



October 7, 2021

TO: LOCSO Board of Directors

FROM: Ron Munds, General Manager

SUBJECT: Agenda Item 6H – 10/07/2021 Board Meeting

Authorization to the County of San Luis Obispo to Provide Recycled Water to the Morro Coast Audubon Society for Use at the Sweet Springs Nature Preserve.

President

Christine M. Womack

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Charles L. Cesena

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DESCRIPTION

In 2018, the District entered into an agreement with County of San Luis Obispo (County) regarding setting terms and conditions to provide recycled water to the District for distribution and sale to customers within the District's water service area. This report summarizes a request from the County to continue providing recycled water to the Morro Coast Audubon Society (Audubon Society) for the revegetation work they are performing at Sweet Springs Nature Preserve. The parcel where the water is being used is within the District's water service area.

SUMMARY OF STAFF RECOMMENDATION

This item will be approved along with the Consent Calendar unless it is pulled by a Director for separate consideration. If so, Staff recommends that the Board adopt the following motion:

Motion: I move that the Board direct the General Manager to sign Exhibit A of the Agreement for Delivery of Recycled Water between the County of San Luis Obispo and the Morro Coast Audubon Society authorizing the County to provide recycled water to the Sweet Springs Nature Preserve.

DISCUSSION

In 2018, the District entered into an agreement with County of San Luis Obispo (County) regarding setting terms and conditions to provide recycled water to the District for distribution and sale to customers within the District's water service area. The agreement resolved any duplication of service conflict issues that arose during the process to deliver recycled water from the Los Osos Water Reclamation Facility to customers within the District's water service area.

The County has been providing recycled water to the Audubon Society on as needed basis for a vegetation rehabilitation project at the Sweet Springs Nature Preserve. The parcel where the water is used is within the District's water service area. The water is hauled by water truck to a tank on the property and refilled when needed.

In order for the County to continue providing water to the site, the State Division of Drinking Water is requiring the County to comply with the rules and regulations for the delivery of recycled water to the site. This includes gaining authorization from the District to deliver recycled water to a parcel within the District's water service area. The site is currently undeveloped and has no water service to the

property. It is anticipated there will not be the opportunity for the District to serve the property with recycled water because of the distance from the recycle water distribution system. Extending the distribution system to the parcel would be cost prohibitive given the small amount of water that is used. It is staff's opinion that this is an ideal use of recycled water and incurs no direct fiscal impact to the District's water revenues.

FINANCIAL IMPACT

There is no direct fiscal impact to the District since the parcel in question is not a current water customer and, in all probability, will not be one in the future given its current land use designation.

Attachment

Agreement for Delivery of Recycled Water Between the County of San Luis Obispo and the Morro Coast Audubon Society.

**AGREEMENT FOR DELIVERY OF RECYCLED WATER BETWEEN THE COUNTY OF SAN LUIS
OBISPO AND THE MORRO COAST AUDUBON SOCIETY**

This Agreement for the Delivery of Recycled Water ("Agreement") is entered into on this ____ day of _____, 2021 by and between the COUNTY OF SAN LUIS OBISPO ("COUNTY") and the MORRO COAST AUDUBON SOCIETY, a nonprofit corporation, ("CONTRACTOR") (each a "Party" and collectively the "Parties").

WHEREAS, COUNTY has constructed a wastewater collection system and treatment facility ("Project") in the unincorporated community of Los Osos, California which produces disinfected tertiary-treated non-potable recycled water ("Recycled Water") that meets or exceeds all standards for the use of non-potable tertiary-treated water, including, without limitation, those standards set forth in Title 22 of the California Code of Regulations ("Title 22"); and

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 re-users, all Recycled Water, after treatment necessary for the intended use, at locations within the Los Osos Groundwater Basin ("Basin") in a manner consistent with the Los Osos Basin Recycled Water Management Plan approved by the Coastal Commission; and

WHEREAS, the COUNTY intends to dispose of, or provide to re-users, said recycled water in a manner that will promote its beneficial reuse consistent with the CDP, Title 22, the Service Duplication Act (Public Utilities Code §§ 1501 *et seq.*), the Water Recycling Act of 1991 (Water Code §§ 13575 *et seq.*) and any other applicable laws and regulations including those laws and regulations for use of tertiary-treated water on property located within the water service area of retail water suppliers in Los Osos; and

WHEREAS, the CONTRACTOR seeks to utilize Recycled Water produced from the Project to support an ongoing effort to grow native plants in a portion of the Sweet Springs Nature Preserve, located at 660 Ramona Avenue, Los Osos, California and identified as APN No. 074-229-009 (said parcel is commonly known as the Sweet Springs Nature Preserve referred to herein as the "Contractor Property"); and

WHEREAS, the Contractor Property is located within an area that Los Osos Community Services District ("LOCSO") has identified as its service area; and

WHEREAS, LOCSO has agreed to delegate its authority to provide Recycled Water for use by CONTRACTOR at the Contractor Property as shown in Exhibit A, attached to this Agreement and incorporated by this reference; and

WHEREAS, the COUNTY has made and continues to make Recycled Water available to the CONTRACTOR to prevent the loss of native plant life at the Contractor Property while this Agreement is formalized.

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

1. **RECYCLED WATER AVAILABILITY** – Pursuant to the provisions set forth herein, the COUNTY will make available to the CONTRACTOR at least 120,000 gallons of Recycled Water per calendar year for irrigation and storage purposes for use on and around the Contractor Property. CONTRACTOR shall meet Title 22 standards, any standards for use of non-potable tertiary-treated water for irrigation and storage purposes, and any other applicable standards the COUNTY is required to meet under applicable law. If additional Recycled Water is available, the COUNTY may, but is not required to, make available more than 120,000 gallons of Recycled Water per calendar year for CONTRACTOR's use.
2. **DELIVERY AND METERING** – COUNTY shall furnish, install, operate, and maintain at its own expense, facilities on County property where CONTRACTOR's water truck may receive Recycled Water, and 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. 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. **RECYCLED WATER RATES AND BILLING.**
 - 3.1. The rate for Recycled Water shall be Eighty dollars (\$80) per acre foot delivered to the CONTRACTOR. Any fractional amount of an acre foot of Recycled Water delivered to CONTRACTOR shall be prorated and billed by the amount of Recycled Water delivered to CONTRACTOR, measured in gallons.
 - 3.2. Quarterly, COUNTY shall provide CONTRACTOR with a billing statement setting forth the amount of Recycled Water delivered to CONTRACTOR during the preceding three (3) month period. Quarterly billings shall be based on the fiscal year beginning July 1st and ending June 30 of each year.
 - 3.3. CONTRACTOR shall pay COUNTY, no later than sixty (60) days after receipt of the billing statement, for the use of Recycled Water.
4. **EFFECTIVE DATE AND TERM** – This Agreement shall be effective as of the date that the COUNTY and CONTRACTOR have executed this Agreement. The CONTRACTOR and the COUNTY retain the right to terminate this AGREEMENT at any time. However, any termination by the CONTRACTOR shall not relieve the CONTRACTOR from the obligation to make full payment for all Recycled Water delivered prior to the date of termination.
5. **CONTRACTOR RIGHTS AND RESPONSIBILITIES** – CONTRACTOR agrees to comply with the COUNTY'S Rules and Regulations governing the use of Recycled Water, as applicable, and 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 the Central Coast Regional Water Quality Control Board, California State Water Resources Control Board, the California Coastal Commission, or any other regulatory body regulating the use of Recycled Water within the Basin. Nothing in this Agreement validates,

invalidates or otherwise affects any rights the CONTRACTOR may otherwise have to receive water from LOCSD to the 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.

6. **INDEMNIFICATION** – To the fullest extent permitted by law, 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 by CONTRACTOR 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.
7. **TRANSFERABILITY** – The COUNTY may 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 assign this Agreement to any other entity that owns Contractor Property. Any such assignment by COUNTY or CONTRACTOR may require additional provisions or amendments before being assigned.
8. **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 or at another address designated by a party in a writing provided pursuant to this section:

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

MORRO COAST AUDUBON SOCIETY, A General Partnership
Attn: Dave Clendenen
PO Box 1507
Morro Bay, CA 93443
9. **JURISDICTION AND VENUE** – Any dispute that arises under or relates to this Agreement shall be resolved in San Luis Obispo County Superior Court. In any such litigation, COUNTY and CONTRACTOR shall each be responsible for its respective attorney's fees and costs.
10. **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

precedence 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.

11. **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.
12. **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 Contractor Property, including the maintenance of adequate comprehensive general liability insurance coverage. CONTRACTOR shall keep the Contractor Property free of any liens arising out of the work performed for, materials furnished to, or obligations incurred by CONTRACTOR. The CONTRACTOR 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 of the certificate is submitted to the Public Works Department within thirty (30) days of the date that this Agreement is signed by the COUNTY.
13. **COUNTERPARTS** - This Agreement may be executed in two or more counterparts, each of which shall be deemed the original, but all of which together shall constitute one and the same Agreement.
14. **INTEGRATION** - The Agreement, including all exhibits, represent the entire agreement between the COUNTY and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the COUNTY and the CONTRACTOR as of the effective date of the Agreement, which is the date that the COUNTY signs the Agreement.
15. **AMENDMENT** - This Agreement may be amended or modified only by an instrument in writing signed by the COUNTY and the CONTRACTOR.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have executed this Agreement on the dates set forth below.

COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson of the Board of Supervisors

Dated: _____

ATTEST:

WADE HORTON

Ex-Officio Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: *Daniel Solish*
Deputy County Counsel

Dated: October 1, 2021

CONTRACTOR

By: _____ Dated: _____

EXHIBIT A of the Agreement

AUTHORIZATION TO PROVIDE RECYCLED WATER TO CUSTOMER

The Los Osos Community Services District authorizes the County of San Luis Obispo to provide recycled water to the Morro Coast Audubon Society for use at the Sweet Springs Nature Preserve, located at 660 Ramona Avenue, Los Osos, California (APN No. 074-229-009) consistent with the terms of the attached Agreement for the Delivery of Recycled Water Between the County of San Luis Obispo and the Morro Coast Audubon Society.

LOS OSOS COMMUNITY SERVICES DISTRICT

By: _____ Dated: _____