

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

This agreement, made this 15th day of December, 2009 by and between the San Luis Obispo County Flood Control and Water Conservation District, hereinafter referred to as "District", and City of Pismo Beach, 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 Pismo Beach," 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 Pismo Beach" 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 1240 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.

(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 the Contractor hereby agrees to pay such interest; provided, that no interest shall be charged to or be paid by the Agency unless such delinquency continues for more than (30) days. In addition, Contractor shall reimburse District for all of District's costs, expenses, and personnel costs and other overhead incurred in the collection of any past due payments owed by Contractor to District.

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 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 matters and things provided for in this agreement, with the right at any time during office hours to make copies thereof, and the representatives of the District and the State of California shall have the same rights in respect to the account books and records of the Contractor.

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 Water 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 Wandy Curren
Deputy Clerk

By [Signature]

ATTEST:

CONTRACTOR:

By Elaine Cya

By Ham. P. [Signature] 3 December, 2009

MAILING ADDRESSES

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

CONTRACTOR:

City of Pismo Beach
760 Mattie Road
Pismo Beach CA 93449-2056

**APPROVED AS TO FORM
AND LEGAL EFFECT**

**WARREN R. JENSEN
COUNTY COUNSEL
SAN LUIS OBISPO COUNTY**

By [Signature]
Deputy County Counsel

Date 11/24/09

Approved As To Form

Dave Fleishman, City Attorney

[Signature]
3 DECEMBER 2009