

**AMENDMENT NO. 1 TO
WATER TREATMENT AGREEMENT**

This Amendment No. 1 to Water Treatment Agreement ("Amendment No. 1") is made and entered into on this ____ day of _____, 2020 by and between the County of San Luis Obispo ("County"), acting on behalf of County Service Area No. 10 ("CSA 10"), including CSA 10, Zone A ("CSA 10A"), Morro Rock Mutual Water Company, a California corporation ("Morro Rock Mutual") and Cayucos Beach Mutual Water Company, a California corporation and successor in interest to Paso Robles Beach Water Association ("Cayucos Beach") (each a "Party" and collectively the "Parties;" CSA 10A, Morro Rock Mutual and Cayucos Beach are also collectively referred to as the "Cayucos Water Purveyors").

RECITALS

WHEREAS, on November 5, 1996, CSA 10, Morro Rock Mutual and Paso Robles Beach Water Association entered into a Water Treatment Agreement ("Treatment Agreement"); and

WHEREAS, on November 18, 2016, the Board of Directors of the Paso Robles Beach Water Association voted to change the name of said corporation to the Cayucos Beach Mutual Water Company; and

WHEREAS, the Treatment Agreement sets forth the manner in which water treatment facilities ("Water Treatment Facilities") are to be acquired, constructed, financed, paid for, owned, operated, maintained and repaired for the purpose of treating and delivering Whale Rock Reservoir water to the Cayucos Water Purveyors; and

WHEREAS, the annual treatment capacity of the Water Treatment Facilities is 1,534 acre-feet; and

WHEREAS, Subsection 3(g) of the Treatment Agreement provides for the potential use of available treatment capacity at the Water Treatment Facilities for the treatment of water that is in addition to the Water Allotments set forth in Subsections 1(l), 1(m) and 1(n) of the Treatment Agreement pursuant to a future amendment to the Treatment Agreement that satisfies certain conditions; and

WHEREAS, the Cayucos Water Purveyors have determined that they may, from time to time, desire to dedicate a portion of the Water Treatment Facilities' available annual treatment capacity such that said capacity can be utilized by third parties within the community of Cayucos pursuant to the terms of the Treatment Agreement as amended herein; and

WHEREAS, based on the foregoing, the Parties desire to amend the Treatment Agreement consistent with Subsection 3(g) of the Treatment Agreement to establish the process by which any such dedication shall take place.

NOW, THEREFORE, the Parties hereto agree that the Treatment Agreement shall be amended as follows:

1. All references in the Treatment Agreement to "Paso Robles Beach Water Association" and "Paso Robles Beach" shall be replaced with "Cayucos Beach Mutual Water Company" and "Cayucos Beach," respectively.
2. Section 1 of the Treatment Agreement entitled "Definitions" is hereby amended as follows:
 - a) Subsection 1(p) is hereby added and shall read: "Third Party shall mean any individual, entity, organization or agency, other than the Parties hereto, which contracts with the County acting on behalf of CSA 10 for dedication of Treatment Capacity pursuant to Section 16 of this Agreement."
 - b) Subsection 1(q) is hereby added and shall read: "Treatment Capacity shall mean the annual treatment capacity of the Water Treatment Facilities and which is 1,534 acre-feet."
 - c) Subsection 1(r) is hereby added and shall read: "Water Treatment Capacity Agreement shall mean a separate written agreement, including any amendment thereto, between the County acting on behalf of CSA 10 and any Third Party for the purchase and sale of Treatment Capacity."
3. Section 3 of the Treatment Agreement entitled "Treatment and Delivery of Water" is hereby amended as follows:
 - a) Subsection 3(a)(v) is hereby added and shall read: "any Third-Party Water Allotment, as defined and provided for in an approved Water Treatment Capacity Agreement."
 - b) Subsection 3(g)(iv) is hereby added and shall read: "Any amendment to this Agreement providing for the treatment of supplemental water at the Water Treatment Facilities shall be consistent with any approved Water Treatment Capacity Agreement."
4. Section 16 entitled "Conditions for Contracting for Dedication of Treatment Capacity to Third Parties" is hereby added to the Treatment Agreement and shall read as follows: "Section 16 Conditions for Contracting for Dedication of Treatment Capacity to Third Parties."
 - (a) Cayucos Water Purveyors' Rights to Transfer Treatment Capacity. No Cayucos Water Purveyor shall have the right to transfer or dedicate any portion of the Treatment Capacity to a third party except as provided in this Section 16.
 - (b) Water Treatment Capacity Agreements. The terms and conditions under which Treatment Capacity will be dedicated to the treatment of a third party's water shall be established by a Water Treatment Capacity Agreement that is in conformance with the terms and conditions hereof.

- (c) Unanimous Approval of Water Treatment Capacity Agreements. No Water Treatment Capacity Agreement shall be effective unless and until each Cayucos Water Purveyor consents in writing to said Water Treatment Capacity Agreement.
- (d) Third Party Water Allotment. For purposes of establishing the Treatment Capacity dedicated to the treatment of a Third Party's water and the terms and conditions of such dedication, including, but not limited to, the Third Party's proportionate share as described below, each Water Treatment Capacity Agreement shall establish and define a water allotment for the Third Party ("Third Party Water Allotment").
- (e) Proportionate Share. For purposes of implementing and applying to a Third Party the provisions of this Agreement that rely on a Party's "Share" or that require that a determination be made on a "pro rata" or "proportional" basis, including, without limitation, Section 7, and notwithstanding Section 3(g) of this Agreement which the Parties agree applies to Treatment Capacity as defined above (i.e. to *annual* treatment capacity), each Water Treatment Capacity Agreement shall establish and define a share attributable to the Third Party ("Third Party Share") and shall revise the Shares of the Cayucos Water Purveyors set forth in Subsections 1(b), 1(c) and 1(d) of this Agreement and any other Third Party Share established and defined pursuant a Water Treatment Capacity Agreement in proportion to the ratio of each Party or Third Party Allotment to all existing Allotments.
- (f) Allocation of Costs and Expenses pursuant to Section 7. Each Water Treatment Capacity Agreement shall allocate a portion of all costs and expenses incurred by CSA 10 for the Fiscal Year to the Third Party consistent with and in the manner described in Section 7 of this Agreement. For purposes of allocating the Fixed Water Treatment Facilities Costs incurred by CSA 10 for the Fiscal Year among the Third Party, the Cayucos Water Purveyors and any other Third Party pursuant to Subsection 7(a) of this Agreement, CSA 10 shall utilize the shares calculated pursuant to Subsection 16(e) above; and for purposes of allocating Fixed O&M Costs and Variable O&M Costs incurred by CSA 10 for the Fiscal Year among the Third Party, the Cayucos Water Purveyors and any other Third Party pursuant to Subsections 7(b) and (c) of this Agreement, CSA 10 shall utilize the ratio of the amount of water treated by CSA 10 on behalf of the Third Party, each of the Cayucos Water Purveyors and any other Third Party to the total amount of water treated by CSA 10 pursuant to this Agreement and each Water Treatment Capacity Agreement. Each Water Treatment Capacity Agreement shall further require that the Third Party pay its allocation of costs and expenses as described herein in accordance with the time and method of payment outlined in Section 9 of this Agreement.

- (g) Buy-In for Purchase of Treatment Capacity. In addition to requiring the Third Party to pay its allocation of costs and expenses as described in Subsection 16(f) above, each Water Treatment Capacity Agreement shall require the Third Party to pay any and all appropriate buy-in fees and charges as determined by CSA 10 and the Cayucos Water Purveyors (“Third Party Buy-in”). Said Third Party Buy-in shall be calculated as of the Effective Date (defined in Subsection 16(h) below) and shall include, without limitation, a payment based on the Third-Party Share of the following costs, expenses and the balance on the safe drinking water loan identified below:
- i. cash reserve balance;
 - ii. fixed assets including total Water Treatment Facilities construction costs as of the completion of construction on or about June 1997 and capital improvements costs as recorded and capitalized by the San Luis Obispo Auditor-Controller-Tax Collector-Public Administrator;
 - iii. interest paid on the loan issued to CSA 10 in the amount of \$3,437,630 by the State of California Department of Water Resources on November 7, 1995 (Loan no. E53317) and commonly known as the “safe drinking water loan”.
- (h) Effective Date. Each Water Treatment Capacity Agreement shall provide that the effective date of the Third Party Buy-in (“Effective Date”) shall be the earlier of the first May 15 or the first November 15 after the date that the Water Treatment Capacity Agreement has been signed by the Third Party and CSA 10 and consented to by the Cayucos Water Purveyors in accordance with Subsection 16(c) above, whichever occurs first; and full payment of the Third Party Buy-in must be made not less than thirty (30) days prior to the Effective Date.
- (i) Apportionment of Buy-in Payment. The proceeds from the Buy-in shall be apportioned among the Cayucos Water Purveyors by CSA 10 in accordance with the cost and expense allocation methodology set forth in Subsection 16(e) above and shall be distributed in accordance with Section 8 of this Agreement.
- (j) Additional Requirements. Nothing contained in this Section 16, including those provisions related to the required contents of each Water Treatment Capacity Agreement, shall be construed to prevent CSA 10 from including additional provisions in a Water Treatment Capacity Agreement, including provisions that place additional terms and conditions on the dedication of Treatment Capacity to a Third Party.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the dates set forth below with the prior approval of their respective governing bodies.

COUNTY OF SAN LUIS OBISPO, ACTING ON BEHALF
OF COUNTY SERVICE AREA NO. 10 AND 10A

ATTEST:

County Clerk and Ex-officio Clerk
of the Board of Supervisors of the
County of San Luis Obispo

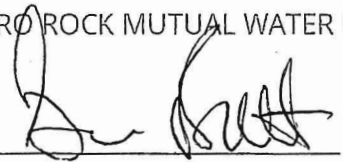
By: _____
Chairperson of the Board of Supervisors
Acting on Behalf of County Service
Area No. 10 and 10A

By: _____
Deputy Clerk

Date: _____

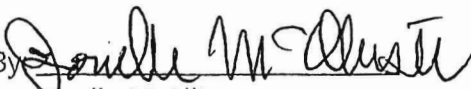
Date: _____

MORRO ROCK MUTUAL WATER COMPANY

By: 
George Brett
President, Board of Directors

Date: 11/13/2019

CAYUCOS BEACH MUTUAL WATER COMPANY

By: 
Jonelle McAllister
President, Board of Directors

Date: 11/13/2019

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: 
Deputy County Counsel

Date: 12/12/2019