

MENDOCINO COUNTY RUSSIAN RIVER FLOOD CONTROL & WATER CONSERVATION IMPROVEMENT DISTRICT

AGREEMENT FOR SURPLUS WATER SERVICE

This Agreement for Surplus Water Service (“**Agreement**”) is entered into by and between ****NAME**** (“**Surplus User**”) and Mendocino County Russian River Flood Control & Water Conservation Improvement District (“**District**”) as of ****INSERT DATE****.

ARTICLE 1 EXPLANATORY RECITALS

1.1 The District holds water rights to the Russian River in Mendocino County, California, and has established a process by which customers within the District’s authorized place of use under their water rights may purchase and consume a specific amount of water from the District under contract.

1.2 Accordingly, there are circumstances under which there is Surplus Water available not being used by District Customers, and through this Agreement, the District desires to serve those landowners and public agencies with Surplus Water in accordance with this Agreement.

1.3 Surplus User wishes to contract with the District for a quantity of Surplus 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.

1.4 Surplus User may also hold its own water rights under state law to water from the Russian River.

1.5 District and Surplus User intend by this Agreement to confirm the terms and conditions under which surplus water may be provided by the District to the Surplus User.

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 **"Approved Meter"** shall mean a manufactured instrument for accurately measuring and recording the flow of water in a pipeline that can meet the requirements of the District's Alternative Compliance Plan under the State Water Resources Control Board water measurement and reporting regulation and has been approved by the District General Manager.
- 2.4 **"CEQA"** shall mean the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.).
- 2.5 **"Customers"** shall mean every customer who has signed a Uniform Water Supply and Purchase Agreement with the District for an annual allocation of District Water.
- 2.6 **"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 specific authority is delegated to the General Manager.
- 2.7 **"District Enactments"** shall mean Ordinance No. 25-01, as revised or amended, and all supporting Resolutions.
- 2.8 **"District Place of Use"** shall mean the District's Place of Use as designated in its Water Rights.
- 2.9 **"District Water"** shall mean any and all water available to the District for distribution.
- 2.10 **"Effective Date"** shall mean the date of this Agreement specified above.
- 2.11 **"Ordinance"** shall mean Ordinance No. 25-01, the Mendocino County Russian River Flood Control and Water Conservation Improvement District Ordinance Establishing Rules & Regulations for Water Sales, as amended or revised in the future.
- 2.12 **"Party"** or **"Parties"** shall mean Surplus User and/or District.
- 2.13 **"Surplus User"** shall mean the signatory to this Agreement for Surplus Water Service.
- 2.14 **"Surplus Users"** shall mean every surplus user who has signed an Agreement for Surplus Water Service and any party within the District's Place of Use that has informed the District of its desire to receive Surplus Water, including any party within the District's Place of Use that has provided written notice to the District of its desire for a specific amount of Surplus Water within 30 days of the District's issuance of the Notice of Surplus Availability in accordance with Section 2.1.2.

2.15 **"Surplus User's Place of Use"** shall mean Surplus User's authorized place of use, designated as Assessor Parcel Number(s) for non-public agency Surplus Users, and legal boundaries for public agency Surplus Users, as designated on the map attached as **EXHIBIT B** to this Agreement.

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

2.17 **"Surplus Water"** shall mean District Water temporarily available during any Year in excess of the amounts necessary for the District to meet the demands of its Customers as determined by the District.

2.18 **"Water Rights"** shall collectively refer to District License Nos. 013898, 003870, and 004783 as issued by the California State Water Resources Control Board and any other water rights or water supply sources of the District.

2.19 **"Point of Delivery"** or **"Service Connection"** shall mean the location(s) where Surplus User diverts Surplus Water from the Russian River as identified in **EXHIBIT D** to this Agreement.

2.20 **"SWRCB"** shall mean the California State Water Resources Control Board.

2.21 **"Year"** shall mean standard water year from October 1 through September 30 of the following year.

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 SURPLUS WATER SUPPLY

2.1 **Surplus Water.** Each Year when Surplus Water is available, as determined by the District, Surplus User may purchase all or part of such Surplus Water in accordance with the following procedures:

2.1.1 The District shall provide all Surplus Users with a Notice of Surplus Availability;

2.1.2 Surplus Users shall provide written notice to the District of its desire for a specific amount of such Surplus Water by email or mail within 30 days of the District's issuance of the Notice of Surplus Availability. If Surplus Water is determined by the District to be available, District will confirm each Surplus User's allotment of Surplus Water by providing the form attached here as **EXHIBIT E** which must be signed and

returned to the District by Surplus Users as a precondition to the Effective Date of this Agreement and to the start of each Extended Term as defined in Section 7.1;

2.1.3 Surplus User acknowledges that District must provide Surplus Water first to its Customers. If Surplus Water remains uncommitted after Customer demands have been met, such Surplus Water shall then be provided to Surplus Users. If Surplus Users combined express a desire to purchase more Surplus Water than has been determined to be available, the District shall apportion the available Surplus Water among all Surplus Users in such manner as the District shall determine to be equitable.

2.1.4 Surplus User's failure to pay, by the due date, the price per acre foot established by the District for Surplus Water shall constitute a Surplus User default under this Agreement.

ARTICLE 4 SURPLUS WATER DELIVERY AND USE

4.1 **Point of Delivery.** District shall make the Surplus Water available at the Point of Delivery. The Parties acknowledge that Surplus User will also divert Surplus User Water from the Point of Delivery in addition to Surplus Water. Surplus User shall take physical control of Surplus Water at the Point of Delivery. Consistent with Ordinance 25-01, Surplus User shall bear all expenses of such diversion, including the furnishing and maintenance of intake facilities. Surplus User 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.** Surplus User shall not change the location of or substantially alter the Point of Delivery without obtaining District's prior written approval, which approval shall not be unreasonably withheld, and compliance with the law.

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

4.4 **Place of Use.** Surplus Water made available to Surplus User shall not be used, sold, or disposed of by the Surplus User outside of the Surplus User's Place of Use.

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

4.6 **Responsibility for Handling Water and Indemnification.** Surplus User shall be responsible for the carriage, handling and control of Surplus 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 Surplus Water, and Surplus User 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 Surplus Water beyond the Point of Delivery.

4.7 **Interruption of Water Service.** The District does not guarantee continuous availability of Surplus 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 for various reasons, including, but not limited to, those set forth in the District Enactments. Except in emergencies, such stoppages will not be made without prior notice to Surplus User. The District shall not assume any responsibility or be held liable for loss or damage which may occur due to such interruption of water service.

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

4.9 **Availability and Reduction in Surplus Water.** The District makes no representation, guarantee or warranty to Surplus User regarding the availability of Surplus Water or the quantity, quality, or delivery times of said Surplus Water. Surplus Water delivered to Surplus User under this Agreement may be reduced by District at any time due to it becoming unavailable as determined by the District.

ARTICLE 5 METERS AND WATER USAGE REPORTS

5.1. **Installation and Maintenance.** In accordance with Ordinance No. 25-01, as amended or revised in the future, and all supporting Resolutions and Policies, all Surplus Water made available pursuant to this Agreement shall be metered at each of Surplus User's Points of Delivery by an Approved Meter. All determinations relative to the measurement of Surplus Water shall be made by the District.

5.2. **District Meters.** Consistent with Ordinance 25-01, District may in its sole discretion, and at such time determined by District, place its own Approved Meter at a Point of Delivery, and Surplus User shall make space available for that purpose in accordance with District's specifications. Once District has installed its own Approved 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 Surplus User'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 Surplus User or by District at the Service Connection without advance notice, and Surplus User hereby grants District sufficient license and permission to facilitate such activity.

5.4. **Readings.** The District shall read each Approved Meter at Surplus User's Point of Delivery monthly, either directly or by remote telemetry, and provide Surplus User with an annual summary of total water diverted from each Approved Meter no later than November 30 of the following Year, reflecting the total amount of all water diverted by Surplus User from the Russian River, including Surplus User Water and Surplus Water.

5.5. **Reports.** Based upon the Approved Meter readings provided to Surplus User by District as set forth in this Article, Surplus User shall provide District with an annual written report of water usage, quantifying all water diverted and used by Surplus User from the Point of Delivery, and identifying such water as either Surplus Water or Surplus User 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, Surplus User shall establish and maintain books and records sufficient to allow District to furnish information required to the SWRCB regarding Surplus User's water use. Surplus User shall also provide District with such other reports concerning Surplus User's use of Surplus Water and compliance with this Agreement as requested by District. Such reports shall be furnished to District annually by December 31.

ARTICLE 6 PAYMENT

6.1. **Price.** Surplus User shall pay District for all Surplus Water made available to Surplus User each Year at the per acre foot rate determined annually by the District, subject to the Ordinance, in addition to other fees set forth in District Enactments.

6.2. **Obligation to Purchase.** Surplus User shall be obligated to pay for the Surplus Water requested and made available from the District, as confirmed by the Parties signatures on **Exhibit E**, regardless of the amount of Surplus Water actually diverted by Surplus User pursuant to this Agreement. Surplus User shall not be required to pay for any portion of the Surplus Water that is not available for diversion as determined by District in accordance with Article 11. At any time, Surplus User may refuse to accept Surplus Water pursuant to this Agreement, however, the Surplus User 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 Surplus User for amounts due hereunder for the previous Year. Surplus User shall pay each such invoice within twenty-five (25) days of issuance. Surplus User's obligation to pay each such invoice shall be absolute and unconditional, and not subject to deduction, setoff, prior notice, demand, or inability of Landowner to use, store or resell Surplus Water, and shall be subject to collection and enforcement as set forth in the District Enactments.

6.4. **General Obligation of Customer.** The obligations of any public agency Surplus User under this Agreement will constitute a general obligation, and the Surplus User 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 Surplus User is obligated to pay District the payments becoming due under this Agreement notwithstanding any individual default by its water users or others in the payment to the Surplus User of assessments, taxes or other rates and charges levied.

ARTICLE 7 TERM

7.1. **Term.** The term of this Agreement and the applicability of each fully executed **EXHIBIT E** ("Original Term"), shall be for one (1) year from and after the Effective Date. Upon expiration of the Original Term, this Agreement shall automatically renew for another one (1) year term subject to the District's amendment of, and Surplus User's approval of, **EXHIBIT E** ("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 District's Water Rights 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 Surplus User is/are responsible for compliance with the requirements of CEQA.

8.2. **Permits and Authorizations.** Surplus User 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 District's rights to District 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 Surplus User any ownership interest or control over District Water, including Surplus Water. Nothing in this Agreement, nor the conduct of the Parties in their performance hereof, shall confer upon Surplus User any legal or equitable right or claim to District Water, including Surplus Water. The availability of Surplus Water pursuant to this Agreement shall not confer any appropriative, public trust or any other right to water of any nature on Surplus User 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 District 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 Surplus User for use of District Water are those expressly set forth in this Agreement, and such rights and use are subject to each and every provision hereof.

8.4. **Surplus User Water Rights.** Surplus User, by signing this Agreement, is not waiving, releasing, altering, or transferring any right to Surplus User Water or facilities of Surplus User, or right to use water, vested or otherwise, that Surplus User may have or acquire, or which may be granted to Surplus User by the SWRCB. Surplus User 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 Surplus User and Surplus User's businesses and properties, or other District Surplus Users and Customers. This Agreement shall not diminish, impair, supersede or otherwise affect Surplus User Water, and Surplus User's signature on this Agreement does not constitute a waiver, release, alteration or transfer of any such rights, vested or otherwise, which Surplus User 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 Surplus Water made available pursuant to this Agreement, and the District makes no warranty or representations as to the quality or fitness for use of Surplus Water. Surplus User shall be responsible for all necessary measures at its own expense for the testing, treatment, and other steps required for Surplus User's intended uses of Surplus Water.

8.6. **Wheeling.** Notwithstanding any other provision in this Agreement, if Surplus Water cannot be received by Surplus User unless it is wheeled to the Surplus User's Place of Use by another public agency, District shall not provide water service to Surplus User 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 Surplus User 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 SURPLUS USER

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

10.1. Surplus User 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) owns real property outside the District's Place of Use under the District's Water Rights;

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

10.3. Surplus User 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 Surplus User have the right, power, intent, and authority to do so;

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

10.5. Surplus User agrees to use Surplus Water only pursuant to and in compliance with each and all of the requirements and provisions of the Water Rights, 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. If Surplus User is a public agency, it agrees to provide service to all customers within its boundaries who request a water allocation of Surplus Water.

ARTICLE 11. CONSERVATION PLAN

Surplus User shall comply with the water conservation program and enforcement plan established by the District set forth in Article 9 of Ordinance 25-01 (“Plan”). Surplus User’s failure to implement and enforce the Plan within Surplus User’s Place of use and as against any third party to whom Surplus User may sell, give, or allow to receive Surplus Water, shall constitute an event of default under this Agreement.

ARTICLE 12. DEFAULT

12.1. **Surplus User Default.** Each of the following shall constitute a default by Surplus User under this Agreement:

12.1.1. Surplus User’s failure to pay, by the due date, the price per acre foot for Surplus 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;

12.1.2. Surplus User’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 Surplus Water and the use or disposition thereof, and Surplus User fails to cure such failure within thirty-five (35) days after District's written notice of default; or

12.1.3. If any warranty, representation or other statement made by or on behalf of Surplus User and contained in this Agreement or any other document furnished by Surplus User 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.

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

12.2.1. 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 Surplus User's written notice of default; or

12.2.2. 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 13. REMEDIES

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

13.1.1. District may terminate this Agreement, discontinue making Surplus Water available to Surplus User pursuant to the terms hereof and remove its Approved Meter at Surplus User's Point of Delivery;

13.1.2. District may suspend availability of Surplus Water to Surplus User's Point of Delivery until such time as Surplus User has cured its default or may impose conditions upon the availability of Surplus Water to Surplus User; or

13.1.3. District may, by mandamus or other action or proceeding or suit at law or in equity, enforce its rights against Surplus User, 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 Surplus User 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 Surplus User shall have the opportunity to discuss the reasons for the proposed discontinuance with the District's General Manager, or their 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. Surplus User shall be entitled to appeal any decision of the General Manager to the Board of Trustees.

13.2. **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, Surplus User shall have no right to seek specific performance to cause District to make Surplus Water available for

Surplus User's use when District has determined that such Surplus 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.

13.3. **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.

13.4. **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 14. INDEMNIFICATION

14.1. **Surplus User Indemnity.** To the fullest extent permitted by applicable law, Surplus User 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:

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

14.1.2. 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 Surplus Water made available by District to Surplus User pursuant to this Agreement after it is made available at Surplus User's Point of Delivery, and

14.1.3. District shall not be liable to Surplus User 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 Surplus 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.

14.2. **District Indemnity.** To the fullest extent permitted by applicable law, District shall defend, indemnify and hold harmless Surplus User, 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 Surplus User), 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 Surplus User or any of its directors, officers, employees or agents.

14.3. **Surplus User Covenant; Insurance.**

14.3.1. **Covenant.** Surplus User, 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) 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 Customers and Surplus Users.

14.3.2. **Insurance.** Surplus User 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 Surplus User 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. Surplus User shall provide evidence of such insurance to District satisfactory to District's General Manager.

14.4. **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 15. GENERAL PROVISIONS

15.1. **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.

15.2. **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.

15.3. **Property Transfer.** In the event that Surplus User proposes to sell its real property to which Surplus Water is made available under this Agreement, Surplus User 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) Surplus User 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, on or before the close of escrow; then District shall approve the application of 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.

15.4. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of California as well as the District Enactments.

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

15.6. **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 Surplus Water to Surplus User 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.

15.7. **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.

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

15.9. **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 Surplus Water as well as Surplus User 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 District's Water Rights, any requirements imposed upon Surplus User Water, and performance of any terms of this Agreement.

15.10. **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.

15.11. **Regulatory and Litigation Costs.** District will defend its own interest in any litigation or regulatory action challenging the validity of the District's Water Rights or use of District 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.

15.12. **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
PO Box 2104
Ukiah, California 95482
Phone: (707) 462-5278
Email: DistrictManager@rrfc.net

If to Surplus user:

****CUSTOMER NAME****
****ADDRESS ****
****PHONE NUMBER ****
****EMAIL ADDRESS****

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

15.13.1. 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;

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

15.13.3. 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;

15.13.4. 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;

15.13.5. "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;

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

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

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

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

15.15. **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.

15.16. **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.

15.17. **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 of the Board of Trustees

Date

ATTEST:

Secretary of the Board of Trustees

Date

SURPLUS USER

By: _____

****SURPLUS USER NAME, COMPANY NAME****

Date

****ADDRESS ****

****PHONE NUMBER ** **EMAIL ADDRESS****

TEMPLATE

EXHIBIT A PURPOSE OF USE

Exhibit A to that Agreement for Out-of-District Surplus Water Service between Mendocino County Russian River Flood Control & Water Conservation Improvement District (“**District**”) and ****SURPLUS USER NAME**** (“**Surplus User**”) dated ****DATE**** (“**Agreement**”).

By its signature below, Surplus User represents and warrants to District the following:

1. The purpose of use for the water shall be as follows (check all that apply):
 - Domestic, Municipal, and/or Industrial
 - Irrigation (includes frost protection, heat protection, heat suppression, etc.)

The use of District Water available to Surplus User under this Agreement shall be restricted exclusively to the uses specified above. Should Surplus User wish to change the purpose of use of District Water provided under this Agreement to any other use, Surplus User is required to apply to the District for approval and a revised Exhibit A.

2. Surplus User hereby represents and warrants to District that Surplus User’s use of District Water will at all times comply with all restrictions, laws, ordinances, rules, regulations, and orders affecting the use of District Water now in effect or which may hereafter come into effect during the term of this Agreement for the use specified above. Surplus User, at its expense, shall promptly and diligently procure, maintain, and comply with all permits, licenses, franchises, and other authorizations which are now or at any time hereafter may be required for the use of District Water contemplated hereby.
3. **As provided in the Agreement, the Agreement is not assignable to any other party or landowner.**

By: _____ Date _____
****SURPLUS USER NAME****
****ADDRESS ****
****PHONE NUMBER ** **EMAIL ADDRESS****

By: _____ Date _____
Secretary of the Board of Trustees of the

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

**EXHIBIT E
ANNUAL SURPLUS WATER AMOUNT**

Exhibit E to that Agreement for Out-of-District Surplus Water Service between Mendocino County Russian River Flood Control & Water Conservation Improvement District (“**District**”) and ****SURPLUS USER NAME**** (“**Surplus User**”) dated ****DATE**** (“**Agreement**”).

The maximum quantity of District Water to be made available to Surplus User pursuant to the Agreement in water year ****INSERT WATER YEAR****, defined as “**Surplus Quantity**”, shall be ****XX**** acre feet.

By: _____ Date
****SURPLUS USER NAME****
****ADDRESS ****
****PHONE NUMBER ** **EMAIL ADDRESS****

By: _____ Date
Secretary of the Board of Trustees of the

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