

MENDOCINO COUNTY RUSSIAN RIVER FLOOD CONTROL  
AND WATER CONSERVATION IMPROVEMENT DISTRICT

**WATER SUPPLY AGREEMENT**

This WATER SUPPLY AGREEMENT is entered into by and between \_\_\_\_\_ (“**Customer**”) and MENDOCINO COUNTY RUSSIAN RIVER FLOOD CONTROL AND WATER CONSERVATION IMPROVEMENT DISTRICT as of \_\_\_\_\_, 2013.

**ARTICLE 1.  
EXPLANATORY RECITALS**

1.1 District holds water rights to the Russian River in Mendocino County, California, and has established a process by which customers may purchase and consume a specific amount of water from the District through filing an application and, upon approval of District, execution of this Agreement.

1.2 Customer wishes to contract with District for a quantity of Project Water under the terms and conditions of this Agreement and applicable provisions of California law, and has filed an application with District for that purpose.

1.3 Customer may also hold water rights under state law to water from the Russian River.

**NOW, THEREFORE**, in consideration of the foregoing recitals of fact, the mutual covenants described herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 2.  
DEFINITIONS**

When used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the term:

2.1 “**Act**” shall mean Chapter 54 of the Water Agency Acts, entitled the Mendocino County Water Agency Act, as may be amended from time to time.

2.2 “**Agreement**” shall mean this agreement between the Parties.

2.3 “**CEQA**” shall mean the California Environmental Quality Act (Public Resources code Sections 21000 et seq.).

2.4 “**Contractors**” shall mean Customer, as well as District’s other customers who have entered into Water Supply Agreements.

2.5 “**Contract Quantity**” shall mean the maximum quantity of Project Water made available to Customer as specified in **EXHIBIT A**, subject to the terms and conditions of this Agreement.

2.6 “**Customer Place of Use**” shall mean Customer’s place of use, designated as Assessor Parcel Number(s) for non public agency Customers, and legal boundaries for public agency Customers, as designated on the map attached as **EXHIBIT B** to this Agreement.

2.7 “**Customer Water**” shall mean any other rights (either Pre-1914, riparian or appropriative) to water held by Customer that are not subject to this Agreement, as set forth in **EXHIBIT C** to this Agreement, which amendment may be revised from time to time to add newly acquired rights by written submission by Customer and acceptance by District.

2.8 “**District**” shall mean the Mendocino County Russian River Flood Control and Water Conservation Improvement District, a public agency organized and operating pursuant to the Act, acting through its Board of Trustees, unless delegated to the General Manager.

2.9 “**District Enactments**” shall mean Ordinance No. 00-1, as revised or amended, and all supporting Resolutions.

2.10 “**District Place of Use**” shall mean the District’s Place of Use as designated in the Permit.

2.11 “**Effective Date**” shall mean the date of this Agreement specified above.

2.12 “**Ordinance**” shall mean Ordinance No. 00-1, the Russian River Flood Control and Water Conservation Improvement District Ordinance Regarding Water Sales,” as amended or revised in the future.

2.13 “**Party**” or “**Parties**” shall mean Customer and District.

2.14 “**Permit**” shall mean Permit No. 12947B issued by the California State Water Resources Control Board.

2.15 “**Point of Delivery**” or “**Service Connection**” shall mean the location(s) where Customer diverts Project Water from the Russian River as identified in **EXHIBIT D** to this Agreement.

2.16 “**Project Water**” shall mean the 8,000 acre feet of Russian River water District is allowed to divert under the Permit.

2.17 “**SWRCB**” shall mean the California State Water Resources Control Board.

2.18 “**Year**” shall mean calendar year from January 1 through December 31.

In addition, terms used in this Agreement that are defined in the Ordinance shall have the meaning defined therein unless another inconsistent meaning is defined in this Agreement.

### **ARTICLE 3. CONTRACT AMOUNT**

3.1. **Amount.** Customer agrees to pay for, and District agrees to make available to Customer, the amount of Project Water set forth as the Contract Quantity each Year, subject to the terms and conditions of this Agreement.

3.2. **Surplus Water.** There may be temporarily available during any Year a quantity of Project Water in excess of the amounts necessary for the District to meet its obligations under this Agreement and to other Contractors. Each Year in which there is such surplus water available, the District may offer, at rates not to exceed those specified herein, all or a portion of such Project Water to Contractors, but not to exceed twenty percent (20%) of any Customer’s Contract Quantity. The Contractors may purchase all or part of such surplus Project Water so offered; provided, that in the event the Customer does not indicate to the District, in writing, its desire to accept and pay for such surplus Project Water offered, within fifteen (15) days after receiving written notice from the District of its availability, Customer’s right to purchase such water shall terminate for that year. If the Contractors express a desire to purchase more surplus Project Water than has been determined to be available, the District shall apportion the available surplus water among all Contractors in such manner as the District shall determine to be equitable. Notwithstanding the above, Customer may elect to receive surplus water pursuant to this Section no more than three (3) times during the Term (Original Term and any Extended Term) of this Agreement.

### **ARTICLE 4. PROJECT WATER DELIVERY AND USE**

4.1. **Point of Delivery.** District shall make the Contract Quantity available at the Point of Delivery. The parties acknowledge that Customer will divert Customer Water from the Point of Delivery as well as Project Water. Customer shall take physical control of Project Water at the Point of Delivery. Consistent with the Ordinance, Customer shall bear all expenses of such diversion, including the furnishing and maintenance of intake facilities. Customer shall at all times comply with the local, state and federal laws, rules and regulations, including, but not limited to the District Enactments, those of the U.S. Army Corp of Engineers,

California Department of Fish and Game and any other public authority with jurisdiction over the installation and maintenance of such facilities.

4.2. **Change in Point of Delivery.** Customer shall not change the location of or substantially alter the Point of Delivery without obtaining District's prior written approval, and compliance with law.

4.3. **Diversion Costs.** All permitting, construction, reconstruction, and maintenance costs for facilities necessary or used to divert Project Water from the Russian River and those which are necessary to accomplish the measurement of Project Water shall be born solely by Customer. Customer is solely responsible for all costs associated with treatment, diversion headworks, pumping facilities, etc., to divert, convey, transport, treat, and deliver Project Water for its ultimate use by Customer.

4.4. **Place of Use.** Project Water made available to Customer shall not be used, sold, or disposed of by the Customer outside of the Customer's Place of Use, nor outside of the District's Place of Use.

4.5. **Resale of Water.** Customer shall not resell any portion of the Project Water made available under this Agreement without prior written authorization from the District. Notwithstanding the above or Section 4.60 of the Ordinance, if Customer is a public agency, it shall have the right to resell and distribute water to customers within its boundary.

4.6. **Responsibility for Handling Water and Indemnification.** Customer shall be responsible for the carriage, handling and control of Project Water made available hereunder after the water has passed the Point of Delivery. District shall not be responsible, beyond the Point of Delivery, for the control, carriage, handling, use, disposal, or distribution of Project Water, and Customer shall hold the District harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death, arising out of or connected with the control, carriage, handling, use, disposal, or distribution of Project Water beyond the Point of Delivery.

4.7. **Schedule.** Customer shall submit, in writing, to the District, prior to February 15 of each Year, a schedule, in a form satisfactory to the District, of water to be made available to the Customer during that Year.

4.8. **Interruption of Water Service.** The District does not guarantee continuous availability of Project Water on demand. From time to time it may be necessary for the District to shut off the flow of water in its water system. Except in emergencies, such stoppages will not be made without prior notice to Customer. The District shall not assume any responsibility or be held liable for loss or damages which may occur due to such interruption of water service.

4.9. **Limitations on Obligations of District.** District shall be under no obligation to provide water service, or to make Project Water available to the Customer except during such time and to the extent and in the quality and manner that Project Water is available pursuant to the Permit and in the Russian River, and subject to the terms and conditions of this Agreement. District shall not be liable to the Customer in the event of delay, interruption, discontinuance, low water levels, or quality deterioration of the Project Water to be made available to Customer under the Permit, except to the extent that such conditions result from the gross negligence or willful misconduct of the District.

## **ARTICLE 5. METERS AND WATER USAGE REPORTS**

5.1. **Installation and Maintenance.** All Project Water made available pursuant to this Agreement shall be metered by Customer at Customer's Point of Delivery with equipment satisfactory to the District, which shall be installed, operated and maintained in good repair at the expense of Customer unless District agrees in writing to assume this obligation pursuant to Section 5.2. Customer has installed one or more meters to measure the amount of water diverted by Customer at each Point of Delivery. All determinations relative to the measurement of Project Water shall be made by the District, and upon request of Customer, the accuracy of such measurements will be investigated by the District, subject to Article 5 of the Ordinance.

5.2. **District Meters.** Consistent with the Ordinance, District may in its sole discretion, and at such time determined by District, place its own meter at a Point of Delivery, and Customer shall make space available for that purpose in accordance with District's specifications. Once District has installed its own meter, District shall have the responsibility to maintain it in good repair and condition.

5.3. **Access.** Authorized agents of the District shall be allowed to enter Customer's property in order to install, repair, replace, evaluate, test, inspect, read and or monitor the operation of metering, pumping and conveyance facilities installed by the Customer or by District at the Service Connection without advance notice, and Customer hereby grants District sufficient license and permission to facilitate such activity.

5.4. **Readings.** The District shall read each meter at Customer's Point of Delivery monthly, either directly or by remote telemetry, and provide Customer with an annual summary of total water diverted from each meter no later than January 31 of the following year, reflecting the total amount of all water diverted by Customer from the Russian River, including Customer Water and Project Water.

5.5. **Reports.** Based upon the meter readings provided to Customer by District as set forth in this Article, Customer shall provide District with an annual written report of water usage, quantifying all water diverted and used by Customer

from the Point of Delivery, and identifying such water as Project Water or Customer Water, on a form provided by or approved by District. Such report shall include a declaration under penalty of perjury that the information provided therein is accurate to the best of the signer's knowledge and belief. In addition, Customer shall establish and maintain books and records sufficient to allow District to furnish information required to the SWRCB regarding Customer's water use. Customer shall also provide District with such other reports concerning Customer's use of Project Water and compliance with this Agreement as requested by District. Such reports shall be furnished to District annually within forty-five (45) days following the end of each Year, or such later date as may be fixed by District.

## **ARTICLE 6. PAYMENT**

6.1. **Price.** Customer shall pay District for all Project Water made available to Customer each Year, but not less than the Contract Quantity, at the per acre foot rate determined annually by the District, subject to the Ordinance.

6.2. **Obligation to Purchase.** While Customer shall be obligated to pay for the Contract Quantity annually regardless of the amount of Project Water actually diverted by Customer pursuant to this Agreement, Customer shall not be required to pay for any portion of the Contract Quantity that is not available for diversion as set forth as determined by District in Article 11. At any time the Customer may refuse to accept Project Water pursuant to this Agreement, however, the Customer shall remain obligated to make payment required under this Agreement.

6.3. **Invoice and Payment.** On or about February 1 of each Year, District shall invoice Customer for amounts due hereunder for the previous Year. Customer shall pay each such invoice within twenty-five (25) days of issuance. Customer's obligation to pay each such invoice shall be absolute and unconditional, and not subject to deduction, setoff, prior notice, demand, or inability of Customer to use, store or resell Project Water.

6.4. **General Obligation of Customer.** The obligations of any public agency Customer under this Agreement will constitute a general obligation, and the Customer will use all of the powers and resources available to it under the law to collect the funds necessary for, and to pay, the obligation to the District under this Agreement. The Customer is obligated to pay District the payments becoming due under this Agreement notwithstanding any individual default by its water users, customers or others in the payment to the Customer of assessments, taxes or other rates and charges levied.

**ARTICLE 7.  
TERM**

7.1. **Term.** The term of this Agreement (“**Original Term**”) shall be for twenty (20) years from and after the Effective Date. Upon expiration of the Original Term, this Agreement shall automatically renew for another one (1) year term (“**Extended Term**”). Each Extended Term shall automatically renew for another one (1) year Extended Term, unless either party provides notice to the other of its intent to terminate this Agreement as provided below.

7.2. **Notice of Voluntary Termination.** During any Extended Term, either Party may give the other Party written notice of its intent to terminate. Once such notice is given, there shall be no further extension of the term and the Agreement shall terminate at the conclusion of the then-existing Extended Term.

7.3. **Termination for Regulatory Infeasibility.** District may terminate this Agreement upon sixty (60) days prior written notice upon the occurrence of any of the following conditions:

7.3.1. the SWRCB reduces, modifies or conditions the Permit on factors beyond the District’s practical or economic ability to accommodate;

7.3.2. the transactions contemplated by this Agreement are enjoined or otherwise prohibited by a court of competent jurisdiction; or

7.3.3. the Parties mutually agree in writing that completion of the transactions contemplated by this Agreement is not feasible.

Upon such termination, this Agreement shall be null and void and each Party shall be responsible for its own expenditures and out-of-pocket costs incurred in connection with this Agreement subject to the provisions of Article 16 regarding indemnification. Nothing in this section shall be construed as an admission by either Party that this Agreement or any of its terms is subject to the approval of SWRCB or any other governmental entity.

**ARTICLE 8.  
ADDITIONAL COVENANTS AND PROVISIONS**

8.1. **Environmental Review.** The parties acknowledge that District and any public agency Customer is/are responsible for compliance with the requirements of CEQA.

8.2. **Permits and Authorizations.** Customer shall support District in obtaining any permit, authorization, environmental approval or other governmental approval necessary for the effectiveness and continuing validity of this Agreement

and to fully cooperate with and use its best reasonable efforts to assist District in implementing all of the terms of this Agreement and achieving its objectives.

8.3. **No Rights Conferred.** This Agreement shall have no effect on the Permit or District's rights to Project Water, as the Parties do not intend to, and under this Agreement do not in any manner or way transfer, assign, encumber or grant to Customer any ownership interest or control over Project Water or the Permit. Nothing in this Agreement, nor the conduct of the Parties in their performance hereof, shall confer upon Customer any legal or equitable right or claim to Project Water. The availability of Project Water pursuant to this Agreement shall not confer any appropriative, public trust or any other right to water of any nature on Customer or any other person or entity. Nothing in this Agreement shall act as a forfeiture, diminution or impairment of any rights or discretion that District may enjoy to the full use of the Project Water, or from future sources, or shall in any way prejudice any of District's rights, title or interest thereto. The only rights granted to Customer for use of Project Water are those expressly set forth in this Agreement, and such rights and use are subject to each and every provision hereof.

8.4. **Customer Water Rights.** Customer, by signing this Agreement, is not waiving, releasing, altering, or transferring any right to Customer Water or facilities of Customer, or right to use water, vested or otherwise, that Customer may have or acquire, or which may be granted to Customer by the SWRCB. Customer does acknowledge and agree that the District may seek to secure permits for, acquire, develop, construct, and operate additional water facilities and systems in the future that will benefit Customer and Customer's businesses and properties, or other District customers. This Agreement shall not diminish, impair, supersede or otherwise affect Customer Water, and Customer's signature on this Agreement does not constitute a waiver, release, alteration or transfer of any such rights, vested or otherwise, which Customer may have or acquire.

8.5. **Water Quality.** The District does not assume any responsibility and shall not be held liable with respect to the quality of Project Water made available pursuant to this Agreement, and the District makes no warranty or representations as to the quality or fitness for use of Project Water. Customer shall be responsible for all necessary measures at its own expense for the testing, treatment, and other steps required for Customer's intended uses of Project Water.

8.6. **Wheeling.** Notwithstanding any other provision in this Agreement, if Project Water cannot be received by Customer unless it is wheeled to the Customer Place of use by another public agency, District shall not provide water service to Customer without the prior written consent of the public agency responsible for the required wheeling.



**ARTICLE 9.  
REPRESENTATIONS AND WARRANTIES OF DISTRICT**

District makes the following representations and warranties to Customer as of the Effective Date:

9.1. District is an improvement district duly formed and organized, validly existing and in good standing under the laws of the State of California;

9.2. District has the right, power and authority to enter into this Agreement and to perform its obligations herein, and the persons executing this Agreement on behalf of District have the right, power and authority to do so;

9.3. This Agreement constitutes a legal, valid and binding obligation of District, enforceable against District in accordance with its terms; and

9.4. The execution, delivery and performance of this Agreement by District will not breach or constitute a default by District under or grounds for the acceleration of maturity of any agreement, indenture, undertaking or other instrument to which District is a party or by which District or any of its property may be bound or affected.

**ARTICLE 10.  
REPRESENTATIONS AND WARRANTIES OF CUSTOMER**

Customer makes the following representations and warranties to District, as of the Effective Date:

10.1. Customer is either (a) a public water agency duly formed and organized, validly existing, and in good standing under the laws of the State of California, and is qualified to do and is doing business in the State of California; or (b) is a property owner of lands located within the District's boundaries and place of use under the Permit;

10.2. Customer has received a copy of the District Enactments, which Customer agrees are valid, subsisting, and in full force and effect, and Customer further agrees to be bound by and comply with the terms and provisions of the District Enactments.

10.3. Customer has the right, power, and authority to enter into this Agreement and perform all of its obligations hereunder, and the persons executing this Agreement on behalf of Customer have the right, power, intent, and authority to do so;

10.4. This Agreement constitutes a legal, valid and binding obligation of Customer, enforceable against Customer in accordance with its terms; and

10.5. Customer agrees to use Project Water only pursuant to and in compliance with each and all of the requirements and provisions of the Permit, SWRCB Decision D-1030, District Enactments, and California law, including, but not limited to, the requirements of Article X Section 2 of the California Constitution that all water must be placed to reasonable and beneficial use.

10.6. Customer will not deliver, use, allow to be used, store or resell Project Water to any areas, lands or users outside of the District's Place of Use.

10.7. If Customer is a public agency, it agrees to provide service to all customers within its boundaries who request a water allocation of Project Water.

## **ARTICLE 11. REDUCTION IN SUPPLY OF PROJECT WATER DUE TO SHORTAGE**

11.1 **Reductions in Supply.** The Parties recognize that the quantity of Project Water available to District at any given time may be reduced or eliminated by various circumstances, including, but not limited to: (a) a drought, reduction of supply or shortage condition with respect to water available to the District under the Permit; (b) an adverse regulatory, legal or environmental determination to District, which directly or indirectly restricts District from diverting and using the entire 8,000 acre feet per year pursuant to the Permit; (c) the consent of District to a restriction on its right to divert and use the entire 8,000 acre feet per year pursuant to the Permit; (d) the consent of District to, or an adverse determination against District, finding that District is no longer reasonably and beneficially using all of its water; or (e) the risk of an unexpected event disrupting District's ability to transfer the water to be delivered to Customer, or an unexpected event disrupting Customer's ability to receive the water delivered by District, such as a flood, earthquake, fire, act of war or like emergency.

11.2 **Allocation of Shortage.** In the event that a shortage condition from any cause is declared by the District with respect to its water rights or supply in Lake Mendocino and the east fork of the Russian River, and evidence of such shortage condition is of sufficient magnitude, in the District's sole opinion or findings, to require a reduction in diversions by District pursuant to its Permit, then District shall be entitled to reduce the amount of Project Water it is required to deliver to Customer pursuant to the terms of this Agreement in the manner set forth below without any form or manner of liability. Customers will share prorata in the reduction in District's allowed diversions from the Russian River and/or Lake Mendocino, as the case may be.

11.3 **Declaration and Notice.** In the event of a shortage pursuant to Section 11.2 above, District shall deliver a written "Notice of Impending Shortage" to

Customer, informing Customer of the amount of reduction in Project Water for the period in question, which shall be binding on Customer. Within thirty (30) days of delivery of such a Notice of Impending Shortage, District shall notice and conduct a public meeting to meet and confer with its customers in an effort to determine the terms and provisions under which District will delivery Project Water to Customers for the period during which the shortage condition prevails.

**11.4 Water Shortage Emergencies.** Notwithstanding Section 11.2 above, the District may allocate Project Water to its Customers on some other basis if a water shortage emergency has been declared pursuant to Water Code section 350. In the event of such an emergency water shortage, District shall comply with the notice, hearing, and other requirements set forth in Division 1 Chapter 3 of the California Water Code.

**11.5 Inability to Deliver.** If the delivery of Project Water under the provisions of this Agreement is prevented, delayed, or made impracticable due to drought, flood, fire, earthquake, or other natural disaster, federal or state regulatory limitations, strike, unavailability of necessary materials, electrical power or fuel, civil rioting, terrorism, war or military conflict, inability of District to obtain any approval for conveyance of Project Water from any government agency, including the SWRCB, or if the cost of complying with any environmental requirements renders this transaction economically or physically impractical (each a “**Force Majeure Event**”), District shall not be required to deliver and Customer shall not be required to pay for that portion of the Project Water the delivery of which has been prevented, delayed or made impracticable, for the period of prevention, delay or impracticability. Project Water not delivered as a result of a Force Majeure Event may be delivered to Customer on a make-up basis upon the conclusion of the Force Majeure Event, or at other times mutually agreeable to the parties on a reasonable, mutually agreed schedule, subject to District’s determination that such make-up deliveries are legally permissible and practicable.

**11.6 No Liability for Shortage.** Neither the District nor any of its officers, agents, or employees shall be liable for any damage, direct or indirect, arising from shortages in the amount of Project Water to be made available for delivery to Customer under this Agreement caused by any of the reasons set forth in this Article, or any other cause beyond its control.

## **ARTICLE 12. REDUCTION IN USE AND ALLOTMENT**

**12.1. Customer Initiation.** On or before September 1 of any Year, Customer may initiate a reduction in the Contract Quantity as to the following Year and the remainder of any Original or Extended Term, by providing written notice to District of such determination.

## 12.2 District Initiation.

**12.2.1** If Customer's actual beneficial use of Project Water is less than the Contract Quantity for three (3) consecutive Years, the General Manager may notify Customer in writing of District's intent to reduce Customer's Contract Quantity to an amount determined by District to reflect Customer's actual, historic beneficial use. Such notice shall provide an opportunity for the matter to be considered by District's Board of Trustees, and Customer may present information relevant to the Board's consideration. The Board's determination of the matter after such consideration shall be conclusive and final.

**12.2.2** Notwithstanding Section 12.2.1 above, if Customer is a Public Water System, as defined in Section 116275 of the California Safe Drinking Water Act, Part 12, Chapter 4 of the California Health and Safety Code, the District acknowledges that the California Department of Public Health ("**CDPH**") may require that Customer maintain a minimum contract quantity with District ("**CDPH Contract Quantity**"), as well as a buffer amount above and beyond Customer's maximum demands ("**Buffer**"). In order to accommodate this requirement, District agrees that it will not exercise its right to reduce Customer's Contract Quantity, pursuant to Section 12.2.1, below the CDPH Contract Quantity, provided Customer covenants to utilize its full Contract Quantity less the Buffer at least once every three (3) years. District reserves the right of specific performance as provided in Section 15.2 below to enforce the covenants made by Customer.

## **ARTICLE 13. CONSERVATION PLAN**

Customer shall develop and implement a comprehensive water conservation program and enforcement plan ("**Plan**") approved in writing by District. Customer shall submit the Plan to District's General Manager within ninety (90) days of the Effective Date. The Plan shall mandate and utilize, as appropriate, California development, domestic, agricultural and irrigation water conservation guidelines, including California Urban Water Association water conservation standards and agricultural irrigation conservation techniques as recognized by the California Department of Food and Agriculture. District's General Manager shall approve or disapprove the Plan within sixty (60) days after submittal; if rejected, the General Manager shall specify the revisions necessary for approval and the authority for such revisions. Customer shall resubmit a rejected plan within sixty (60) days of disapproval. Customer's failure to submit and obtain approval of a Plan as required by this Article, or its failure to implement and enforce the Plan within Customer's Place of Use and as against any third party to whom Customer may sell, give or allow to receive Project Water, shall constitute an event of default under this Agreement.

**ARTICLE 14.  
DEFAULT**

14.1. **Customer Default.** Each of the following shall constitute a default by Customer under this Agreement:

14.1.1. Customer's failure to pay, by the due date, the price per acre foot for water, or any other charge due and payable hereunder. Any such late payment shall bear interest at ten percent (10%) per annum from the due date until paid in full;

14.1.2. Customer's failure to perform, comply with, or observe any term, covenant, obligation, undertaking or other obligation that it is to perform or observe under this Agreement, the District Enactments or applicable state or federal law concerning Project Water and the use or disposition thereof, and Customer fails to cure such failure within thirty-five (35) days after District's written notice of default; or

14.1.3. If any warranty, representation or other statement made by or on behalf of Customer and contained in this Agreement or any other document furnished by Customer in compliance with or in reference to this Agreement is on the date made, or later proves to be, false, misleading or untrue in any material respect.

14.2. **District Default.** Each of the following shall constitute a default by District under this Agreement:

14.2.1. If District fails to perform, comply with, or observe any term, covenant, obligation, undertaking or other obligation under this Agreement that it is to perform or observe, and District fails to cure such failure within thirty-five (35) days after Customer's written notice of default; or

14.2.2. If any warranty, representation or other statement made by or on behalf of District and contained in this Agreement or any other document furnished by District in compliance with or in reference to this Agreement is on the date made, or later proves to be, false, misleading or untrue in any material respect.

**ARTICLE 15.  
REMEDIES**

15.1. **District's Remedies.** In the event of a default by Customer, District shall have the following rights and remedies, in addition to any rights and remedies now or hereafter provided by law or District Enactments:

**15.1.1.** District may terminate this Agreement, discontinue making water available to Customer pursuant to the terms hereof and remove its meter at Customer's Point of Delivery;

**15.1.2.** District may suspend availability of Project Water to Customer's Point of Delivery until such time as Customer has cured its default or may impose conditions upon the availability of Project Water to Customer; or

**15.1.3.** District may, by mandamus or other action or proceeding or suit at law or in equity, enforce its rights against Customer, or by suit in equity enjoin any acts or things which are unlawful or violate the rights of District.

Prior to discontinuing water service under this Agreement, District must provide thirty (30) day's advance written notice prior to the proposed discontinuance, specifying the grounds upon which the action is to be taken. Before discontinuance of the service, the Customer shall have the opportunity to discuss the reasons for the proposed discontinuance with the District's General Manager, or his/her designated agent, who shall be empowered to review all letters and statements, rectify any errors, and settle any controversies pertaining to the discontinuance of service. Customer shall be entitled to appeal any decision of the General Manager to the Board of Trustees.

**15.2. Specific Performance.** The Parties have invested significant time and resources in entering into this Agreement, and will invest additional time and resources in the implementation hereof. It is not possible to determine the sum of money which would adequately compensate a Party for such efforts. For the above reasons, the Parties agree that damages would not be an adequate remedy if a Party fails to carry out its obligations under this Agreement and that, in addition to any other right or remedy to which a Party may be entitled, at law or in equity, each Party shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent a breach or threatened breach hereof, without posting any bond or other undertaking. Notwithstanding the foregoing, Customer shall have no right to seek specific performance to cause District to make Project Water available for Customer's use when District has determined that such water is not available, or to compel District to exercise its discretion in any particular manner when a decision is reserved to District's judgment hereunder or by law.

**15.3. No Waiver.** A waiver of any default or breach of duty or contract by a Party shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract by the other Party. No delay or omission by a Party to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein.

15.4. **Remedies Cumulative.** No remedy herein conferred upon or reserved to a Party is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute, District Enactment or otherwise and may be exercised without regard to any other remedy conferred by any other law.

## **ARTICLE 16. INDEMNIFICATION**

16.1. **Customer Indemnity.** To the fullest extent permitted by applicable law, Customer shall defend, indemnify and hold harmless the District, its officers, directors, employees and agents, and each and every one of them, from and against any and all actions, liability, damages, claims, suits, proceedings, judgments, settlements, losses and expenses (including reasonable legal fees and expenses of attorneys chosen to represent District), including all expenses of every type and description to which it or they may be subjected or put to arising out of or related to the following:

**16.1.1.** any breach or alleged breach of any representation, warranty, covenant, provision, promise or agreement of Customer contained in this Agreement or in any document, instrument or agreement executed and delivered by Customer in connection herewith;

**16.1.2.** any loss, injury, adverse impact, or damage or alleged loss, injury, adverse impact or damage to any person, entity, party, or property arising out of or related in any way to this Agreement or to the Project Water made available by District to Customer pursuant to this Agreement after it is made available at Customer's Point of Delivery, and

**16.1.3.** District shall not be liable to Customer for any loss or damage to person or property caused by any Force Majeure Event, or any other causes, or any consequential damages or inconvenience which may arise from or relate to use of the Project Water.

This indemnification is effective and shall apply whether or not any such action is alleged to have been caused in part by District as a party indemnified hereunder. This indemnification shall not include any claim arising from the sole or active negligence or willful misconduct of District or any of its directors, officers, employees or agents.

16.2. **District Indemnity.** To the fullest extent permitted by applicable law, District shall defend, indemnify and hold harmless Customer, its officers, directors, employees and agents, and each and every one of them, from and against any and all actions, liability, damages, claims, suits, proceedings, judgments, settlements, losses and expenses (including reasonable legal fees and expenses of

attorneys chosen to represent Customer), including expenses of every type and description to which it may be subjected or put to arising out of or related to: any breach or alleged breach of any representation, warranty, covenant, promise or agreement of District contained in this Agreement. This indemnification shall not include any claim arising from the sole or active negligence or willful misconduct of Customer or any of its directors, officers, employees or agents.

### 16.3. **Customer Covenant; Insurance.**

**16.3.1. Covenant.** Customer, on its own behalf and on behalf of its officers, directors, employees and agents, covenants and agrees that it shall not initiate or pursue, or assist or support any other person or entity in the initiation or pursuit of, an action or undertaking of any kind, whether judicial, administrative or otherwise, that seeks to or would limit, diminish, impair, interrupt, or prohibit, either temporarily or permanently, (a) the Permit or other District water rights or entitlements; (b) the District Enactments; or (c) the District's ability to perform its obligations under this Agreement or other instrument by which District provides or makes available water to Contractors.

**16.3.2. Insurance.** Customer shall procure and maintain at its own cost during the term hereof a policy of commercial general liability insurance issued by a company lawfully authorized to do business in California, with a Best Insurance Reports (or comparable) rating of "A-VII" or better, covering Customer for its activities hereunder in the amount of one million dollars (\$1,000,000). The insurance shall name as additional insured and provide waiver of subrogation to District and its directors, officers, elected officials, appointed officials, lenders, agents, attorneys and employees, as their interests may appear. Customer shall provide evidence of such insurance to District satisfactory to District's General Manager.

16.4. **Defense of Claims.** No right to indemnification under this Article shall be available unless the Party seeking indemnification (the "**Indemnified Party**") shall have given to the Party obligated to provide indemnification (the "**Indemnitor**") a written notice (a "**Claim Notice**") describing in reasonable detail the facts giving rise to any claim for indemnification hereunder promptly after receipt of knowledge of the facts upon which such claim is based. A delay or failure to so notify the Indemnitor shall relieve the Indemnitor of its obligations hereunder only to the extent, if at all, that it is prejudiced by reason of such delay or failure. Upon receipt by the Indemnitor of a Claim Notice from an Indemnified Party with respect to a claim of a third party, such Indemnitor shall assume the defense thereof with counsel reasonably satisfactory to the Indemnified Party, and the Indemnified Party shall cooperate in the defense or prosecution thereof and shall furnish such records, information, and testimony and attend all such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnitor in connection therewith. If the Indemnitor assumes such defense as provided above, then the Indemnitor shall have the right in its sole discretion, to



settle any claim for which indemnification has been sought and is available hereunder, provided the Indemnified Party is fully released from all known and unknown claims of such third party and the Indemnified Party is not obligated to perform any actions or pay any money on account of such settlement. If the Indemnitor does not assume such defense as provided above, then: (a) the Indemnified Party shall have the right to employ its own counsel in any such case, and all of the fees and expenses of such counsel shall be the responsibility of Indemnitor, who shall promptly reimburse the Indemnified Party fully for such expenses; and (b) the Indemnified Party shall have the right, in its sole discretion, to settle any claim for which indemnification has been sought and is available hereunder, at the expense of Indemnitor, who hereby agrees to promptly reimburse the Indemnified Party all costs and expenses incurred by the Indemnified Party with respect to such settlement.

## **ARTICLE 17. GENERAL PROVISIONS**

17.1. **No Third Party Rights.** This Agreement is made solely for the benefit of the Parties and their respective permitted successors and assigns, if any. Except for such a permitted successor and assign, no other person or entity shall have or acquire any right by virtue of this Agreement.

17.2. **Assignment.** Neither Party may assign any of its rights or delegate any of its duties under this Agreement. Any assignment or delegation made in violation of this Agreement is void and of no force or effect. This Agreement is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities.

17.3. **Property Transfer.** In the event that Customer proposes to sell its real property to which Project Water is made available under this Agreement, Customer shall notify District in writing in advance of the close of escrow with sufficient time for District to consider the proposed transfer. If (a) District is timely notified of the proposed transfer; (b) Customer is not then in default under this Agreement at the time of such notification or at any time up until the close of escrow; and (c) the proposed new owner executes a new agreement with District in substantially the same form as this Agreement, or if specified by District, executes District's then-current uniform water supply agreement, on or before the close of escrow; then District shall approve the transfer of the Contract Quantity to the proposed new owner and execute the new agreement with such owner. Upon District's execution of the replacement agreement, this Agreement shall be terminated.

17.4. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of California.

17.5. **Amendment.** The terms of this Agreement may be modified only in writing by mutual agreement signed by both Customer and District. Any amendment made in violation of this section shall be null and void.

17.6. **Entire Agreement.** Except as otherwise provided herein, this Agreement supersedes any and all other agreements, including any prior water supply agreements previously in effect between the Parties prior to execution of this Agreement, either oral or in writing, between the Parties hereto with respect to the availability of Project Water to Customer by District and contains all the covenants and agreements between the Parties with respect thereto. Each Party acknowledges that no representation or promise has been made by the other Party which is not embodied herein, and that no other agreement or promise not contained in this Agreement shall be valid or binding. Each recital set forth at the beginning of this Agreement is true and correct and a binding portion hereof.

17.7. **Severability.** Should any provision in this Agreement is held by a court of competent jurisdiction or an arbitrator or arbitration panel to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way notwithstanding such invalidity, illegality or unenforceability.

17.8. **Time is of the Essence.** It is expressly hereby agreed that time is of the essence of each and every provision of this Agreement.

17.9. **Cooperation.** To the extent reasonably required, each Party shall, in good faith, assist the other in obtaining all such necessary approval and preparation of required environmental documents or reports to the SWRCB for Project Water as well as Customer Water. The Parties agree to cooperate and assist each other in good faith in meeting such requirements of regulatory agencies as may be applicable to the terms and conditions of the Permit, any requirements imposed upon Customer Water, and performance of any terms of this Agreement.

17.10. **Attorneys' Fees.** Should either Party to this Agreement reasonably retain counsel for the purpose of enforcing any provision of this Agreement, including the institution of any action or proceeding to enforce any provision of this Agreement, or to recover damages if otherwise available hereunder, or to obtain injunctive or other relief by reason of any alleged breach of any provision of this Agreement, or for a declaration based on a demonstrated necessity of such Party's rights or obligations under this Agreement, or for any other judicial or equitable remedy, then if the matter is resolved by judicial or quasi-judicial determination (including arbitration, if such arbitration is agreed to by the Parties), the prevailing Party shall be entitled, in addition to such other relief as may be granted, to be reimbursed by the losing Party for all attorneys' fees, expert fees and costs, and all litigation or arbitration fees and costs reasonably incurred, including all attorneys' fees and costs for services rendered to the prevailing Party and all attorneys' fees and costs reasonably incurred in enforcing any judgment or order entered on

appeal. The prevailing Party shall be determined by the court (or arbitrator, if arbitration is agreed to by the Parties) in the initial or any subsequent proceeding.

17.11. **Regulatory and Litigation Costs.** District will defend its own interest in any litigation or regulatory action challenging the validity of the Permit or District's use of Project Water. The parties shall each defend their own interest in litigation or regulatory action involving this Agreement, including environmental compliance and validity of the Agreement. Any attorney fees and costs awarded in CEQA litigation to a person or entity not a party to this Agreement shall be split equally between the parties.

17.12. **Notices.** Any notice, approval, consent, waiver or other communication required or permitted to be given or to be served upon either Party in connection with this Agreement shall be in writing. Such notice shall be personally served, sent by facsimile, telegram, or cable, or sent prepaid by registered or certified mail with return receipt requested, or sent by reputable overnight delivery service, such as Federal Express, and shall be deemed given: (a) if personally served, when delivered to the Party to whom such notice is addressed; (b) if given by facsimile, telegram, or cable, when sent (with confirmation of receipt); (c) if given by prepaid or certified mail with return receipt requested, on the date of execution of the return receipt; or (d) if sent by reputable overnight delivery service, such as Federal Express, when received with confirmation of delivery. Such notices shall be addressed to the Party to whom such notice is to be given at the Party's address set forth below or as such Party shall otherwise direct in writing to the other Party delivered or sent in accordance with this section.

If to District:                   Mendocino County Russian River Flood Control and  
Water Conservation Improvement District  
151 Laws Avenue, Suite D  
Ukiah, California 95482  
Phone: (707) 462-5278  
Fax: (707) 462-5279

If to Customer:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17.13. **Usage.** Unless the context clearly requires otherwise:

**17.13.1.** the plural and singular numbers shall each be deemed to include the other; the masculine, feminine and neuter genders shall each be deemed to include the others; "shall," "will" or "agrees" are mandatory, and "may" is permissive;

**17.13.2.** reference to any individual or entity includes its successors and assigns, but only if such successors and assigns are not prohibited by this Agreement;

**17.13.3.** reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

**17.13.4.** reference to any legal requirement, including a permit, governmental approval, regulation or statute, means such legal requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any legal requirement means that provision of such legal requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

**17.13.5.** "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;

**17.13.6.** "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

**17.13.7.** "or" is used in the inclusive sense of "and/or"; and

**17.13.8.** references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

17.14. **Headings.** Headings are provided for the convenience of the Parties and shall not be construed to explain or modify any part of this Agreement.

17.15. **Ambiguities.** Each Party and its counsel have participated fully in the review and any revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement.

17.16. **Survival.** Whether or not it is specifically so provided herein, any term or provision of this Agreement, which by its nature and effect is required to be kept, observed, or performed after the termination, suspension, cancellation, rescission or expiration of this Agreement, shall survive such termination, suspension, cancellation, rescission or expiration, and shall be and remain binding upon and for the benefit of the Parties until fully observed, kept or performed.

17.17. **Execution and Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the last date written below.

**MENDOCINO COUNTY RUSSIAN RIVER FLOOD CONTROL AND  
WATER CONSERVATION IMPROVEMENT DISTRICT**

By: \_\_\_\_\_  
President

ATTEST: \_\_\_\_\_  
Secretary

**CUSTOMER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**CONTRACT QUANTITY**

**EXHIBIT B**  
**CUSTOMER PLACE OF USE**

**EXHIBIT C**  
**CUSTOMER WATER**



**EXHIBIT D**  
**POINT OF DELIVERY MAP**