

**DROUGHT BUFFER WATER AGREEMENT BETWEEN  
SAN LUIS OBISPO COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT AND  
CITY OF MORRO BAY**

This agreement, made this \_\_\_\_\_ day of OCT 12 1999, \_\_\_\_\_ by and between the San Luis Obispo County Flood Control and Water Conservation District, hereinafter referred to as "District", and City of Morro Bay, hereinafter referred to as the "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 27, 1992, entered into an agreement entitled "Water Supply Agreement between San Luis Obispo County Flood Control and Water Conservation District and City of Morro Bay," 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 and which other agreement is substantially similar to this agreement except as to water amounts.

(d) "Master Contract" shall mean that agreement entitled "Water Supply Contract Between the State of California Department of Water Resources and the San Luis Obispo County Flood Control and Water Conservation District," dated February 26, 1963, and all amendments thereto.

(e) "Water Supply Agreement" shall mean that "Water Supply Agreement between San Luis Obispo County Flood Control and Water Conservation District and City of Morro Bay" dated May 27, 1992 and all amendments thereto.

(f) "Water Treatment Agreement" shall mean that "Water Treatment and Local Facilities Agreement" dated May 27, 1992 and all amendments thereto.

(g) "Contractor's Water Service Amount" shall mean that water made available to Contractor per Article 6 of the Water Supply Agreement.

(h) "Other Water Supply Subcontractor" shall mean any other public water distribution agency, having the power to do so, who enters into an agreement with the District which agreement is substantially similar to the Water Supply Agreement.

#### Article 2. Term.

This agreement shall become effective on the date first above written and shall remain in effect throughout the term provided by Article 2 of the Water Supply Agreement; provided, that whenever the Water Supply Agreement is terminated or suspended in the manner and for a cause specified in the Water Supply Agreement, this agreement shall also be terminated or suspended.

#### Article 3. Option for Continued Service.

By written notice delivered to District at least nine (9) months prior to the expiration of the term of this agreement, Contractor may elect to receive continued service after expiration of said term and under the conditions set forth in Article 3 of the Water Supply Agreement.

#### Article 4. Relationship to Master Contract.

Contractor acknowledges and agrees that this agreement is subject to the obligations and limitations imposed on District by the Master Contract and all existing and future amendments to the Master Contract and is intended to be in conformance and harmony with it. The Contractor hereby expressly agrees to the provisions of the Master Contract 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 Master Contract. Contractor further agrees that District's rights to enter into amendments to the Master Contract is not, and shall not be restricted or impaired, in any way, by this agreement.

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 year after completion of this agreement, the District will make available to Contractor 1313 acre feet 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.

Article 10. Limitations on Delivery of Drought Buffer Water

Contractor's Drought Buffer Water shall be delivered to Contractor under this agreement only in those years that there are water shortages as defined in Article 10 of the Water Supply Agreement. The availability of Contractor's Drought Buffer Water shall not increase any of the delivery limitations defined in Article 8 of the Water Supply Agreement.

Article 11. Payment for Water Service.

(a) The Contractor shall pay to District each year the appropriate/proportionate share of each of the following cost components. The aggregate of these costs will be the Contractor's Annual Drought Buffer Obligation

(1) Delta Water Charge Reimbursement will be computed by multiplying the Delta Water rate for that year times the Contractor's Drought Buffer Water Amount

(2) Transportation Charges will be the sum of the following components:

(i) Capital Cost Component reimbursement will be computed by multiplying the District's annual cost per acre foot for the District's Total Drought Buffer Water times the Contractor's Drought Buffer Water Amount.

(ii) Transportation Minimum Operation Maintenance, Power & Replacement Component (Minimum OMP & R) reimbursement will be computed by multiplying the District's annual cost per acre foot for the District's Total Drought Buffer Water for Minimum OMP & R times the Contractor's Drought Buffer Water Amount.

(iii) Variable Operation Maintenance Power & Replacement Charge (Variable OMP & R) will be computed by multiplying the District's annual Variable OMP & R cost per acre foot of delivered water times the amount of Contractor's Drought Buffer Water delivered to the Contractor.

(iv) Off-Aqueduct Power Facilities Reimbursement will be computed by multiplying the District's annual Off Aqueduct Power Facilities cost per acre foot of delivered water times the amount of Contractor's Drought Buffer Water delivered to the Contractor.

(3) Revenue Bond Surcharge reimbursement will be computed by multiplying the District's annual cost per acre foot for the District's Total Drought Buffer Water times the Contractor's Drought Buffer Water Amount.

(4) Other Charges such as may be charged per the Master Contract, Water Supply Agreement, and Water Treatment Agreement from time to time.

(b) Time of Payment.

Commencing with the first year after completion of this agreement, the Contractor shall pay to the District, either within 10 days after receipt by it of an annual statement from the District setting forth the Contractor's Annual Drought Buffer Obligation or on January 1 of each year, whichever is later, 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.

## Article 14. Obligation of Contractor to Make Payment

### (a) Character of Obligation.

The obligation of the Contractor arising out of or pursuant or incidental to this agreement including, without limiting the generality of the foregoing, the obligations of the Contractor to pay to the District the sums becoming due the District for water furnished hereunder, shall constitute a general obligation of the Contractor and the Contractor shall use all the powers and resources available to it under the law to collect the funds necessary for and to pay its obligations to the District under this contract including levying and collecting all necessary taxes, assessments and charges. The Contractor as a whole is obligated to pay to the District the payments becoming due under this agreement, notwithstanding any individual default by its water users, constituents or others in the payment to the Contractor of assessments, tolls, or other charges levied by the Contractor.

### (b) Refusal of Water Does Not Affect Obligation.

The Contractor's failure or refusal to accept delivery of Contractor's Drought Buffer Water under this agreement shall in no way relieve the Contractor of its obligation to make payments to the District except to the extent provided under Article 11 (e) hereof.

## Article 15. Area Served by Contractor

Contractor's Drought Buffer Water delivered to the Contractor pursuant to this agreement shall not be sold or otherwise disposed of by the Contractor for use outside the District.

## Article 16. Remedies not Exclusive.

The use by either party of any remedy specified herein for the enforcement of this agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

## Article 17. Amendments.

This agreement may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law or inconsistent with the provisions of the Master Contract, the Water Supply Agreement, or the Water Treatment Agreement. The District shall make available to the Contractor at all times during the normal hours of business at the District offices for the Contractor's inspection copies of all agreements now or hereafter executed by the District with all other Contractors or the State of California and of any amendments thereof.

## 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 25. Good Faith.

Contractor and District shall each act in good faith in performing their respective obligations as set forth in this agreement.

Article 26. Water Rights.

No provision of this agreement shall be considered to be in derogation of any existing water right(s) or claim(s) to water right(s) by or any agreements concerning water rights of any party hereto, including but not limited to overlying, prescriptive, appropriative, riparian, or pueblo rights, nor shall it be construed to result in any relinquishment or adjustment of any such water rights or claims thereto; and, in particular, no provision of this agreement shall be considered to diminish, reduce or affect, in any way, any party's rights pursuant to California Government Code Section 1005.1 and/or Section 1005.2.

Article 27. Joint Powers Agreement and/or Authority.

No provision of this agreement is intended to prohibit the District and Contractor, in conjunction with other contractors, from entering into a joint powers agreement, or from forming a joint powers authority, concerning any subject matter contained in this agreement provided, however, that it is understood that this paragraph shall not be construed as requiring District or Contractor, or any other contractor, to enter into any such joint powers agreement or form such joint powers authority.

Article 28. Agreements to be Uniform.

Agreements executed by the District with other agencies shall be substantially similar to this agreement with respect to basic terms and conditions, and shall differ primarily with respect to quantities and payment amounts.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first above written.

ATTEST:

SAN LUIS OBISPO COUNTY  
FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT

By JULIE L. RODEWALD

By NARBY L. SVITT

ATTEST: CHERIE ANSPUNG  
Deputy Clerk

CONTRACTOR:

By Bridgett Bauer

By Rodger Anderson  
RODGER ANDERSON, MAYOR

MAILING ADDRESSES

DISTRICT:  
SLO CO FC&WCD  
County Government Center, Room 207  
San Luis Obispo CA 93408

CONTRACTOR:

City of Morro Bay  
595 Harbor Street  
Morro Bay CA 93442

**AMENDMENT NO. 1 TO  
DROUGHT BUFFER WATER AGREEMENT BETWEEN  
SAN LUIS OBISPO COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT AND  
CITY OF MORRO BAY**

This agreement, made this 7 day of January, 2003 by and between the San Luis Obispo County Flood Control and Water Conservation District, hereinafter referred to as "District", and City of Morro Bay, hereinafter referred to as the "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 27, 1992, entered into an agreement entitled "Water Supply Agreement between San Luis Obispo County Flood Control and Water Conservation District and City of Morro Bay," 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

**WHEREAS**, the District and the Contractor on October 12, 1999, entered into an agreement entitled "Drought Buffer Water Agreement between San Luis Obispo County Flood Control and Water Conservation District and City of Morro Bay," whereby the District will increase allocation of project water to enhance deliveries in such times of shortages; and

**WHEREAS**, Contractor has requested a further increased allocation of drought buffer water to further enhance deliveries in such times of shortages.

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

The amount of "1313 acre-feet of District's Project Water" named in Article 8: Drought Buffer Water Amount of "Drought Buffer Water Agreement between San Luis Obispo County Flood Control and Water Conservation District and City of Morro Bay," dated October 12, 1999, shall be amended to read an amount of "2,290 acre-feet of District's Project Water."

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first above written.

ATTEST:

SAN LUIS OBISPO COUNTY  
FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT

By JULIE L. RODEWALD

By Noel King  
NOEL KING, DIRECTOR OF PUBLIC WORKS

County Clerk and Ex-Officio Clerk, Board of Supervisors  
County of San Luis Obispo, State of California

ATTEST:

CITY OF MORRO BAY

By Chris Cupress  
Deputy Clerk

By Bridgett Bauer

By [Signature]

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.  
County Counsel

By: [Signature]  
Deputy County Counsel

Dated: 7/5/02