

**CONGRESS VALLEY WATER DISTRICT
AGREEMENT FOR PROVISION OF INTERRUPTIBLE SURPLUS
AGRICULTURAL AND STOCKWATERING WATER SERVICE**

THIS AGREEMENT is made by and between the CONGRESS VALLEY WATER DISTRICT, hereinafter called "District", and _____, hereinafter called "Customer", effective on the date fully executed by both parties.

Customer agrees to purchase from District, and District agrees to sell and deliver to Customer, surplus water on an interruptible basis under the following terms and conditions.

1. **Description of Property.** Water delivered under this Agreement shall only be used on the real property shown on "EXHIBIT A" attached hereto and made a part hereof (Napa County Assessor's Parcel No. _____) ("Property"). Customer represents and warrants that Customer is the, or one of the, record holders of title to this Property.

2. **Place of Use.** Water delivered pursuant to this Agreement may be used only on the Property. The area of the Property where water may be used on this Property shall not exceed ___ acres. Customer is prohibited from providing water delivered pursuant to this Agreement, or using water delivered pursuant to this Agreement, to or on any other property.

3. **Season of Water Service.** Water service under this Agreement shall be available only during the period April 15 through September 15 of each year ("irrigation season") and Customer shall use such water only during the irrigation season.

4. **Use of Water.** Customer's use of water delivered under this Agreement shall be strictly limited to agricultural irrigation and stockwatering

purposes only. Customer shall not use water delivered under this Agreement for any other use. Customer shall comply with all local, state and federal laws, rules and regulations pertaining to the use of water provided pursuant to this Agreement.

5. Maximum Quantities of Water.

A. The maximum annual quantity of water available for any purpose under this Agreement shall be 150,000 gallons per acre served.

B. The maximum flow rate of water delivered under this Agreement for irrigation purposes shall be 8 gallons per minute per acre served.

C. The maximum quantity of water that may be delivered under this Agreement for stockwatering purposes shall not exceed 30 gallons per head, per day.

6. Water Availability Estimate and Allocation.

A. At the beginning of each calendar year, the District is entitled to estimate the total District water supply and demand for that year.

B. Should the District determine that no, or limited, surplus water may or will be available in a given year (a "surplus water deficiency"), the District may notify Customer, in writing, on or before March 1, or later if circumstances warrant, of the total quantity of available surplus water for the year and of Customer's allocation thereof, if any.

C. In the event of a surplus water deficiency, available surplus water shall be allocated by District on a pro rata basis by projected need, as determined by District, amongst all customers contracting with District for agricultural and stockwatering surplus water service. Customer's allocation shall not exceed the amount it reasonably needs, as determined by the District.

D. Upon request by District, Customer shall provide to District all requested information regarding Customer's past and projected water use and needs. Customer is responsible to timely report this information in writing to District.

7. **Rights and Carryover.** District shall retain all rights to water not used or not needed for use by Customer. Customer's allocation of surplus water under this Agreement shall not carry over from year to year or season to season.

8. **Water Conservation Requirements.** At a minimum, Customer shall implement and fully comply with water conservation measures as required pursuant to water conservation measures and programs enacted or adopted by District. At all times Customer shall make reasonable use of water delivered pursuant to this Agreement, and shall never waste that water.

9. **District Right to Interrupt or Discontinue Service.**

A. Water service under this Agreement may be interrupted or discontinued, in whole or in part, without notice in case of an actual or anticipated shortage of water supply, storage, or delivery capacity, if there is a facility or other outage, if Customer breaches any term of this Agreement, or for any other reason, as determined by District. District's determination shall be in its sole discretion and shall not be subject to review. District shall not be liable to Customer for any damages arising out of its discontinuation or interruption of service under this Agreement.

B. In the event of an interruption or discontinuation of water service ordered by District, Customer shall immediately cease taking water pursuant to this Agreement and shall not resume doing so until such resumption is approved by District.

10. **Quality of Water.** District does not warrant the quality of water made available and delivered to Customer pursuant to this Agreement. Customer's payment and other obligations under this Agreement shall not be affected in any manner by the quality of the water delivered by District hereunder.

11. **Separate Water Service Connection.**

A. There shall be a separate water service connection exclusively used for the water provided under this Agreement. The service connection includes the service pipe, valves, meter, and meter box. Customer requests and District hereby agrees to a water service connection no larger than _____.

B. Customer acknowledges and agrees that the City of Napa ("City") may install, operate, maintain, repair and replace as necessary the water service connection, as well as performing other functions such as billing and collecting charges for water use hereunder. All service connection equipment shall be and remain the property of the District and may be assigned by the District to the City or any other person or entity which succeeds to the District function as water service provider.

C. Customer agrees to timely pay all of the costs and expenses for the installation, operation, maintenance, repair, replacement, and removal of the service connection. The cost and expense of removal shall be incurred immediately prior to termination.

12. **Backflow prevention program.** Customer shall comply with the City's backflow prevention device program as it may change from time to time. A backflow prevention device and related equipment will be installed and paid for by Customer in accordance with City standards.

13. **Billing and Payment.** District shall prepare and forward to Customer invoices for all charges incurred under this Agreement excepting water usage and water service equipment installation charges which are billed by and paid to the City. Customer agrees to and shall pay such charges to District within thirty (30) days of the date of the District invoice. A late fee not to exceed \$10 or 10% of the total invoice, whichever is greater, shall apply if an invoice remains unpaid forty five (45) days after the invoice date.

A. **Water Service Connection Fee.** Customer shall pay to District the water service connection fee, which fee shall be at the rate adopted and amended by the District from time to time. The District shall verify that Customer has fully paid to City the City's installation costs as described in Section 13.B. of this Agreement. Upon District's receipt of payment in full for the balance of the District's water service connection fee, and, upon District's verification that Customer has fully paid City's installation costs, District shall authorize City to commence service connection installation work. District may amend the amount of the water service connection fee and method of payment by ordinance, which ordinance shall supercede any inconsistent provisions of this agreement.

B. **Installation Costs.** Customer shall pay City the cost of service connection installation in accordance with City requirements.

C. **Annual Service Charge.** The annual service charge applicable to interruptible surplus agricultural service shall be at the prevailing rates as adopted and amended by the District from time to time.

14. **Water usage charges.** The rate for all quantities of water delivered under this Agreement shall be at the prevailing rates as adopted and amended by the District from time to time. Water usage charges are billed by and paid to City.

Customer agrees to timely pay these charges in accordance with City invoices and requirements.

15. **Acceptance.** Customer must sign and return this Agreement with reliable documentation of Customer's payment of the City's installation costs described in Section 13.B. hereof as soon as reasonably possible after Customer's receipt of this Agreement. This Agreement is not valid until signed by the District. Customer recognizes and agrees that initiation of service may not occur in time to provide water for the irrigation season. Initiation of service during this period is dependent upon Customer's payment of the water service connection fee and installation costs under Sections 13.A. and 13.B. hereof, and City's and District's ability to perform the activities prerequisite to service initiation, at their discretion.

16. **Term.** This Agreement shall be for an initial term of not more than seven (7) years commencing on the effective date hereof, and ending on the December 31, _____. Thereafter this Agreement shall renew annually from year-to-year without further notice, until terminated by either party.

17. **Termination.**

A. Customer may terminate this Agreement by giving District thirty (30) days advance written notice of termination pursuant to Section 23.L. of this Agreement.

B. District may terminate this Agreement at any time if (1) Customer in any way breaches this Agreement; (2) District does not have, or does not reasonably anticipate having, adequate water to serve interruptible Customers; or (3) such service would be inconsistent with District's agreement with the City or any statute, regulation, or other legal requirement. District may terminate this Agreement for any other reason upon thirty (30) days' advance notice to Customer. District's termination pursuant to Subsections B (1)-(3) above shall be

effective immediately, and District shall provide Customer notice thereof (no advance notice required). District's right to terminate this Agreement shall not be prejudiced or waived by any delay or forbearance on its part in terminating the Agreement.

18. **Indemnification.** Customer shall indemnify, hold harmless, defend, and release District, its officers, agents, contractors, and employees, from any and all liabilities, actions, claims, damages, costs, or expenses, including attorney's fees and costs and expenses of suit, which may be asserted by any person or entity arising out of or in connection with (1) the control, use, disposal, quality, quantity, allocation, or distribution of water under this Agreement or (2) the actions or omissions of Customer in connection with this Agreement, including but not limited to a violation of this Agreement or any law, rule or regulation.

19. **Non-responsibility of District.** Neither District nor any of its officers, agents, contractors or employees shall be liable for the actions or omissions of Customer or any third party, including but not limited to the City, in connection with the control, use, disposal, quality, quantity, allocation or distribution of water under this Agreement, nor for any damage of any nature whatsoever, including but not limited to property damages, personal injury or death, arising out of or connected with the same. Customer recognizes and agrees that this is an interruptible and terminable water service agreement, and acknowledges Customer's responsibility to make its own arrangements (such as storage) to address its water needs in the event that service pursuant to this Agreement is interrupted or terminated. Customer expressly and knowingly waives any and all claims for injury or damages against the District.

20. **Right of Entry and Inspection.** Customer agrees to provide District and City the right, upon reasonable advance notice, to enter Customer's property

for the purposes of installing, operating, maintaining, repairing and inspecting the water service connection equipment, and as may be necessary or convenient to monitor compliance with this Agreement. This right includes inspection of relevant documents including but not limited to records of water delivery and use. For “small winery customers” as that term is defined under District’s rules and regulations, this consent extends to all small winery records relating to the amount of wine produced and the origin of the grapes crushed, to determine whether Customer is in compliance with District’s and City’s rules and regulations.

21. **Water Rights Not Conferred.** Nothing in this Agreement shall be construed to confer any appropriative, prescriptive, public trust, or any other right to water to Customer, except as expressly set forth in this Agreement.

22. **Standard Rules and Regulations.** Water service provided under this Agreement shall be subject to District’s rules and regulations governing interruptible surplus agricultural water service for agricultural and stockwatering purposes, as those rules and regulations may be adopted and amended from time to time. To the extent that any rule or regulation conflicts with an express provision of this Agreement, the express provision of this Agreement shall control.

23. **General Provisions.**

A. **Integration.** This Agreement constitutes the sole, final, complete, exclusive, and integrated expression and statement of the terms of this Agreement among the parties concerning the subject matter addressed herein, and supercedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Agreement.

B. **Waiver.** The waiver at any time by any party of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

C. **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.

D. **Severability.** The invalidity, illegality, or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

E. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective heirs, devisees, personal representatives, successors, and assigns of the parties, except as follows. Customer is not permitted to assign or otherwise transfer its interest in this Agreement to any other person or entity. Customer's interests herein may transfer to Customer's successor-in-interest to the property described in Section 1, upon notice to and written approval by District.

F. **Relationship of Parties.** 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.

G. **No Third Party Beneficiaries.** This Agreement shall not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the parties, their respective successors, and no other person or entity

shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.

H. **Amendment.** This Agreement may be modified or amended only by a subsequent written Agreement approved and executed by both parties.

I. **Counterparts.** This Agreement may be executed in counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who signed it.

J. **Obligations Prior to Termination.** The rights and obligations of the parties incurred pursuant to Sections 13 and 14 (for payment obligations incurred prior to termination), and Sections 18 through 21, of this Agreement prior to the termination of this Agreement shall survive the termination.

K. **Attorney Fees and Costs.** Should proceedings be brought to enforce or interpret any of the terms of this instrument, the prevailing party in any such proceedings shall be entitled to recover from the non-prevailing party its costs, including reasonable attorneys' fees.

L. **Notice.** Any notice, requests, tender, demand, delivery, approval, or other communication provided for, required, or arising under this Agreement shall be in writing and shall be deemed delivered three business days after deposited in the United States mail, certified or with return receipt requested, addressed to the party as follows:

To: Customer: _____

To: District: Congress Valley Water District
P.O. Box 3023
Napa, CA 94558

IN WITNESS WHEREOF, Customer and District have hereunto caused their hands to be subscribed through their duly authorized officer.

By Customer this _____ day of _____, 20_____.

[Customer]

By: _____

Name: _____

Title: _____

By District this _____ day of _____, 20_____.

CONGRESS VALLEY WATER DISTRICT

By _____

Name:

Title: President of the Board

ATTEST:

Kiersten Bjorkman,
District Secretary