

Mendocino County Russian River Flood Control & Water Conservation Improvement District

AMENDMENT to the UNIFORM WATER SALE AND PURCHASE AGREEMENT

This Amendment to Uniform Water Sale and Purchase Agreement (“Amendment”) is entered into by and between ****CUSTOMER NAME**** (“Customer”) and MENDOCINO COUNTY RUSSIAN RIVER FLOOD CONTROL AND WATER CONSERVATION IMPROVEMENT DISTRICT (“District”) as of ****INSERT DATE****.

RECITALS

WHEREAS, the District desires to amend certain provisions of the Uniform Water Sale and Purchase Agreement (“Agreement”) which govern the process by which customers may purchase and consume a specific amount of water from the District pursuant to the terms and conditions of said Agreement.

WHEREAS, Section 17.5 of the Agreement authorizes the District to modify the Agreement in writing by mutual agreement signed by both Customer and District.

WHEREAS, by this amendment District seeks to update and clarify various terms and conditions of the Agreement in order to better reflect District’s water rights and to align with new water year reporting requirements imposed by the California State Water Resources Control Board.

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 to amend the Agreement as follows:

AGREEMENT

THROUGHOUT DOCUMENT

1. All references to “Permit” in the Agreement shall hereby be amended to read “water rights.”
2. All references to “Ordinance No 00-01” in the Agreement shall hereby be amended to read “Ordinance No 25-01.”
3. All references to “Project Water” in the Agreement shall hereby be amended to read “District Water.”
4. All references to “meter” in the Agreement shall hereby be amended to read “Approved Meter.”
5. All references to “facsimile” in the Agreement shall hereby be amended to read “email” and references to Federal Express shall be deleted.

5-6. All references to “Contractors” in the Agreement shall hereby be amended to read “Customers.”

ARTICLE 2. DEFINITIONS.

The following changes shall be made to DEFINITIONS and section numbers updated:

6-7. ADD: “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.

8. REMOVE "Contractors" shall mean Customer, as well as District's other customers who have entered into Water Supply Agreements

9. ADD “Customer” shall mean the signatory to this Uniform Water Supply and Purchase Agreement.

10. ADD “Customers” shall mean every customer who has signed a Uniform Water Supply and Purchase Agreement with the District.

7-11. EDIT “Customer Water” to the following: "Customer Water" shall mean any other rights (Pre-1914, riparian, appropriative, etc.) 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.

8-12. DELETE “Project Water” and REPLACE with the following: "District Water" shall mean any and all water available to the District for distribution.

13. DELETE “Permit” and REPLACE with the following: “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.

9-14. ADD “Surplus” shall mean District Water temporarily available during any water year in excess of the amounts necessary for the District to meet the demands of its Customers as set forth in the schedules described in Section 4.7.

10-15. EDIT “Year” to the following: "Year" shall mean the standard water year from October 1 through September 30 of the following year.

ARTICLE 3. CONTRACT AMOUNT.

~~44~~16. SECTION 3.2 of the Agreement shall be amended to read:

3.2. **Surplus Water.** When Surplus Water is available, as determined by the District, Customers may purchase all or part of such Surplus Water in accordance with the following procedures:

3.2.1. The District shall provide all Customers a Notice of Surplus Availability;

3.2.2. Customer shall provide written notice to the District of its desire to accept and pay for such Surplus Water within thirty (30) days after District's issuance of the Notice of Surplus Availability;

3.2.3. After said thirty (30) day period, the District may offer any remaining Surplus Water to all other water users holding a contract with the District during which time Customer may still indicate its desire to accept such surplus water by providing written notice to the District.

3.2.4. If Customers 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 Customers in such manner as the District shall determine to be equitable.

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

~~**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 Customer demand for the water year. 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. 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.~~

ARTICLE 3. CONTRACT AMOUNT.

~~42~~17. SECTION 4.2. of the Agreement shall be amended to read:

4.2. **Change in Point of Delivery.** Customer shall not change the location of or substantially alter the Point of Delivery as each Customer's specific Point of Delivery is included as an authorized point of redirection in the District's water rights. Should Customer seek to change its Point of Delivery, Customer shall notify District and thereafter Customer and District shall work collaboratively to pursue filing of a minor change petition

with the State Water Resources Control Board to authorize an additional point of rediversion under the District's water rights. Customer shall reimburse District for all costs associated with pursuing such a minor change petition. Should Customer not seek to file a minor change petition, or should the petition be unsuccessful, then this Agreement shall either remain in effect as to the original Point of Delivery or terminate in accordance with the procedures established herein upon change in the Point of Delivery.

~~13.18.~~ SECTION 4.3. of the Agreement shall be amended to read:

4.3. **Diversion Costs.** All permitting, construction, reconstruction, and maintenance costs for facilities necessary or used to divert District Water from the Russian River 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 District Water for its ultimate use by Customer.

~~14.19.~~ SECTION 4.5 of the Agreement shall be amended to read:

4.5 **Resale of Water.** Customer shall not resell any portion of the District 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 the portion of its boundary within the District's Place of Use.

~~15.20.~~ SECTION 4.7. of the Agreement shall be amended to read:

4.7. **Schedule.** Customer shall submit, in writing, to the District, prior to April 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

ARTICLE 5. METERS AND WATER USAGE REPORTS.

~~16.21.~~ SECTION 5.1. of the Agreement shall be amended to read:

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 Project Water made available pursuant to this Agreement shall be metered at each of Customer's Points of Delivery by an Approved Meter furnished by the District and installed by Customer, subject to the approval of the District. The District shall/may inspect, test and service all such Approved Meters at regular intervals at its own cost and expense. All determinations relative to the measurement of Project Water shall be made by the District.

~~17.22.~~ SECTION 5.4. of the Agreement shall be and amended to read:

5.4. **Readings.** The District shall read each Approved 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 Approved Meter no later than November 30 of the following water year, reflecting the total amount of all water diverted by Customer from the Russian River, including Customer Water and District Water.

~~18-23.~~ SECTION 5.5. of the Agreement shall be amended to read:

5.5. **Reports.** Based upon the Approved 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 District 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 District Water and compliance with this Agreement as requested by District. Such reports shall be furnished to District annually by December 31.

ARTICLE 6. PAYMENT.

~~19-24.~~ SECTION 6.4. of the Agreement shall be amended to read:

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, , or others in the payment to the Customer of assessments, taxes or other rates and charges levied.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES OF CUSTOMER.

~~20-25.~~ SECTION 10.7 of the Agreement shall be amended to read:

10.7. If Customer is a public agency, it agrees to provide service to all customers within its boundaries and the District's Place of Use who request a water allocation of District Water.

ARTICLE 11. REDUCTION IN SUPPLY OF DISTRICT WATER DUE TO SHORTAGE.

~~21-26.~~ SECTION 11.1. of the Agreement shall be amended to read:

11.1 **Reductions in Supply.** The Parties recognize that the quantity of District 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 its water rights; (b) an adverse regulatory, legal or environmental determination to District, which directly or indirectly restricts District from diverting and exercising its water rights; (c) the consent of District to a restriction on its right to divert and exercise its water rights; (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.

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~~22-27.~~ SECTION 11.4 of the Agreement shall be amended to read:

11.4 Water Shortage Emergencies. Notwithstanding Section 11.2 above, the District may allocate District Water to its Customers as set forth in Article 9 of Ordinance #25-01 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.

ARTICLE 12. REDUCTION IN USE AND ALLOTMENT

~~23-28.~~ SECTION 12.1 of the Agreement shall be amended to read:

12.1 Customer Initiation. At any time, Customer may initiate an increase or reduction in the Contract Quantity effective the following Water Year beginning October 1 and the remainder of any Original or Extended Term, by providing written notice to District of such determination, and, in the case of an increase, subject to CEQA compliance and District written confirmation of the availability of the additional water requested.

ARTICLE 13. CONSERVATION PLAN

~~24-29.~~ ARTICLE 13. of the Agreement shall be amended to read:

District Customer shall comply with the water conservation program and enforcement plan established by the District set forth in Article 9 of Ordinance 25-01 (“Plan”). Customer’s 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 District Water, shall constitute an event of default under this Agreement.

ARTICLE 17. GENERAL PROVISIONS.

~~25-30.~~ SECTION 17.3 of the Agreement shall be amended to read:

17.3 Property Transfer. In the event that Customer proposes to sell its real property to which District 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 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.

26.31. SECTION 17.13 of the Agreement shall be amended to read:

17.13. the plural and singular numbers shall each be deemed to include the other; "shall," "will" or "agrees" are mandatory, and "may" is permissive;

27.32. NO OTHER CHANGES. Except as otherwise expressly set forth in this Amendment, the Agreement shall not be amended or modified and the Agreement, as amended hereby, is hereby ratified and confirmed and shall continue in full force and effect between the Parties.

IN WITNESS WHEREOF, the Parties have executed this Amendment 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

CUSTOMER

By: _____
Date

****CUSTOMER NAME, COMPANY NAME****
****ADDRESS ****
****PHONE NUMBER ** **EMAIL ADDRESS****