



June 28, 2018

TO: LOCSD Board of Directors

FROM: Rob Miller, PE, District Engineer

SUBJECT: Agenda Item 7D – 7/5/2018 Board Meeting
Review of Draft Recycled Water Agreement with San Luis Obispo County

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DESCRIPTION

A draft agreement between the District (LOCSD) and the County has been prepared to accommodate the delivery of recycled water generated by the County to District irrigation customers, including Baywood Elementary and Los Osos Middle School. Staff is seeking Board approval of the agreement as recommended by the Utilities Advisory Committee (UAC).

STAFF RECOMMENDATION

Staff recommends that the Board review and approve the draft agreement and authorize the President to execute the agreement on behalf of the District, or direct staff to negotiate additional changes.

Motion: I move that the Board approve the draft agreement and authorize the Board President to execute the agreement on behalf of the District.

or

Motion: I move that the Board direct staff to negotiate additional changes to the draft agreement.

DISCUSSION

The Los Osos Wastewater Project and Basin Plan both contemplate the urban reuse of recycled water for landscape irrigation. The urban use of recycled water directly offsets lower aquifer pumping and therefore has the highest available seawater intrusion benefit. It has been estimated that every gallon of recycled water used in the urban area reduces seawater intrusion by 0.55 gallon. While other uses may follow in the District's service area in the future, Los Osos Middle School and Baywood Elementary School were both identified as recycled water users by the County in the short term. Dedicated recycled water mains were extended to both locations, and the schools are working with the County during the 2018 summer break to retrofit irrigation plumbing to comply with State recycled water regulations.

The schools are the District's two largest irrigation customers, and they historically consume a combined total of 11,500 CCF per year. A formal agreement between the District and County is necessary to avoid duplication of service. Previous agreements between the County and the San Luis Coastal Unified School District (SLCUSD) were opposed by the District and Golden State Water Company. The County has stated that the previous agreements are no longer valid since they violated the duplication of service provisions in the law. The attached draft agreement includes the following key provisions:

1. The County will provide the recycled water to a District-owned recycled water meter, and therefore the schools will remain customers of the District.
2. The County will continue to own and maintain all infrastructure upstream of the water meter at no cost to the District, and the water will be delivered under pressure.
3. The District will pay the County \$80 per acre-ft in recognition of the energy savings that the District will receive by not pumping its potable water supplies for the same use.

The District will continue to receive revenue from the schools for the recycled water metered at each location. A discount of 10% from the potable water rate is currently contemplated, similar to the City of San Luis Obispo's recycled water program that serves other SLCUSD facilities. The District's last rate analysis in April 2017 included provisions for this discount. Once the agreement is in place, the final rate will be set by the District pursuant to Proposition 218.

While the draft agreement has been approved by District Counsel, the document may be subject to minor, non-substantive refinements initiated by the County. If such amendments become substantive, the agreement will be brought back to the Board. This item was reviewed by the UAC on June 20, 2018, and the committee recommended approval with the correction of one erroneous reference to Golden State Water Company in the draft. This reference has been removed in the version that is before the Board.

FINANCIAL IMPACT

The proposed agreement will reduce District water revenues due to the contemplated 10% discount in the cost of recycled water. However, such reductions have already been anticipated in the District's water rate design.

Attachment

**RECYCLED WATER DELIVERY AGREEMENT BETWEEN
THE COUNTY OF SAN LUIS OBISPO AND
THE LOS OSOS COMMUNITY SERVICES DISTRICT**

THIS RECYCLED WATER USE AGREEMENT (“AGREEMENT”) is entered into by and between the COUNTY OF SAN LUIS OBISPO (“COUNTY”) and the LOS OSOS COMMUNITY SERVICES DISTRICT (“LOCSD”) (each a “PARTY,” and collectively the “PARTIES”):

WHEREAS, pursuant to Government Code section 25825.5 and Coastal Development Permit No. A-3-SLO-09-055/069 (“CDP”), COUNTY constructed, owns and operates the Los Osos Wastewater Treatment Plant (“LOWWP”); and

WHEREAS, the CDP requires that the LOWWP provide disinfected tertiary recycled water as defined in section 60301.230 of Title 22 of the California Code of Regulations (“RECYCLED WATER”) and that all RECYCLED WATER be used in locations within the Los Osos Groundwater Basin (“BASIN”) in a manner that will maximize the objectives of the Los Osos Basin Recycled Water Management Plan (“RECYCLED WATER PLAN”), where the highest priority for reuse shall be replacing existing potable water use with RECYCLED WATER use where feasible and appropriate; and

WHEREAS, COUNTY Condition No. 97 of the CDP identifies areas within the urban reserve line, as more particularly described in the Effluent Re-Use and Disposal Tech Memo dated July 2008 (“TECH MEMO”), as optimal locations for use of RECYCLED WATER; and

WHEREAS, LOCSD is a duly formed Community Services District operating pursuant to the California Government Code and must provide facilities and water supplies to meet the present and prospective needs of those in its service area and charge rates adopted pursuant to Proposition 218; and

WHEREAS, some of the locations identified in the TECH MEMO as appropriate for RECYCLED WATER use are locations and customers served by LOCSD (“CUSTOMERS”); and

WHEREAS, by entering into this AGREEMENT, the PARTIES desire to provide the opportunity (after compliance with all requirements under the California Environmental Quality Act) to maximize the objectives of the RECYCLED WATER PLAN as required by the CDP and facilitate the service of RECYCLED WATER from the LOWWP by LOCSD to CUSTOMERS, when it is available and prudent to do so, in the most efficient and cost-effective manner.

NOW, THEREFORE, in consideration of the foregoing and of the benefits which shall accrue to the PARTIES hereto, the following is understood and agreed to by and between COUNTY and LOCSD:

Section 1. Purpose. The purpose of this AGREEMENT is to establish a standard set

of terms and conditions through which the COUNTY is to provide RECYCLED WATER from the LOWWP to LOCSD for distribution and sale to CUSTOMERS within the service area of LOCSD.

Section 2. Rights, Obligations and Responsibilities of COUNTY.

The COUNTY shall:

(a) Review each CUSTOMER'S design plans for the construction of and/or modifications to its water system necessary to receive RECYCLED WATER and to prevent backflow or cross-contamination; connect each CUSTOMER'S RECYCLED WATER distribution system to LOCSD's meter(s); and disconnect each CUSTOMER'S potable water distribution system from LOCSD's meters; and test the required backflow and cross-connection facilities in accordance with the requirements established by the State Division of Drinking Water ("STATE DDW") and the COUNTY Health Agency, Environmental Health Services ("COUNTY HEALTH AGENCY") at the time of each CUSTOMER'S conversion to RECYCLED WATER; and furnish copies of all test results to LOCSD.

(b) Subject to subsection (c) below, design, construct, finance, own, operate, maintain, repair, and replace if necessary the RECYCLED WATER distribution system and stub outs to each CUSTOMER, and ensure design and construction of the RECYCLED WATER distribution system complies with all federal and state regulations and local regulations and land use requirements. Without limiting the foregoing, the COUNTY shall obtain and maintain all necessary STATE DDW and Regional Water Quality Control Board ("RWQCB") approvals and all necessary land use permits and construct site retrofits for the purpose of constructing a RECYCLED WATER distribution system converting potable water usage to RECYCLED WATER usage for each CUSTOMER. COUNTY shall provide copies of all applicable approvals and permits to LOCSD.

(c) Not be responsible for providing and installing the RECYCLED WATER meter(s) at each CUSTOMER site, though the meter vault(s) shall be provided and installed by COUNTY in accordance with LOCSD standards. COUNTY shall also pay for the disconnection (including installing backflow devices) of potable water service lines that become unused due to the addition of RECYCLED WATER service lines as well as provide detailed as-built drawings of the work. The retrofit piping and equipment from the outlet of the meter(s) (excluding the meter vault(s) installed by COUNTY) shall become the property of the property owner upon completion of the construction of the RECYCLED WATER distribution system retrofit for each CUSTOMER.

(d) Supply RECYCLED WATER from the LOWWP to LOCSD at a cost of \$80.00 per acre foot to LOCSD to allow LOCSD to deliver recycled WATER to each CUSTOMER for allowed RECYCLED WATER uses. At the COUNTY's request, the PARTIES agree to review this cost provision in the future. If the PARTIES cannot agree on how to proceed in the event of a future requested change to this cost provision, either PARTY may terminate this AGREEMENT upon written notice pursuant to Section 11(b) below. COUNTY shall not be required to procure RECYCLED WATER from substitute

sources to meet LOCSD's demand for RECYCLED WATER under this AGREEMENT.

(e) Ensure that the RECYCLED WATER complies with all applicable federal, state and local regulations; COUNTY, and not LOCSD, shall be responsible for fines, permit requirements or other liability resulting from the production and distribution of RECYCLED WATER provided hereunder that does not comply with federal, state or local regulations.

(f) Provide appropriate training and documentation verifying each CUSTOMER'S active participation in training on the safe use of RECYCLED WATER.

(g) Require CUSTOMERS to agree to certain Rules and Regulations Governing the Distribution of Recycled Water developed by COUNTY ("RULES AND REGULATIONS"). LOCSD acknowledges that the RULES AND REGULATIONS provide for, among other things, a Use Agreement between the COUNTY and each CUSTOMER whereby each CUSTOMER shall agree to comply with the RULES AND REGULATIONS. The COUNTY shall retain exclusive authority and responsibility to enforce the RULES AND REGULATIONS, except for disconnection of CUSTOMERS from the RECYCLED WATER system. Upon receiving notice from the COUNTY of CUSTOMER'S non-compliance with the RULES AND REGULATIONS, LOCSD shall have the exclusive authority and responsibility to disconnect CUSTOMERS from the RECYCLED WATER system.

(h) In the event COUNTY is unable to deliver RECYCLED WATER for a period exceeding fourteen (14) days for a reason that can be cured within a period of one (1) year or less, COUNTY shall notify LOCSD and LOCSD shall be responsible for disconnecting each CUSTOMER from the RECYCLED WATER distribution system and connecting each CUSTOMER to the LOCSD potable water supply, subject to available capacity in said system. Said disconnection and connection shall be completed in accordance with all applicable regulatory requirements, including those established by STATE DDW and RWQCB, and shall be subject to LOCSD standards, inspection, review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. In the event that COUNTY is unable to supply RECYCLED WATER for a period exceeding one (1) year, COUNTY, the CUSTOMERS and LOCSD, as appropriate, shall meet to discuss how to proceed, which may but shall not necessarily include termination of this AGREEMENT pursuant to Section 11(b) below.

(i) Reimburse LOCSD within thirty (30) days for all costs associated with the disconnection of each CUSTOMER from the RECYCLED WATER system and reconnection to the potable water system prior to terminating RECYCLED WATER service if (1) COUNTY requests LOCSD to disconnect CUSTOMER for noncompliance pursuant to Section 2(g) above, (2) COUNTY is unable to delivery RECYCLED WATER as set forth in Section 2(h) above; (3) COUNTY or LOCSD terminates this AGREEMENT per Section 11(b) below; or (4) this AGREEMENT is terminated per Section 11(c) below and the COUNTY is the defaulting PARTY. Unless otherwise specified in this AGREEMENT, LOCSD shall be responsible for the costs of disconnection and connection in all other instances.

Section 3. Rights, Obligations and Responsibilities of LOCSD.

LOCSD shall:

(a) As promptly as practical, establish a rate applicable to all potential LOCSD RECYCLED WATER customers, said rate to be adopted in compliance with all legal requirements, including but not limited to, Proposition 218. LOCSD shall establish rates that provide a reasonable discount from the applicable potable water consumptive use rates to provide the RECYCLED WATER user an incentive to manage the extraordinary regulatory requirements associated with RECYCLED WATER use.

(b) Furnish and install water meter(s) on service connections from the RECYCLED WATER distribution system to CUSTOMERS.

(c) Prepare and send COUNTY a RECYCLED WATER usage report on a bi-monthly basis, subsequent to the normal reading cycle for each CUSTOMER'S accounts, as measured by LOCSD's RECYCLED WATER meter(s) for each CUSTOMER.

(d) Not be responsible for the quality of the RECYCLED WATER delivered to LOCSD points of connection from COUNTY.

(e) Charge CUSTOMERS its-approved RECYCLED WATER rate for all RECYCLED WATER delivered according to meter(s) at service connection.

(f) Pay COUNTY for RECYCLED WATER it sells to CUSTOMERS concurrently with the LOCSD's billing cycle through which it bills and receives payment from each RECYCLED WATER CUSTOMER. Billing shall commence no later than _____ days after each CUSTOMER begins receiving RECYCLED WATER.

Section 4. School District Agreement. The PARTIES are aware that COUNTY entered into a forty (40) year Agreement for Delivery of Recycled Water with the San Luis Coastal Unified School District on or around April 24, 2012 ("SCHOOL DISTRICT AGREEMENT") but that may now be terminated upon six (6) months written notice. The PARTIES agree to cooperate with each other, in good faith, to terminate the SCHOOL DISTRICT AGREEMENT so that it is not in conflict with this AGREEMENT. Notwithstanding anything to the contrary in this AGREEMENT, it shall be a condition precedent to either PARTY'S obligations under this AGREEMENT that the SCHOOL DISTRICT AGREEMENT is terminated.

Section 5. Environmental Review.

(a) All obligations of the PARTIES set forth above are subject to obtaining all land use and regulatory approvals, and environmental review pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000 et seq.) ("CEQA").

(b) The COUNTY, as the lead agency, prepared and adopted an environmental impact report ("EIR") for the LOWWP, including the provision of RECYCLED WATER as contemplated in this AGREEMENT, which EIR the PARTIES agree has fulfilled the

PARTIES' obligations under CEQA.

(c) The PARTIES shall cooperate with each other, in good faith and as needed, to conduct any additional CEQA review that might be required pursuant to this AGREEMENT. Each PARTY retains its discretion to independently, fairly and fully evaluate a project and environmental documentation prepared pursuant to CEQA.

Section 6. Notices. Except for providing EMERGENCY NOTICE (as defined in Section 7 below), all notices, requests, demands, and other communications required to or permitted to be given under this AGREEMENT shall be in writing and shall be conclusively deemed to have been duly given (i) when hand delivered to the receiving PARTY; or (ii) three business days after the same have been deposited in a United States post office with registered or certified mail return receipt requested postage prepaid and addressed to the PARTIES as set forth below; or (iii) the next business day after same have been deposited with a national overnight delivery service (Federal Express, DHL Worldwide Express, Express Mail, etc.), postage prepaid, addressed to the PARTIES as set forth below with next-business-day delivery guaranteed, provided that the sending PARTY receives a confirmation of delivery from the delivery service provider.

To COUNTY: Colt Esenwein, Director of Public Works
County Government Center, Room 206
San Luis Obispo, CA 93408

To LOCSD: Los Osos Community Services District General Manager

Fax: (805) 965-4333

Each PARTY shall make an ordinary, good faith effort to ensure that it shall accept or receive notices that are given in accordance with this Section and that any person to be given notice actually receives such notice. A PARTY may change or supplement the addresses given above, or designate additional addresses, for purposes of this Section by giving the other PARTY written notice of the new address in the manner set forth above.

Section 7. Emergency Notification. Notwithstanding the procedure outlined in Section 6 above, if there exists an emergency resulting from a violation of the CDP, the PARTY with knowledge of the violation shall use the following contact information to notify the other PARTY of the violation as soon as practicable ("EMEGENCY NOTICE"):

To COUNTY: Ron Munds
(805) 781-5267
rmunds@co.slo.ca.us

To LOCSD: _____

Section 8. Indemnification. As part of the consideration for this AGREEMENT, both PARTIES for their respective selves and their respective successors and assigns, agree to indemnify, defend and hold harmless each other and their respective officers, directors, representatives, and agents from every loss, damage, injury, cost, expense, claim, judgment, penalty, fine, or liability of every kind or character, whether in contract, tort, or otherwise, which arises directly or indirectly from the PARTY's willful, intentional, reckless or negligent (whether active, passive or gross) acts or omissions related to or arising from this AGREEMENT. This indemnity and hold harmless AGREEMENT shall extend to the acts or omissions of the respective contractors, representatives, and agents of COUNTY, and LOCSD. Notwithstanding this general indemnification, LOCSD shall not be liable for, and COUNTY shall indemnify and hold LOCSD harmless from, any loss, damage, injury, cost, expense, claim, judgment, penalty, fine, or liability resulting from permit violations resulting from failure of LOWWP facilities or from any act or omission by COUNTY in connection with the delivery and use of RECYCLED WATER to CUSTOMERS. The provisions of this Section 8 shall survive termination of this AGREEMENT.

Section 9. Modification. The terms of this AGREEMENT may be modified only by written mutual AGREEMENT of the PARTIES hereto.

Section 10. Effective Date and Term. This AGREEMENT shall become effective as of the date that this AGREEMENT has been signed by both PARTIES ("EFFECTIVE DATE"). Unless earlier terminated in the manner provided under this AGREEMENT or unless extended by mutual written AGREEMENT of the PARTIES, this AGREEMENT shall remain in full force and effect up to and until the end of the calendar year following fifteen (15) years from the EFFECTIVE DATE ("TERM"). The TERM shall be automatically extended for each succeeding calendar year, unless either PARTY provides twenty-four (24) months prior written notice of an intent not to extend this AGREEMENT.

Section 11. Termination.

(a) Termination by CUSTOMER. In the event a CUSTOMER requests to cease use of RECYCLED WATER, upon sixty (60) days prior written notice, LOCSD shall disconnect that CUSTOMER from the RECYCLED WATER distribution system and connect the CUSTOMER to a potable water supply, subject to available capacity in the applicable potable water system. The CUSTOMER shall be responsible for the costs of such disconnection and connection. Such disconnection and connection shall be completed in accordance with all applicable regulatory requirements, including those established by STATE DDW, COUNTY HEALTH AGENCY and RWQCB.

(b) Termination Upon Agreement of the PARTIES. Pursuant to Sections 2(d) and 2(h) above, either PARTY may terminate this AGREEMENT upon sixty (60) days prior written notice to the other PARTY.

(c) Termination for Cause. In the event either PARTY fails to perform, or adhere to, any applicable duty or obligation set forth under this AGREEMENT (or fails to perform or adhere to any such duty, obligation or standard of conduct at the time, place or

manner set forth in this AGREEMENT), an event of default (“EVENT OF DEFAULT”) shall be deemed to have occurred. Except as otherwise provided in this AGREEMENT, if an EVENT OF DEFAULT remains uncured by the defaulting PARTY for a period in excess of thirty (30) calendar days from the date upon which the non-defaulting PARTY issues a notice of default to the defaulting PARTY, then the default shall constitute a breach of this AGREEMENT. If a PARTY is in breach of this AGREEMENT, the non-breaching PARTY may terminate this AGREEMENT and pursue any and all remedies available to it at law or in equity.

(d) Government Code Section 25825.5(k)(4). The PARTIES are aware that Government Code section 25825.5(k)(4) provides for application to the RWQCB to transfer the responsibility to operate the LOWWP to the LOCSO. If and when the RWQCB adopts a resolution transferring such responsibility to the LOCSO, this AGREEMENT shall automatically terminate.

Section 12. Time Is Of The Essence. Timely performance of the PARTIES’ duties under this AGREEMENT is of the essence.

Section 13. Force Majeure. Any prevention, delay, nonperformance or stoppage due to any of the following causes shall excuse nonperformance for a period equal to the duration of the force majeure event. The causes referred to above are strikes, walkouts, labor disputes, failure of power, irresistible superhuman cause, acts of public enemies of the State or United States, riots, insurrections, civil commotion, governmental restrictions or regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this AGREEMENT) or other causes beyond the reasonable control of the PARTY obligated to perform.

Section 14. Assignment. Neither PARTY to this AGREEMENT shall assign, sell, or otherwise transfer any obligation or interest in this AGREEMENT without the specific written consent of the other PARTY.

Section 15. Waiver. The waiver of any breach of any provision hereunder by any PARTY to this AGREEMENT shall not be deemed to be a waiver of any preceding or subsequent breach hereunder, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the PARTY making the waiver.

Section 16. Applicable Law. This AGREEMENT shall be construed in accordance with and governed by the laws of the State of California.

Section 17. Integration. This AGREEMENT represents the entire understanding of the PARTIES. No prior oral or written understanding shall be of any force or effect with respect to those matters covered by this AGREEMENT.

[Signature to Follow on Next Page]

IN WITNESS THEREOF, COUNTY and LOCSD have executed this AGREEMENT on the dates set forth below.

COUNTY OF SAN LUIS OBISPO

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

Date: _____

ATTEST:

By: _____
County Clerk of the Board of Supervisors,
County of San Luis Obispo, State of California

Date: _____

APPROVED AS TO FORM AND LEGAL EFFECT:
RITA L. NEAL
COUNTY COUNSEL

By: Deputy County Counsel

Date: _____

LOS OSOS COMMUNITY SERVICES DISTRICT

By: _____

Date: _____

ATTEST:

By: _____

Date: _____

APPROVED AS TO FORM AND LEGAL EFFECT:

Date: _____

DRAFT