

SCWA-11

UNIFORM WATER SUPPLY AGREEMENT

RECEIVED NOV 02 2004

THIS WATER SUPPLY AGREEMENT (Agreement), entered into as of the latest of the dates shown opposite the signatures of the Parties to this Agreement, is made by and between *MILLVIEW* Insert Name *WATER DIST.* (hereinafter "Customer") and MENDOCINO COUNTY RUSSIAN RIVER FLOOD CONTROL AND WATER CONSERVATION IMPROVEMENT DISTRICT organized and operating pursuant to Water Agency Acts Chapter 54 (the "District"). Customer and District are sometimes referred to herein individually as a "Party" and collectively as the "Parties." The Parties hereby mutually agree to and confirm the following:

RECITALS

A. District is an improvement district organized and operating pursuant to the provisions of Chapter 54 of the Water Agency Acts entitled the Mendocino County Water Agency Act. Pursuant to Sections 101 and 102 of that Act, the District has all the rights, duties, powers, liabilities, purposes, privileges, and immunities conferred and specified by the Act on the Mendocino County Water Agency. Chapter 54 Section 3(s) of the Act provides that District, as an improvement district within the Mendocino County Water Agency, has the power "to divert, produce, store, transmit, distribute, and sell or otherwise furnish surface waters and groundwaters for beneficial uses within or without the Agency".

B. The District has been granted the right to divert East Fork Russian River water, redivert water released from storage in Lake Mendocino, and withdraw water from storage in Lake Mendocino in a total amount not to exceed 8,000 acre feet per year pursuant to Decision D-1030 and Permit No. 12947B issued by the California State Water Resources Control Board (hereinafter "Project Water").

C. Historically, the District, since securing its water rights pursuant to the provisions of SWRCB Decision 1030 and Permit No. 12947B, has provided to individual customers an amount of water annually that each of those customers has put to beneficial uses. For over forty years, these annual allocations of the District's water

supply have been beneficially used by the District's customers and reported to the appropriate governmental and regulatory agencies. Those beneficial uses include permanent orchards, vines, vineyards, and existing and long-established agricultural, residential, commercial, and industrial uses that have greatly benefited and will continue to benefit and sustain the economy, the environment and environmental resources, the livelihoods, the health and safety, the jobs, and the communal and moral integrity of the residents of Mendocino County.

D. Within the past several years and due, in part, to diminishing or threatened alternate water allocations and supplies from other sources of Russian River water, the District has received and is experiencing increased and new requests and demands for the use of its water to a greater extent than its current water supplies can satisfy. The District desires to conserve its water supply and to provide for and satisfy the historic needs of the existing and continuing beneficial uses of its water by its long-term customers referenced above before it develops or allocates existing or new water supplies for new or expanded areas or uses. Consequently, the District has adopted Ordinance No. 00-1.

E. The District has adopted Ordinance No. 00-1 and Resolution No. 04-03 which provide a method by which Customers who wish to purchase a specific amount of the District's Project Water may file an application with the District to purchase such water and, upon approval of the application by District, enter into a Water Supply Agreement which provides that the Customer will install at its own expense a water meter or meters to measure the quantity of Project Water to be sold by the District to each such Customer.

F. The purposes of said Ordinance and said Resolution are to provide a method by which the District can properly promote conservation and conserve its water resources, can accurately measure the amount of its Project Water used by each of its Customers, and can sell such water to its Customers, for their sole properties or services areas, in order to acquire funds sufficient to pay for the District's operational and administrative costs and to finance acquisition of additional water supply to meet current and increased demand for water necessitated by growth within the District's jurisdictional boundaries and designated places of use. In order to implement these purposes, the District finds that it is in the public's interest to accept written applications from its Customers, who wish to utilize a specific amount of Project Water, to enter into Water

Supply Agreements in the form of this Agreement by which the District will agree to supply a specific amount of Project Water to each Customer submitting an application (for the Customer's consumptive use) for a period to be reflected in this Agreement and made a part in consideration for each such Customer agreeing to install at its own expense a water meter at each of Customer's Service Connections for the purpose of measuring the specific amount of Project Water utilized by each such Customer and payment of the "per acre foot purchase price to be charged" for water pursuant to Section 2 hereof. The amount of water agreed to be provided is not guaranteed and the availability of said water is based on the type of water year as designated in State Water Resources Control Board Decision D-1610 and explained in Section 9 below. The purpose of this Water Supply Agreement is (1) to enable the District both to accurately measure the demand for and usage of its Project Water by its customers during the terms of this agreement and to charge its customers for said Project Water and (2) to allow the District's Customers to utilize and consume a specific quantity of Project Water for uses specified in the District's water rights permits upon payment to the District of the required water charges.

G. Customer is a public water agency and/or individual which seeks to acquire a water supply for all of its historic and long-term uses, including its domestic uses and consumption and its agricultural uses, from the District's Project Water, and which hereby acknowledges, confirms and agrees to comply with and uphold both the aforementioned Ordinance and Resolution.

H. District expects to have a quantity of Project Water available for delivery to Customer during the term of this Agreement.

I. To accomplish the foregoing objectives of the parties, District is willing to supply, and Customer is willing to pay for, receive and consume a specific quantity of Project Water that it has historically used under the terms and conditions set forth in this Agreement.

J. The purpose of this Agreement is to set forth the terms and conditions under which Customer will take delivery from District of a specified quantity of Project Water for Customer's consumptive use pursuant to the beneficial uses allowed under the District's permit and California law as in effect on the effective date of this Agreement. The Project Water delivered by District to Customer pursuant to the terms of this Agreement shall be acquired by District pursuant to those water rights by which District

is entitled to 8,000 acre feet per year of water stored in Lake Mendocino pursuant to Permit No. 12947B, and this Agreement shall have no effect on District's water rights described in said Permit No. 12947B. The Parties hereto do not intend, and under this Agreement do not in any manner or way transfer, assign, encumber, or grant to Customer any ownership interest or control over any of District's water rights. As part of the consideration for District in this Agreement, Customer promises and agrees to use District's water only pursuant to and in compliance with each and all of the requirements and provisions of Permit No. 12947B, California Law, and D-1030.

K. The Parties acknowledge that this Agreement will not become effective unless and until District has obtained any and all necessary authorizations, consents, and permits from certain governmental and public agencies necessary, if any, to deliver Project Water to Customer.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

SECTION 1 - DELIVERY OF PROJECT WATER

1. Subject to the terms and conditions hereof and to satisfaction and occurrence of all of the conditions precedent to the effectiveness of this Agreement set forth herein, District will cause to be delivered to Customer up to a maximum of 970 acre-feet of Project Water at the Customer's Service Connection during the term of this Agreement. Customer agrees to properly install and maintain at its own expense appropriately sized water meter(s) at its Service Connections to accurately measure its usage of Project Water as a condition precedent to accepting delivery from District of that quantity of Project Water specified herein and further, agrees to pay for, purchase, use, and consume the water that customer diverts during the District's water year in which it was diverted pursuant to the provision herein.

2. The Parties hereto agree that at the termination of this Agreement neither the terms of this Agreement nor the conduct of the Parties and performance of this Agreement confers upon Customer any legal or equitable right or claim to the Project Water delivered.

3. Project Water subject to this Agreement shall be delivered to Customer at its Service Connection located on the Russian River for use upon or within Customer's

real property, or within Customer's service area if Customer is a regulated public or private agency, corporation, or municipal entity, created pursuant to the California Constitution, statute, or regulations of the California Public Utilities Commission and which is legally authorized to sell and deliver water to its customers.

4. Customer acknowledges and agrees that this Agreement is a contract for the delivery of Project Water from the District during the Term. The quantity of Project Water delivered pursuant to this Agreement shall be measured by meter(s) to be installed at the location(s) where Customer proposes to divert Project Water from the District's public water system in the Russian River, as the case may be (the "Service Connection"). Prior to the effective date of this Agreement, Customer agrees to furnish and install meters of appropriate size at the Service Connection at Customer's sole cost and expense. The meters shall remain the property of Customer. District, as part of this Agreement, is granted and reserves the right to read, inspect, test, and to require Customer to service said meters, if necessary, at any time. Customer shall have and accepts the obligation to maintain the meter in good working order for the benefit of the District at all times. Failure to install the aforementioned meters by the date specified shall cause this contract to be void and terminated.

5. If deliveries of Project Water under the provisions of this Agreement are prevented, delayed, or made impracticable due to extended drought, flood, fire, earthquake, or other natural disaster, federal or state regulatory limitations, strike, unavailability of necessary materials, electrical power or fuel, civil rioting, war or military conflict, inability of District to obtain any approval for conveyance of Project Water from any government agency, including without limitation the State Water Resources Control Board ("SWRCB"), or if the cost of complying with any environmental requirements renders this transaction economically or physically impractical (collectively a Force Majeure Event), District shall not be required to deliver and Customer shall not be required to accept 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 such prevention, delay or impracticability may be delivered to Customer on a make-up basis on a schedule to be reasonable and agreed upon by the Parties, if such deliveries can legally be made up by the end of the Term of this Agreement.

6. Customer shall have the physical control of the taking of water from the Russian River at the point of its Service Connection. Customer shall bear all expenses of such taking, including but not limited to the furnishing and maintenance of intake facilities on the Russian River and shall obey the rules and regulations of the Corp of Engineers and any other public authority with jurisdiction over the installation and maintenance of such facilities. Customer shall provide to District meter readings reflecting the total amount of water used by Customer from the Russian River. Said meter readings shall be provided on the first of each month and at such other intervals as may be requested by District or its authorized representatives.

SECTION 2 – PER ACRE FOOT PURCHASED PRICE TO BE CHARGED

7. Customer shall pay the "per acre foot purchase price to be charged" to the District in the amount of \$ 23.00 per acre foot for each acre foot of Project Water which District contracts to deliver and that Customer diverts as specified in Paragraph 1 of this Agreement, whether such Project Water is actually used by Customer or not. Customer and District mutually hereby accept and agree that the annual "per acre foot purchase price to be charged" shall be calculated and adopted by resolution annually by the District, as follows: The "cost of administration" of the District in entering into, administering, and managing its water and Water Supply Agreements with Customers for each water year shall be divided by its 8,000 acre foot entitlement, or such other sum as is reserved to the District pursuant to State Water Resources Control Board Decision D-1030, or amendments thereto, to determine the District's costs of administration for each acre foot. The "cost of administration" of the District in administering and entering into the subject "Water Supply Agreements" shall include the following: (a) all of the District's costs of preparing and reviewing, the costs of processing, and all administration costs of evaluating Customer's Application to enter into the Water Supply Agreement; (b) all of the District's costs of administering and monitoring the installation of water meters by Customers as required by the terms of this Agreement; (c) all of the District's annual administrative costs, including but not limited to all monitoring and legal costs, and all of the District's annual environmental review and/or mitigation costs, including engineering and consultants costs and those costs involved in analyzing and responding to Customer Applications, and all costs encompassed in the managing, operating, monitoring, developing, expanding,

preserving and defending, and administering of the District's water system(s) and facilities, water supplies, and the Delivery of Project Water to Customer pursuant to the terms of this Agreement; (d) all costs of water meter inspection, water meter reading, water meter testing, and all costs of all administrative, operational, and regulatory reporting, and compliance requirements, entitlements, obligations, or duties. The total "per acre foot purchase price to be charged" payable by Customer pursuant to the terms of this Agreement is the charge per acre foot times the number of acre feet of Project Water diverted by Customer as set forth in Section 1 hereof.

8. The "per acre foot purchase price to be charged" is due and payable monthly by Customer to District after this Water Supply Agreement is accepted by the District and both parties execute this Agreement. Customer's obligation to pay the "per acre foot purchase price to be charged", which will be due pursuant to this Agreement and upon diversion of water by Customer, shall be an absolute unconditional obligation of Customer, not subject to deduction, setoff, prior notice, demand, or inability of Customer to use, store or resell Project Water after delivery and diversion by Customer. Customer shall have no obligation to accept delivery of any Project Water in excess of the maximum amount diverted by Customer as specified in Section 1 hereof. Pursuant to the provisions of Paragraph 1, Section 1 herein, the maximum amount of water that may be delivered to Customer shall be 970 acre-feet annually. Because the demands for District water resources generally exceed the District's supplies and after the first full calendar year of this Agreement, and every year thereafter, the District shall review the total annual use of the District's water by Customer. If the annual use of District's water by Customer, based upon monthly meter readings and monthly billings, is less than the amount of water reserved for Customer, as referred to in Paragraph 1, Section 1 of this Agreement, the District shall reduce Customer's reserved water allotment to reflect actual use in the prior years. The unused water will then be made available to other water users at the sole discretion and determination of the District for the maximum beneficial use of the District's water resources.

SECTION 3 - TERM

9. The Term of this Agreement and for the delivery of Project Water pursuant to this Agreement shall commence on 12/30, 2004, the Effective Date, and shall continue through December 31, 2010, the Termination Date, subject to the

renewal provisions provided for herein. Either party to this Agreement may provide to the other party Notice to Terminate this Agreement subject to the following terms:

- a. Upon the 31st of December of each calendar year after the Effective Date of this Agreement, if neither party to this Agreement has submitted to the other party a Notice to Terminate this Agreement in the prior 12 months, this Agreement and all of its terms shall be automatically be extended for an additional 12 months (1 year) beyond the Termination Date in effect on the aforementioned 31st of December.
- b. Any Notice to Terminate this Agreement, except for breach of its terms, shall be personally delivered by the party which seeks to terminate this Agreement to the other party not later than 5 P.m. (PST) on the 30th of December, five (5) years prior to the Termination Date in effect on the aforementioned 30th of December.

10. As used in this Agreement, the term "Effective Date" shall mean the date on which all of the conditions precedent set forth in Section 5 below have been satisfied or have occurred. At such time as all of said conditions precedent have been satisfied or have occurred, the Parties shall execute a supplement to this Agreement specifying a revised Effective Date.

SECTION 4 - FIRST OPTION TO PURCHASE PROJECT WATER

11. In consideration for entering into this Water Supply Agreement with the District, Customer shall have an option to purchase additional Project Water, if such water is available. This option shall not become effective (effective date) until after the District has completed new rate studies, water demand studies, and has completed accepting and processing applications from other Customers to purchase Project Water from the District. At such time as the District completes the application and approval process for other Customers to purchase Project Water from the District, Customer shall have the right to have its additional Application for Purchase and Delivery of Project Water considered upon providing written notice of such desire to the District. District solely shall have the right to determine the effective date of the option and shall notify Customer as to the date of completion of the aforementioned process. Said

option shall entitle the Customer to have its additional Application for Purchase and Delivery of Project Water considered by the District prior to the consideration by District of any other Applications for Water Purchase submitted by parties who have not entered into a Water Supply Agreement by the completion of the aforementioned process and the effective date.

SECTION 5 - CONDITIONS PRECEDENT TO DISTRICT'S OBLIGATIONS

12. The obligations of District to deliver Project Water and the resulting obligations of Customer to accept and consume deliveries of Project Water are conditioned upon the satisfaction or occurrence of the following conditions precedent: (a) The installation of appropriately sized water meters by Customer at Customer's expense at Customer's Service Connection; (b) The approval and consent of the SWRCB, if applicable, for the water to be delivered and sold to Customer hereunder; (c) full and complete compliance by Customer, if necessary, with the requirements of the California Environmental Quality Act ("CEQA"), including the completion of an initial study, and if it is determined that the project is not exempt from CEQA, either (a) there shall have been adopted a negative declaration or a mitigated negative declaration, or (b) a final environmental impact report, all costs of CEQA compliance shall be borne by Customer, shall have been completed and approved, and the time shall have expired within which a judicial proceeding may be instituted challenging the validity or completeness of any such determination of exemption, or adoption of a negative declaration or of a mitigated negative declaration, or approval of a final environmental impact report. The Parties acknowledge and agree that they are proceeding with this Agreement on the basis that the transaction contemplated hereby is exempt from the requirements of CEQA due to Customer's historic use.

13. The Parties may agree to extend the date by which any of these conditions precedent may be satisfied or waived.

14. If the conditions precedent specified herein are not timely satisfied or waived, then this Agreement will be void and all rights granted by this Agreement will be terminated and forfeited.

SECTION 6 - PERMITS AND AUTHORIZATIONS

15. Customer agrees to support District in obtaining any Permits, Authorization, Environmental Approvals, or Approvals necessary to make this Agreement effective; and to fully cooperate with District in implementing all of the terms of this Agreement and achieving its objectives.

16. This Agreement may be terminated and abandoned at any time by written notice from either party if the SWRCB or any other governmental entity with jurisdiction over the subject matter of this Agreement rejects or fails to approve the transactions contemplated by this Agreement, or reduces or modifies District's water rights supply, or conditions its approval to such transaction on factors beyond the Parties' individual or collective practical and/or economic ability to accommodate; or the transactions contemplated by this Agreement are enjoined or otherwise prohibited by a court of competent jurisdiction; or the Parties mutually agree the completion of the transactions contemplated by this Agreement are not feasible. Upon such termination and abandonment, this Agreement shall become 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 this Agreement with respect to Indemnification set forth below.

17. The delivery of Project Water pursuant to this Agreement shall not confer any appropriative, public trust, or any other right to water of any nature on any 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 water to which it is entitled pursuant to State Water Resources Control Board Decision D-1030 and Permit No. 12947B, or from future sources, or shall in any way prejudice any of District's rights, title or interest thereto. The Parties hereto agree that Project Water deliveries under this Agreement and this Agreement itself is evidence of the beneficial use of the Project Water agreed to be delivered and consumed hereunder. The only rights granted to Customer as a result of this Agreement are those for use of the Project Water delivered pursuant to this Agreement as expressly set forth in this Agreement.

SECTION 7 - REPRESENTATIONS AND WARRANTIES OF DISTRICT

District makes the following representations, warranties and covenants to Customer, as of the date this Agreement is fully executed:

18. District is an improvement district formed within the Mendocino County Water Agency organized and operating pursuant to the provisions of Chapter 54 of the Water Agency Acts;

19. 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;

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

21. The execution and performance of this Agreement by District does not breach or constitute a default by District under any law, regulation, ruling, court order, agreement, indenture, or undertaking or other instrument to which District is a party or by which District or any of its property may be bound or affected.

SECTION 8 - REPRESENTATIONS AND WARRANTIES OF CUSTOMER

Customer makes the following representation, warranties and covenants to District, as of the date this Agreement is fully executed:

22. Customer, by signing this Agreement, is not waiving, releasing, altering, or transferring any other water right or facilities held by Customer, or right to use water, vested or otherwise, that Customer may have or acquire, or which may be granted to Customer by the State Water Resources Control Board. 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. This Agreement shall not diminish, impair, supercede or otherwise affect any of the Customer's water rights, 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, acquire, or which may be granted to Customer by the State Water Resources Control Board.

23. Customer acknowledges that, as a condition and partial consideration of this Agreement, Customer shall not deliver, use, allow to be used, store, or resell District's water granted to or used by Customer to any areas, lands or users outside of the District's boundaries and/or the designated place of use for the District's water rights as determined by the California State Water Resources Control Board. Further, Customer

acknowledges that it shall not sell water from its contract allocation to any entity for use outside the District's designated place of use and/or the District's boundaries, and also acknowledges and agrees that the "per acre foot purchase price to be charged" includes water charges, capacity charges, water connection fees, and services charges.

24. Customer is a public water agency duly organized, valid and 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 and/or Customer is actively involved in agriculture and/or is a private property owner of agricultural lands located within the District's boundaries and place of use for its water supplies and resources;

25. Customer has the right, power, intent, and authority under this Agreement to 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;

26. This Agreement, and all of its provisions, terms, and obligations herein, constitutes a legal, valid and binding obligation of Customer, enforceable against Customer in accordance with its terms;

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

SECTION 9 - REDUCTIONS IN SUPPLY OF WATER AS A RESULT OF SHORTAGE CONDITIONS

28. In the event that a drought, reduction of supply, or shortage condition 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 drought, reduction of supply, or 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. District and Customer will share prorate in the reduction in District's allowed diversions from the Russian River and/or Lake Mendocino, as the

case may be. District's delivery to Customer will be reduced by Customer's prorata share of the reduction in allowed diversions, calculated as: District's delivery obligation to Customer in a normal flow year divided by District's right to 8,000 acre feet per year multiplied by the amount of reduction in Project Water available to District under its Permit.

29. In the event of such shortage, District shall deliver a written "Notice of Impending Shortage" to Customer. Within thirty (30) days of delivery of such a Notice of Impending Shortage, the Parties shall conduct a meet and confer session for the purpose of negotiating a mutually acceptable "Supplemental Agreement" for the delivery by District of Project Water to Customer. This Supplemental Agreement shall contain the terms and provisions under which District will deliver Project Water to Customer for the period during which the shortage condition prevails.

30. Other events which will trigger a prorata reduction in any amount of Project Water that the District is required to deliver to Customer pursuant to this Agreement are as follows: (a) An adverse regulatory, legal or environmental determination to District, if not pursued or supported by the Customer, restricting District from diverting and using the entire 8,000 acre feet per year pursuant to its Permit based on public trust issues, environmental or endangered species protection issues or on theories of equitable apportionment, forfeiture, abandonment or other theory related to District's use; (b) the consent of District to restriction on its right to divert and use the entire 8,000 acre feet per year pursuant to its Permit; (c) the consent of District to, or an adverse determination against District, if not pursued or supported by Customer, finding that District is no longer reasonably and beneficially using all of its water; or (d) 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.

SECTION 10 - CONSERVATION PLAN

31. Customer, and each and any third parties to whom Customer may sell, give, or shall allow to be transferred District's water acquired pursuant to the provisions of this Agreement, shall comply with the requirements of a comprehensive water conservation program and enforcement plan adopted by Customer and approved by District as partial consideration for this Agreement. Customer shall, within 90 days of the

execution of this agreement, prepare, adopt, and present to the Executive Director of the District, a complete water conservation program and enforcement plan. Such programs and plans shall mandate and utilize California development, domestic, agricultural, and irrigation water conservation guidelines, including California Urban Water Association (CUWA) water conservation standards and agricultural irrigation conservation techniques as recognized by the California Department of Food and Agriculture as appropriate. Within 120 days of the execution of this agreement, the Executive Director shall approve the submitted plan, propose changes to the plan to Customer, or, in the case of the failure of Customer to submit the required plan, notify Customer of the termination of this Agreement due to the failure of consideration and breach of the terms of this Agreement. Upon approval by the Executive Director, Customer shall fully implement and enforce, in favor of the District, the plan and its provisions during the balance of the term of this Agreement. Failure of Customer to fully implement and enforce the conservation plan and its provisions within its service area and against third parties (to whom it may sell, give, or allow the transference of District's water), for the benefit of District, shall constitute a breach of this agreement.

SECTION 11 - DEFAULT

32. Each of the following constitutes an "Event of Default" by Customer under this Agreement:

(a) **Payment.** If Customer fails to pay the "per acre foot purchase price to be charged" when due and payable pursuant to the provisions of Section 2, or any other amount due and payable pursuant to this Agreement by the due date, said failure to pay shall constitute a default in this Agreement and any such delinquent payment will bear interest at the rate of ten percent (10%) per annum until paid in full.

(b) **Promises.** Customer fails to perform, comply with, or observe any term, covenant, obligation, or undertaking in this Agreement that it is to perform or observe, and such default continues for ten (10) days after written notice of default has been sent by District to Customer. This provision shall include, but not be limited to, Customer's excessive use of water which exceeds that water and water allocation that the Parties have agreed to pursuant to the terms of this Agreement. Any use of District's water by Customer which exceeds the

amount of water herein referred to and which is the subject of this Agreement, and which is not authorized in writing by the District, shall constitute a breach and a default of this Agreement.

(c) **Warranties and Representations.** Any warranty, representation, or other statement made by or on behalf of Customer and contained in this Agreement or any other document furnished 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.

SECTION 12 - REMEDIES

33. In the event of any such default by Customer, District shall have the following rights and remedies, in addition to any rights and remedies now or hereafter provided by law. All such remedies are cumulative and may be exercised concurrently or separately:

(a) Upon default by Customer, District, at District's sole determination, may terminate this Agreement and discontinue furnishing water to Customer pursuant to the terms of this Agreement.

(b) In the event of default by Customer, District shall have the option to suspend delivery of water to Customer's Service Connection until such time as the default is remedied by Customer.

(c) In the event of default by Customer, 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.

34. A waiver of any default or breach of duty or contract by District 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 Customer. No delay or omission by District 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.

35. No remedy herein conferred upon or reserved to District 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 or otherwise and may be exercised without regard to any other remedy conferred by any other law.

SECTION 13 – INDEMNIFICATION

36. Customer shall fully 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: (1) Any breach or alleged breach of any express 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; (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 delivered by District to Customer pursuant to this Agreement after delivery thereof to Customer's Service Connection, it being understood that District shall not be liable to Customer for any loss or damage to person or property caused by flood, earthquake, theft, fire, act of God, acts of a public enemy, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or any other causes, or any consequential damages or inconvenience which may arise from or relate to use of the Project Water after delivery by District to Customer's Service Connection. 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 active negligence or willful misconduct of District or any of its directors, officers, employees or agents.

37. 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: (1) Any willful breach or alleged breach of any express representation, warranty, covenant, promise or agreement of District contained in this Agreement or in any document, instrument or agreement executed and delivered by District in connection herewith.

38. Customer acknowledges and agrees that, as a condition and consideration of this Agreement, Customer, its officers, directors, employees, agents, or consultants, and each and every one of them, shall take no action of any kind, nor assist any other individual, party, or entity in any action or in any way to limit, diminish, impair, interrupt, or prohibit, either temporarily or permanently, the District's water rights, entitlements, or ability to perform its obligations under this or any other Agreement that the District may enter into to provide or deliver water to landowners within its boundaries. Further, Customer shall maintain in favor of District, during the entire term of this Agreement, a policy of general liability insurance in an amount of \$1,000,000 naming District as an additional insured for the purposes enumerated in Paragraphs 35, 36, and 37 herein. Evidence of said policy shall be provided to the Executive Director of District. Failure to comply with this provision shall constitute an immediate default of this Agreement, notwithstanding the provisions of Section 10 hereto.

SECTION 14 - DEFENSE OF CLAIMS

39. No right to indemnification under the preceding paragraph shall be available unless the Party seeking indemnification (the "Indemnified Party") shall have given to the Party obligated to provide indemnification (the "Indemnitor") a 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. Any 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, the: (a) 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: (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 which hereby agrees to 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.

SECTION 15 - GENERAL PROVISIONS

40. **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.

41. **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. In the event that Customer proposes to sell its real property to which water from this Agreement is delivered, notwithstanding any other provision herein, Customer shall notify the District of the proposed sale concurrent with the close of escrow. If District is timely notified, and if no violations of this Agreement exist at the time of said notification, District shall agree to the assignment of the subject water supply to the proposed new owner on the condition that the proposed new owner executes this water supply agreement prior to the close of the escrow on the subject property. The execution of this Agreement by the new

owner shall be the consideration for the District's agreement to the assignment of this Agreement by Customer."

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

43. **Amendment.** The terms of this Agreement may be modified only in writing by mutual agreement on signature of Customer and District. Said amendment shall be attached to this Agreement. Any amendment made in violation of this section shall be null and void.

44. **Extension of Term.** The duration of the Term of this Agreement may be extended only by mutual agreement of the Customer and District in writing signed by authorized representatives of both Customer and District. Such a written extension shall be attached to this Agreement.

45. **Entire Agreement.** This Agreement, together with all contract documents and ordinances of District expressly incorporated herein by reference, supersedes any and all other agreements, either oral or in writing, between the Parties hereto with respect to the delivery of Project Water to Customer by District and contains all the covenants and agreements between the Parties with respect thereto. Each Party to this Agreement acknowledges that no representations or promises have been made by any party hereto which are not embodied herein, and that no other agreement or promise not contained in this Agreement or in the other contract documents and ordinances of District shall be valid or binding.

46. **Severability.** If 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 provision shall nevertheless continue in full force and effect without being impaired or invalidated in any way notwithstanding such invalidity, illegality or unenforceability.

47. **Time is of the Essence.** It is expressly hereby agreed that time is of the essence of each and every provision of this Agreement, including all contract documents and ordinances incorporated herein.

48. **Attorneys Fees.** Should either Party to this Agreement reasonably retain counsel for the purpose of enforcing any provision of this Agreement, including without limitation 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 without limitation 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.

49. **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; (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:

Millview County Water District
3081 North State Street
Ukiah, California 95482

50. 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 hereto have executed this Agreement as of the last date below written.

Date: 12/30/04

MENDOCINO COUNTY RUSSIAN RIVER
FLOOD CONTROL AND WATER
CONSERVATION IMPROVEMENT
DISTRICT

By: Tom Ashurst

Title: Vice President

Date: 11-01-04

By: Kenneth Budrow
Kenneth Budrow

Title: _____
President
Millview County Water District