

## EMERGENCY WATER SUPPLY AGREEMENT

This EMERGENCY WATER SUPPLY AGREEMENT (“**Agreement**”) is entered into this 23<sup>rd</sup> day of May, 2014 (“**Effective Date**”) by and between Mendocino County Russian River Flood Control & Water Conservation Improvement District (“**Mendocino**”) and Redwood Valley County Water District (“**Redwood**”).

### 1. Recitals.

a. Mendocino holds an appropriate right to 8,000 acre feet of water from Lake Mendocino pursuant to Permit 12947B issued by the State Water Resources Control Board.

b. Mendocino currently provides water service to Redwood pursuant to Mendocino County Superior Court Judgment No. 42059 (“**Judgment**”), which provides that Mendocino must provide surplus water to Redwood, defined as “that portion, if any, of said 8,000 acre feet which is not put to beneficial use within the land situated in the Mendocino district.”

c. Calendar year 2013 was the driest year on record and 2014 is projected to be critically dry as well, and Mendocino has no surplus water available, and is imposing a 25% reduction in supply upon its customers. Consequently, Redwood does not have sufficient water supply to provide human health and safety municipal uses within its boundaries.

d. In an attempt to provide assistance to Redwood, Mendocino has negotiated an agreement with its customer, the City of Ukiah (“**Ukiah**”), wherein Ukiah has agreed to use alternate sources of water in order to free up water under its Water Supply Contract with Mendocino. In the agreement Ukiah agrees not to use Project water it is authorized to divert under its Water Supply Contract in order to make that water available to Redwood and others.

e. The purpose of this Agreement is to detail the circumstances under which Mendocino will supply Redwood with Project water made available by Ukiah (“**Project Water**”).

2. Agreement. Mendocino hereby agrees to make available to Redwood up to 355 acre feet of Project Water pursuant to the terms and conditions of this Agreement.

3. Term. The term of this Agreement shall begin on March 1, 2014 and shall terminate by its own terms upon the earlier of Redwood’s use of all Project Water available under this Agreement, or December 31, 2014.

4. Costs. As consideration for this Agreement, Redwood will pay to Mendocino the following amounts (collectively “**Water Costs**”):

a. Fifty-Eight Dollars and 75/100 (\$58.75) for each acre foot of Project Water made available to Redwood pursuant to this Agreement (“**Purchase Price**”). Project Water shall be deemed delivered under this Agreement when it is measured at the Redwood’s meter.

b. In addition to the Purchase Price, Redwood shall be responsible for all attorney’s fees and administrative costs of implementing this Agreement, and the agreement with Ukiah.

5. Payment of Costs. Mendocino will invoice Redwood monthly, in arrears, for Water Costs. Redwood shall pay Mendocino within fifteen (15) days of the receipt of any invoice.

6. Reporting. Redwood shall submit monthly reports to Mendocino by the last day of each month documenting the amount of Project Water diverted from Lake Mendocino during the prior thirty (30) days. No later than December 31, 2014, Redwood shall submit to Mendocino a report detailing all water diverted from Lake Mendocino pursuant to this Agreement during the term.

7. Scheduling. Redwood shall submit schedules for use of Project Water at least ten (10) days in advance of the need for delivery and provide a written schedule for the requested delivery. No later than December 31, 2014, Redwood shall submit to Mendocino a report detailing all water diverted from Lake Mendocino pursuant to this Agreement.

8. Measurement. Project Water shall be measured at Redwood's meter. Mendocino shall be allowed to access to Redwood's meter at all times.

9. Restrictions On Use. Redwood agrees that all Project Water provided pursuant to this Agreement will be used (1) within the boundaries of Redwood, (2) only for human health and safety municipal uses, and (3) be placed to a public use that is reasonable and beneficial. Redwood shall maintain books and records sufficient to enable it to furnish Mendocino with reports and statements with regard to the use of any and all water provided pursuant to this Agreement to enable Mendocino to make proof of reasonable and beneficial use of said water. Consistent with the provisions of Water Code Sections 475 and 1244, the parties agree that this Agreement is not evidence of the availability of surplus water beyond the terms of this Agreement or lack of beneficial use of the water involved in this Agreement, and they shall not contend otherwise. No Project Water will be served outside of Mendocino's Place of Use.

10. Water Quality. Mendocino makes no warranty or representations as to the quality or fitness for use of Project Water sold and delivered to Redwood pursuant to this Agreement. Redwood shall be responsible for all necessary measures at its own expense for the testing, treatment, and other steps required for the intended uses of Project Water.

11. CEQA Compliance. The parties acknowledge that they have completed any review required under the California Environmental Quality Act for implementation of this Agreement.

12. General Indemnity. Redwood agrees to protect, defend, indemnify, and hold harmless the other party, its officers, agents, servants, employees, and consultants from and against any and all losses, claims, liens, demands and causes of action of every kind and character on account of personal injuries or death or damages to property and, without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, connected with, or arising directly or indirectly out of the performance or non-performance by the indemnifying party hereunder.

13. Force Majeure. Except as otherwise provided herein, Mendocino's obligations under this Agreement shall be suspended so long as, and to the extent that, the performance thereof shall be prevented by earthquakes, fires, tornadoes, facility failures, floods, drowning, strikes, other casualties or acts of God, orders of court or governmental agencies having jurisdiction over the subject matter thereof or other events or causes beyond the control of the parties hereto.

14. Temporary Nature/Judgment not Affected. This Agreement is not intended to establish a precedent, and the parties agree that the delivery of Project Water under this Agreement shall not give Redwood a continued right to acquire Project Water beyond the term of this Agreement other than pursuant to the Judgment. Nothing in this Agreement is intended to alter the terms of the Judgment.

15. Notices. All notices that are required, either expressly or by implication, to be given by any party to the other under this Agreement shall be in writing, delivered in person or mailed, United States first-class postage prepaid, addressed as follows:

MENDOCINO COUNTY RUSSIAN RIVER FLOOD CONTROL & WATER  
CONSERVATION IMPROVEMENT DISTRICT

Attention: Sean White  
151 Laws Avenue, Suite D  
Ukiah, CA 95482  
Phone: 707.462.5278  
Facsimile: n/a  
Email: rrfc@pacific.net

REDWOOD VALLEY COUNTY WATER DISTRICT

Attention: Bill Koehler  
P.O. Box 399  
Redwood Valley Ca. 95470  
Phone: 707.485.0679  
Facsimile: 707.485.5148  
Email: gmrvcwd@pacific.net

Notice shall be deemed given (a) two calendar days following mailing via regular or certified mail, return receipt requested, (b) one business day after deposit with any one-day delivery service assuring "next day" delivery, or (c) upon actual receipt of notice when personally delivered, whichever is earlier. The parties shall promptly give written notice to each other of any change of address, and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

16. Miscellaneous.

a. *No Waiver*. A waiver by either party of a breach of any of the covenants under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement. No waiver of a condition under this Agreement shall be valid unless it is in a writing signed by the party for whose benefit the condition exists.

b. *Modifications*. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party. In no event shall any amendment or other modification to this Agreement be implied by or construed from oral statements or from the conduct of any person or entity.

c. *Severability*. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

d. *Time of Essence*. Time is expressly made of the essence with respect to the performance by the parties of each and every obligation and condition of this Agreement.

e. *Other Documents; Cooperation of Parties.* Each party agrees to sign any other and further instruments and documents as may be reasonably necessary or proper in order to accomplish the intent of this Agreement, provided that those instruments and documents are consistent with the terms of this Agreement.

f. *Attorneys Fees.* If legal action or other proceeding is commenced as a result of a dispute which arises under or relates to any provision of this Agreement, the losing party shall pay the prevailing party's actual attorneys' fees, costs, expert witness fees and other expenses incurred in preparation for and conduct of that action or proceeding, appeal of judgment, and enforcement and collection of judgment or award.

g. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely execute counterparts shall be sufficient proof of this Agreement.

MENDOCINO COUNTY FLOOD CONTROL &  
WATER CONSERVATION IMPROVEMENT  
DISTRICT

By: Richard Shoenberger  
Its: VICED PRESIDENT

ATTEST:

By: [Signature]  
Secretary

REDWOOD VALLEY COUNTY WATER  
DISTRICT

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Secretary