project Water.

(e) Reduced Deliveries.

Upon reasonable notice to the District that the Contractor will not take all of Contractor's Drought Buffer Water Amount for any year, the District shall adjust the payment required by the Contractor for such water as provided in Article 11(c), above. To the extent that deliveries so reduced are delivered to Other Water Supply Subcontractors or other State Water Contractors, in accordance with the Master Contract, the District may reduce the Contractor's Annual Drought Buffer Obligation by the same amount that any component costs that are paid by the other Water Supply Subcontractor and/or State Water Contractor's who received the water.

Article 12. Default; Suspension of Service.

In the event of any default by the Contractor in the payment of any money required to be paid to the District hereunder, the District in its discretion may suspend delivery of Contractor's Drought Buffer Water during the period when the Contractor is delinquent in its payment for or obligations due to the District under the terms of this agreement; provided, that during any such period of delinquency or suspension the Contractor shall remain obligated to make all payments required under this agreement. Action taken pursuant to this Article shall not deprive the District of or limit any remedy provided by this agreement or by law for the recovery of money due or which may become due under this agreement.

Article 13. Interest on Overdue Payments.

Upon each charge to be paid by the Contractor to the District pursuant to this agreement which remains unpaid after the same shall have become due and payable, interest shall accrue at an annual rate equal to that earned by the District on its funds invested through the County of San Luis Obispo by the County Treasurer calculated monthly on the amount of such delinquent payment from and after the due date when the same becomes due until paid, and

Article 18. Opinions and Determinations.

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 be and shall never be construed as permitting such opinion, judgment, approval, review or determination to be arbitrary, capricious, or unreasonable.

Article 19. Waiver of Rights.

Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this agreement, shall not be deemed to be a waiver with respect to any other default or matter.

Article 20. Notices.

All notices that are required either expressly or by implication to be given by either party to the other under this agreement shall be signed for the District and for the Contractor by such officers as they may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been given and delivered if delivered personally or if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown on the signature page of this agreement.

Article 21. Assignment.

The provisions of this agreement shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this agreement, or any part hereof or interest herein, shall be valid until and unless approved by the District.

Article 22. Contractor to Keep Books, Records and Other Data.

The Contractor shall establish and maintain accounts and other books and records sufficient to enable the District to furnish to the State of California reports and statements, to such extent and in such manner and form as may be prescribed by the District and the State of California pursuant to the terms of this agreement, the Master Contract and the Water Supply Agreement. Reports required to be furnished by the Contractor to the District pursuant to the terms of said agreements shall be furnished to the District within the period of time specified therefor.

Article 23. District to Keep Books, Records and Other Data.

The District shall establish and maintain accounts and other books and records sufficient to enable Contractor to determine the use and disposition of all monies paid by Contractor to District pursuant to this agreement.

Article 24. Inspection of Books and Records.

The officers or agents of the Contractor shall have full and free access at all reasonable times to the account books and official records of the District insofar as the same pertain to the

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates shown below.

SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: _____ Date: _____
Chairperson of the Board of Supervisors

AVILA BEACH COMMUNITY SERVICES DISTRICT

By: _____ Date: _____

ATTEST:

By: _____ Date: _____
County Clerk and Ex-Officio Clerk
Board of Supervisors
County of San Luis Obispo
State of California

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By:  _____ Date: April 19, 2016
Deputy County Counsel

MAILING ADDRESSES:

SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

SLO CO FC&WCD
County Government Center, Room 206
San Luis Obispo CA 93408

AVILA BEACH COMMUNITY SERVICES DISTRICT

Avila Beach Community Services District
Post Office Box 309
Avila Beach, CA 93424

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates shown below.

SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: _____ Date: _____
Chairperson of the Board of Supervisors

AVILA BEACH COMMUNITY SERVICES DISTRICT

By: Peter P. Kelly Date: 5/24/16

ATTEST:

By: _____ Date: _____
County Clerk and Ex-Officio Clerk
Board of Supervisors
County of San Luis Obispo
State of California

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: [Signature] Date: April 19, 2016
Deputy County Counsel

MAILING ADDRESSES:

SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

SLO CO FC&WCD
County Government Center, Room 206
San Luis Obispo CA 93408

AVILA BEACH COMMUNITY SERVICES DISTRICT

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