

PARTIAL ASSIGNMENT OF WATER RIGHTS TO WATER SUPPLY

This Agreement is entered into on this ____ day of _____, 2023 by and between the COUNTY OF SAN LUIS OBISPO ("County") and the PORT SAN LUIS HARBOR DISTRICT ("Harbor District") (each a "Party" and collectively the "Parties").

WHEREAS, the County, acting on behalf of San Luis Obispo County Service Area No. 12 ("CSA 12") and the San Luis Obispo County Flood Control and Water Conservation District ("District") entered into a Contract for Supply of Water dated November 21, 1966 and amendments and restatements thereto dated July 19, 1968 and August 19, 2000 (collectively, "Water Supply Contract") pursuant to which CSA 12 has an annual entitlement to three hundred thirty-seven (337) acre feet per year ("AFY") of water from the Lopez Reservoir ("CSA 12 Entitlement"); and

WHEREAS, CSA 12 and the Harbor District entered into a Contract for the Assignment of Rights to Water Supply and for Assumption of Obligations dated July 19, 1968 ("Water Delivery Contract") pursuant to which CSA 12 assigned 29.67 percent of the CSA 12 Entitlement to the Harbor District ("Harbor District Entitlement"); and

WHEREAS, the County is in the process of reconfiguring the US 101 and Avila Beach Drive Interchange ("Project") to reduce traffic congestion; and

WHEREAS, the County requires approximately one acre foot of water per year ("AFY") to irrigate Project landscaping for an approximate 5-year period, beginning with landscape planting during the project construction and continuing through a 3-year plant establishment period after the County records a Notice of Completion of the Project with the County Clerk-Recorder ("Project Completion"); and

WHEREAS, the County desires to temporarily acquire, and the Harbor District desires to temporarily assign, a water supply of one AFY of the Harbor District Entitlement to irrigate Project landscaping.

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

1. **Recitals** - The recitals set forth above are true and correct and are incorporated herein by this reference
2. **Assignment** - Upon Project Contract Award, the Harbor District agrees to immediately transfer, grant, and assign to the County any and all of the Harbor District's rights and interests to one (1) AFY of the Harbor District Entitlement. After termination of this Agreement, any and all of the County's rights and interests to one (1) AFY of the Harbor District Entitlement shall revert to the Harbor District.

3. **Point of Delivery** – All water to be furnished to the County pursuant to this Agreement shall be delivered to the County at a point of delivery mutually agreed by the County and Harbor District. All costs and expenses of any required connection at said point of delivery shall be the sole responsibility of the County. Any and all water furnished to the County pursuant to this Agreement shall be used within CSA 12.
4. **Payments** - During the term of this Agreement, County hereby agrees to assume the obligation of the Harbor District to pay, and shall pay to CSA 12, the County's proportionate share of the payments due from the Harbor District to CSA 12 (approximately one percent of the Harbor District's payments to CSA 12 if CSA 12 receives its full annual water entitlement of 337 AFY under the Water Supply Contract). The County shall make payments at the same time and in the same manner as the Harbor District as provided in the Water Delivery Contract.
5. **Primacy of Water Supply and Water Delivery Contracts** -This Agreement is subject to the obligations and limitations imposed by the Water Supply Contract and Water Delivery Contract, including all amendments thereto, and is intended to be in conformance and harmony with same. The Water Supply Contract and Water Delivery Contract, and all amendments thereto, are hereby incorporated herein by this reference in all respects as though set forth in full. County hereby expressly agrees to the provisions of the Water Supply Contract and Water Delivery Contract imposing obligations and limitations upon it and further expressly agrees that nothing in this Agreement shall be deemed to require Harbor District or CSA 12 to perform any obligation in conflict with the Water Supply Contract or Water Delivery Contract. County further agrees that CSA 12 and the Harbor District shall have the right to enter into such future amendments to the Water Supply Contract and Water Delivery Contract as CSA 12 or Harbor District may deem reasonable and necessary.
6. **CSA 12 and District Approval**. This Agreement shall not be valid until and unless approved by CSA 12 and the District.
7. **Effective Date and Termination**. This Agreement shall be effective as of the date that the County and Harbor District have executed this Agreement. The Agreement may terminate by mutual written consent or, unilaterally, any time more than three years after Project Completion upon three (3) months' written notice.
8. **CORRESPONDENCE** – Any and all correspondence regarding specific requirements of this Agreement or for general communication between County and Harbor District 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

Port San Luis Harbor District

Attn:

Address

City

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 Harbor District 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. **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.
12. **Integration** - The Agreement, including all exhibits, represent the entire agreement between the County and the Harbor District 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 Harbor District as of the effective date of the Agreement, which is the date that the County signs the Agreement.
13. **Amendment** - This Agreement may be amended or modified only by an instrument in writing signed by the County and the Harbor District. Adoption of this Agreement by the County Board of Supervisors authorizes the County Director of Public Works, or designee, to approve any amendment to this Agreement. Adoption of this Agreement by the Harbor District Board of Commissioners authorizes the Harbor Director, or designee, to approve any amendment to this Agreement.

[SIGNATURES TO FOLLOW ON NEXT TWO PAGES]

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IN WITNESS WHEREOF, County and Harbor District have executed this Agreement on the dates set forth below.

COUNTY OF SAN LUIS OBISPO

By: _____ Dated: _____
Chairperson of the Board of Supervisors
County of San Luis Obispo
State of California

ATTEST:

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

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: _____ Dated: _____
Deputy County Counsel

PORT SAN LUIS HARBOR DISTRICT

By: _____ Dated: _____
Chairperson of the Port San Luis Harbor Commission

APPROVED AS TO FORM AND LEGAL EFFECT:

JEFFREY MINNERY

By: _____ Dated: _____
Legal Counsel

This Agreement is hereby approved by the San Luis Obispo County Flood Control and Water Conservation District.

By: _____
Chairperson of the Board of Supervisors

Dated: _____

This Agreement is hereby approved by the County of San Luis Obispo Board of Supervisors, acting on behalf of County Service Area No. 12.

By: _____
Chairperson of the Board of Supervisors

Dated: _____

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