

**INTERRUPTIBLE SURPLUS AGRICULTURAL WATER SERVICE AGREEMENT  
BETWEEN THE CONGRESS VALLEY WATER DISTRICT AND \_\_\_\_\_**

District Agreement No. \_\_\_\_\_

This Interruptible Surplus Agricultural Water Service Agreement (“**Agreement**”) is made by and between Congress Valley Water District, a California County Water District (“**District**”) and \_\_\_\_\_ (“**Customer**”) and is effective on the date last signed by the District, which is identified on the signature page as the “**Effective Date.**”

**RECITALS**

- A. District is the owner and operator of a water system in the County of Napa, State of California, and is engaged in the supply and distribution of water to customers within its boundaries.
- B. District and the City of Napa (“**City**”) are parties to the *Wholesale Water Agreement Between the City of Napa and Congress Valley Water District* (“**City Agreement**”) which was last amended in 2022, and provides that the District may enter into Interruptible Surplus Agricultural Water Agreements with its landowners on substantially the same terms as those provided to users who contract with the City.
- C. Customer’s deliveries of water under this Agreement (“**Ag Water**”) are conditioned on customer’s compliance with the terms and limitations on delivery in the District bylaws and the City Contract. These requirements include the requirement that such water may be used only for agricultural irrigation purposes, and may not be used or transferred out of the District’s service area.
- D. Annual use of the Ag Water is limited to an amount not to exceed 200,000 gallons per acre of irrigated land per calendar year; this amount may fluctuate based on weather conditions and water supply and is subject to interruption, reduction, or discontinuance in whole or in part without notice, as described herein below.
- E. Customer is the fee simple owner of real property described as \_\_\_\_\_ Assessor Parcel Number \_\_\_\_\_ (“**Property**”), as described in the attached Exhibit A and made a part hereof.
- F. Customer has submitted a request to enter into this Agreement in order to obtain Ag Water to be used for irrigation purposes on \_\_\_\_\_ acres contained on the Property.
- G. Customer hereby agrees to purchase from District and District agrees to sell and deliver to Customer surplus water on an interruptible basis under the terms and conditions specified herein.

NOW THEREFORE, the District and Customer, for mutual consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

**1. Term.**

- a. **Term.** The term of this Agreement begins on the Effective Date and shall be for an initial

term of five (5) years and shall continue thereafter from year to year, unless terminated earlier in accordance with the terms of the Agreement.

## 2. Annual Water Supply of Ag Water.

- a. **Volume.** Pursuant the terms set in this Agreement, District shall furnish up to \_\_\_\_ acre-feet of Ag Water per year, not to exceed 200,000 gallons per acre of irrigated land. Ag Water shall be allocated proportionately to all eligible users based on available supply. Customer shall forfeit any portion of Ag Water that is not used during a given year and shall have no right to roll over unused water to the next year.
- b. **Permissible Use.** Ag Water delivered pursuant to this Agreement shall only be used on the Property for agricultural irrigation purposes and shall not be used in any manner that supports or induces development. Customer is prohibited from providing Ag Water to others or for other uses outside of the Property or outside of District boundaries.
- c. **Availability.** On or before February 15 of each year, the District will receive notice of the amount of Ag Water, if any, that will be available pursuant to the City Agreement. The District will promptly thereafter the Customer in writing of the available Ag Water allocated to Customer under this Agreement. Said allocation shall not be subject to review or appeal, and may be subject to interruption, reduction, or discontinuance as provided in Paragraph 2(d) below.
- d. **Interruption, Reduction or Discontinuance of Ag Water Service.** Customer acknowledges the interruptible and surplus nature of Ag Water service based on weather conditions and water supply, and acknowledges Customer's responsibility to make its own arrangements to address water needs in the event water service is interrupted, reduced or discontinued. At any time during the term of this Agreement, the District retains the sole discretion to adjust the allocation or to interrupt, reduce or discontinue Ag Water service without notice to Customer in the case of an actual or anticipated shortage of water supply, storage, or delivery capacity or facility outage. The District's determination to adjust the allocation or to interrupt, reduce, or discontinue Ag Water service is not subject to review or appeal. District may also interrupt, reduce, and/or discontinue Ag Water service if Customer breaches any term of this Agreement, including, but not limited to, Customer's excessive or unauthorized use of the Ag Water or non-payment of service charges provided in Paragraph 4(b) below.
- e. **Installation of Ag Water Service.** At Customer's sole cost and expense, Customer shall be responsible for the installation of a separate water service connection to be exclusively used for Ag Water service under this Agreement, including the installation of service pipe, valves, meter and meter box, the installation and equipment of which to be approved by the District. Customer also agrees to pay any associated City or District fees, including a water capacity fee and all applicable fees and charges related to the installation of the Ag Water service. The Customer also agrees to pay all costs and expense for removal of the Ag Water service should this Agreement be terminated.
- f. **Water Measurement.** The water delivered pursuant to this Agreement shall be measured by a water meter owned by the District and operated, maintained, and read by the City, hereinafter referred to as the "**Meter.**" District reserves the right to repair

or replace Meter, at District expense, at any time due to malfunction or misoperation. Each party shall have the right to test Meter at its own expense.

- g. **Regulations.** Consistent with the City Agreement and the District's by-laws, Customer shall be subject to the requirements imposed on any other person receiving City water service in accordance with Napa Municipal Code Title 13, City of Napa administrative regulations, and adopted City and District fees and charges.
- h. **Cross Connection Control Device.** As a condition of initiation of Ag Water service at Meter, the customer shall install a District-approved reduced pressure backflow prevention device and perform annual testing of the device, at Customer's sole cost and expense, and subject to District standards.
- i. **Excess Water Use.** Customer shall actively monitor and manage use of Ag Water to avoid exceeding the Annual Water Supply. Customer hereby acknowledges and agrees that: (1) it has no right to receive any water in excess of its annual allocations, and (2) to the extent excess water is used, it shall be subject to a penalty equal to 200% of the Outside Irrigation rate or as otherwise specified in the City's Master Fee Schedule. As a deterrent to excess usage, this penalty shall be paid in addition to the Outside Irrigation rate on the volume of water used in excess of the Customer's allocation.
- j. **Water Quality.** The quality of the water delivered to Meter shall be the same as that furnished to other District customers.
- k. **System Operation.** Customer recognizes and agrees that the City and District shall have the right, in its sole and exclusive discretion, to operate the City and District water system including, but not limited to, treatment plants, transmission facilities, storage tanks, and pump stations. Customer recognizes and agrees that pressure fluctuates based upon customer demands and there is no guarantee of consistent pressure at the Meter and that fluctuations may occur based on the operation of various treatment plants and pump stations.
- l. **Interruption of Delivery Based on Inspection, Repair or Maintenance.** Notwithstanding Paragraph 2(d) above, the District may also temporarily interrupt, reduce or discontinue Ag Water deliveries provided for under this Agreement for the purposes of investigation, inspection, maintenance, repair or replacement of the District's water system, as well as due to outages in, or reduction in capabilities of such facilities beyond District's control, or in the event of an emergency or disaster, including, but not limited to, force majeure, earthquakes, droughts, floods, storms, explosions, fires, labor troubles, strikes, insurrection, riots, acts of the public enemy, or federal or state order, rule or regulation preventing the District, in whole or in part, from delivering water as provided herein. District shall provide Customer notice as far in advance as practicable of any such interruption, except in the case of emergency or disaster in which case no advance notice will be required, but notice shall be given as promptly as feasible. District shall use its best efforts to avoid and minimize any such temporary interruption of deliveries, and shall resume deliveries as soon as District determines, in its sole and exclusive discretion, that it is practicably feasible to do so. Interruption in deliveries shall not affect Customer's payment obligation for water delivered as set forth herein.
- m. **District Access to Property.** Customer hereby grants District the right to access the Property to inspect the Property and water facilities contained therein during normal

business hours, and the right to access the water service line located on the Property for the purposes of confirming that District water service is not being provided to other properties and is not being used for purposes other than those specified in this Agreement. District shall provide 24-hour written notice to Customer.

### 3. Price and Payment.

- a. **Water Quantity Charge.** In return for all water provided by the District to the Customer, the Customer shall pay the rate formally adopted by City Council resolution and then in effect for Outside Irrigation customers. Customer will be directly billed by the City for service.
- b. **Bimonthly Fixed Service Charge.** Customer shall pay the charge formally adopted by City Council resolution and then in effect for Bimonthly Fixed Service Charge, based on the size of Meter, which shall be billed directly to Customer by City.
- c. **Other Fees.** Customer shall be subject to all other fees and charges established by the City and District for water service.
- d. **Billing.** City will bill Customer directly for water delivered under this Agreement. Customer shall pay the City for that service within the time frame allocated on the billing statement.
- e. **Unpaid or Delinquent Accounts.** Customer shall be subject to all rules, regulations, fees and charges established by the City and District for water service under this Agreement, including payment of late fees.

### 4. Termination.

- a. **Termination.** Provided that Customer is not subject to termination for cause as set forth below, either party may have the right to terminate this Agreement for any reason after providing ninety (90) days written notice to the other party, in conformance to the notice provisions set forth in Paragraph 6(g) below.
- b. **Termination by District Based on Cause.** In addition to any other rights of termination and suspension set forth under this Agreement or at law, the District has the right to terminate this Agreement upon fifteen (15) days' written notice to Customer as provided in Paragraph 6(g) below, for the following causes: (i) if Customer takes water in excess of the volume limitations specified; (ii) if the Customer engages in unauthorized use of Ag Water when service is interrupted or discontinued; (iii) if the Customer uses the Ag Water for an unauthorized use as specified in this Agreement; or (iv) if Customer defaults in payment of any bill or charge for greater than ninety (90) days after payment is considered due under this Agreement.
- c. **Surviving Clauses.** All terms, provisions, conditions and obligations under this Agreement shall survive the expiration or termination of this Agreement to the full extent necessary for their enforcement and the protection of the party in whose favor they operate. Notwithstanding any other provisions, the parties' rights to enforce any and all indemnities, limitations of liability, representations and warranties given or made to the other party under this Agreement will not be affected by this Agreement's expiration or termination. The following provisions shall survive expiration or termination of this

Agreement: Paragraph 5 (Liability and Indemnification) and Section 6 (General Provisions).

## 5. Liability and Indemnity.

- a. **Limitations on Liability.** Neither the District, nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal or distribution of water after it has passed the Meter hereunder, nor for any damage or claim of damage of any nature whatsoever, including, but not limited to, property damage, personal injury or death arising out of or connected with the same. The parties agree that the District is expressly not liable for any interruptions, reductions or discontinuance of Ag Water service as described in this Agreement, including but not limited to, Paragraphs 2(d) and (l) and Customer agrees to waive any and all claims for damages arising out of any interruption, reduction or discontinuance of Ag Water service.
- b. **Indemnification.** To the full extent permitted by law, Customer shall indemnify, hold harmless, release and defend the District, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses, including attorney's fees and other defense costs and liabilities of any nature that may be asserted by any third party, including but not limited to Customer, arising out of this Agreement, excepting only liabilities due to the sole negligence or willful misconduct of District. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Customer under Worker's Compensation, disability or other employee benefit acts or the terms, applicability of limitations or any insurance held or provided by Customer and shall continue to bind the Parties after termination/completion of this Agreement. This provision shall survive the termination or expiration of the Agreement.
- c. **No Third-Party Beneficiaries.** District's obligations under this Agreement are solely with Customer and no other third party shall have the right to enforce the terms of this Agreement as a third-party beneficiary.
- d. **No Damages.** Under no circumstances shall either Party be liable for any indirect, special, incidental, punitive, or consequential damages of any kind under this Agreement even if the other Party has been advised of the possibility of such damages.

## 6. General Provisions.

- a. **Recitals.** The recitals in this Agreement are true and correct and a material part of this Agreement.
- b. **Headings.** The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- c. **Attorney's Fees.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
- d. **Remedies Not Exclusive.** The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. The exercise by either party of any remedy under this Agreement shall be

without prejudice to the enforcement of any other remedy.

- e. **No Joint Venture or Partnership.** Nothing in this Agreement shall be construed to create an association, joint venture, trust, or partnership, or to impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the parties.
- f. **Governing Law, Jurisdiction and Venue.** The interpretation, validity, and enforcement of this Agreement shall be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Napa.
- g. **Notices.** All notices required or contemplated by this Agreement shall be in writing and delivered to the other party's authorized representative by personal delivery, U.S. Mail, nationwide overnight delivery service, email or as otherwise specified herein. Delivery is deemed effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, (b) actual receipt at the address identified below, or (c) three (3) business days following deposit in the U.S. Mail of registered or certified mail sent to the address identified below. A party's contact information, below, may be changed by providing written notice of any change to the other party.

To District:           Congress Valley Water District  
                                  PO Box 3023  
                                  Napa, CA 94558

To Customer:         \_\_\_\_\_

                                  \_\_\_\_\_

                                  \_\_\_\_\_

- h. **Successors and Assigns.** This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.
- i. **Assignment and Delegation.** This Agreement shall not be assigned or transferred in whole or in part, nor shall any of Customer's duties be delegated unless and until it is approved in writing by District and made subject to such reasonable terms and conditions as District may impose. Any attempt to assign, transfer, or delegate this Agreement, in whole or in part, without the District's prior written consent shall be void and of no force or effect. Any consent by District to one assignment, transfer, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, or delegation.
- j. **Possessory Interest.** The parties agree and acknowledge that this Agreement may create a possessory interest pursuant to Revenue and Tax Code Section 107.6 and the Customer shall be responsible for payment of any possessory interest taxes that may arise as a result of this Agreement.
- k. **Waiver.** No waiver of a breach, default, or duty under this Agreement shall be effective unless it is in writing, and signed by the party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach, default, or duty under this

Agreement.

- l. **Modifications.** This Agreement may not be amended or modified orally. No amendment or modification of this Agreement is binding unless it is in writing signed by both the Customer and the District.
- m. **Provisions Deemed Inserted.** Every provision of law required to be inserted or referenced in this Agreement shall be deemed to be inserted or referenced.
- n. **Interpretation.** Each party to this Agreement has had an opportunity to review the Agreement, consult with its respective legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, Civil Code Section 1654 shall not apply to interpret any uncertainty in the meaning of this Agreement.
- o. **Entire Agreement.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the subject matter described herein. This Agreement supersedes and replaces all prior negotiations, agreements, and understandings regarding this matter, whether written or oral, including, but not limited to, those prior agreements between the parties referenced in the recitals hereto. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision of the body of this Agreement, the provision of the body of this Agreement shall control over any such conflicting or inconsistent provisions.
- p. **Severability.** If any term of this Agreement (including any phrase, provisions, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this section shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
- q. **Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this Agreement on behalf of the respective legal entities of the Customer and District.
- r. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date set forth below.

**CONGRESS VALLEY WATER DISTRICT:**

**CUSTOMER:**

By: \_\_\_\_\_  
Kiersten Bjorkman, Secretary

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

Date: \_\_\_\_\_  
("Effective Date")

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Valerie Clemen, District Counsel

**EXHIBIT A**

**Property Map**