

DRAFT AGREEMENT

INTERRUPTIBLE AGRICULTURAL RECYCLED WATER USE AGREEMENT

This Agreement is made on _____, 2019, by the CITY OF SANTA ROSA, a municipal corporation, (CITY) and _____ [indicate whether individual(s), trust, limited liability company or corporation] (USER).

RECITALS

A. USER owns or leases approximately _____ acres of real property identified as [INSERT APN # and Street address (if any)]; more particularly described in Exhibit A attached, which property is used for agricultural purposes.

B. CITY has constructed and operates facilities at its Subregional Water Pollution Control Facility that generate recycled water of satisfactory quality for use in irrigating agricultural land.

C. USER desires to irrigate all or a portion of the property with recycled water supplied by CITY pursuant to the terms and conditions of this Agreement.

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1. TERM

The term of this Agreement commences on the date this Agreement is fully executed (Effective Date) and terminates on _____ [anticipates ability to insert an approximately twelve-year term but we can choose end date] ("Term"), unless terminated earlier under Section 14 of this Agreement.

2. LAND FOR RECYCLED WATER DISPOSAL

2.1. USER agrees to use CITY'S recycled water for agricultural irrigation on certain acres of land, herein called "committed acreage." It is understood that the committed acreage shall be those acres of land identified in Recital A, and more particularly described in Exhibit A attached hereto and incorporated by reference, of this Agreement which shall remain in effect as the committed acreage throughout the remaining term of this Agreement unless changed by written amendment to this Agreement, provided that USER will notify CITY of any changes in crop type listed in Exhibit A, which shall not be considered an amendment to the Agreement so long as it remains part of the committed acreage.

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2.2. USER may request a change to the committed acreage by submitting a written request to CITY not later than April 1st in any year during the Term to change the committed acreage for the recycled water delivery and application period for that year, provided that USER may provide notice of changes at any time if required due to changes in applicable law or regulation, including any permit requirements. All land that USER intends to irrigate with recycled water shall be included within the committed acreage.

3. PAYMENT

USER shall pay CITY per the agricultural recycled water interruptible fee as adopted by the City's Board of Public Utilities on _____, as may be updated from time to time, based on the actual amount of recycled water delivered by CITY to USER's irrigation system.

4. ENTIRE AGREEMENT SUBJECT TO SUBREGIONAL AGREEMENT, NPDES PERMIT, CITY ORDINANCES AND REGULATIONS, RECYCLED WATER USER'S GUIDE, AND ALL STATUTES, REGULATIONS, AND PERMITS APPLICABLE TO RECYCLED WATER.

4.1. USER shall comply with all state and local recycled water rules, regulations and permits as they exist now or may be amended, revised or superseded during the Term of this Agreement, including but not limited to Santa Rosa City Code Chapter 14-25, Titles 17 and 22 of the California Code of Regulations, and the Water Reclamation Requirements, Provisions for Recycled Water Use established by the National Pollution Discharge Elimination System (NPDES) Permit issued to City by the North Coast Regional Water Quality Control Board (RWQCB) for the Santa Rosa Subregional Water Reclamation System, requirements of the General Waste Discharge Requirements for Recycled Water Use, Water Quality Order 2014-0090-DWQ adopted by the State Water Resources Control Board (State Water Board), and any requirements of the State Water Resources Control Board, Division of Drinking Water (SWRCB-DDW) and the Sonoma County Health Services – Environmental Health (SCHS-EH).

4.2. USER shall design, install, and operate its irrigation system per all rules, regulations and standards for recycled water use as they exist now and as they may be enacted, amended, or revised during the Term of this Agreement. USER acknowledges receiving a copy of, and agrees to comply with the requirements of, CITY's "Recycled Water User's Guide" last updated in 2018, as it may be amended or revised during the Term of this Agreement.

4.3. This Agreement constitutes the Recycled Water Use Permit pursuant to the Chapter 14-25 of the Santa Rosa City Code.

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5. ADDITIONAL REQUIREMENTS FOR SITE SUPERVISOR AND RECYCLED WATER APPLICATION.

5.1 USER shall have a designated Site Supervisor required to attend a Site Supervisor training provided by CITY prior to or within ninety (90) days from the Effective Date of this Agreement, and shall during the Term, as reasonably required by the CITY, attend additional trainings to assure an adequate understanding and knowledge of new or updated recycled water use requirements. Any newly designated Site Supervisor shall be required to attend CITY training within ninety (90) days from the date of any such appointment by USER hereunder. USER shall provide to the CITY copies of certificates of training for all Site Supervisors.

USER's Site Supervisor shall have the authority to carry out any requirements of the CITY hereunder. The Site Supervisor must be available, or have a designated staff person available, at all times during the Term of this Agreement to assure 24-hour system coverage and prompt response to any operational issues.

5.2 USER hereby designates the following person or persons as Site Supervisor(s). USER shall promptly inform CITY in writing of any change of designated Site Supervisor(s) and/or phone number(s) during the Term of this Agreement and provide a certificate of training as set forth above.

Name: _____

Name: _____

Position: _____

Position: _____

24 Hour Phone: _____

24 Hour Phone: _____

E-Mail: _____

E-Mail: _____

6. DELIVERY AND APPLICATION OF RECYCLED WATER

6.1. The CITY agrees, subject to terms and conditions of this Agreement and during the Term, to deliver and USER agrees to take, accept, and apply recycled water to the committed acreage.

6.2 CITY owns and operates Booster Pump Stations throughout the system to augment the transmission line pressure. USER understands that the Booster Pump Stations have limited capacity and at times may not be sufficient to irrigate the

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full committed acreage at USER's desired pressure. USER agrees to coordinate with the CITY to ensure proper operation of Pump Stations to optimize performance and irrigation coverage.

- 6.3 USER agrees to implement conservation measures and best management irrigation practices when applying the recycled water to assure that the application will be consistent with runoff, ponding and environmental restrictions.
- 6.4 To comply with regulatory requirements and to meet certain operational parameters or emergencies, CITY may have special recycled water disposal needs. USER hereby agrees, when specifically requested by CITY, to accept and apply recycled water so long as such application is consistent with runoff, ponding and environmental restrictions as described in this Agreement.

In the event USER takes recycled water at the specific request of CITY, then CITY agrees there shall be no charge to USER during such periods. In the event that USER, as a result of such additional irrigation, suffers out of pocket expenses or damage to crops, City agrees to reimburse USER for actual out of pocket expenses or losses due to crop damage resulting therefrom. In order to seek reimbursement for such out of pocket expenses or losses from the CITY, USER shall submit a request for actual expenses or losses along with supporting documentation necessary to demonstrate (i) the expense or damage was a result of over-irrigation in connection with a request from the CITY, (ii) evidence of the out-of-pocket expenses or actual losses due to damaged crops incurred by USER, and (iii) any efforts to mitigate such expenses or losses by USER. Within sixty (60) days from receipt of such request the CITY will evaluate all such claims and provide USER with a notice setting forth the proposed amount to be paid or credited to USER and/or the reason for any rejection or partial reduction of said claimed amount, and if no further comment or response is received from USER within ten (10) days from sending such notice, City will promptly remit payment of such loss and damage amounts to USER.

- 6.5 CITY agrees to provide mosquito control related to application of recycled water by USER on the Committed Acreage through agreement with the Marin/Sonoma Mosquito & Vector Control District or similar means which may include other contractor or CITY staff.

7. LIMITATIONS PRECLUDING DELIVERY OF RECYCLED WATER

Notwithstanding the requirements for CITY to deliver recycled water as stated in Section 6 of this Agreement, both parties recognize and agree that such delivery of recycled water may at times be precluded for reasons within and beyond the control of the CITY. Such delivery may be prevented by reasons including, but not limited to, providing recycled water to the Geysers Project and/or urban users, shortage of recycled water, malfunction

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of CITY's system, temporary imbalance of the recycled water in various ponds, or by order of a governmental regulatory authority. City shall not be liable for any actual or consequential damages that may occur due to such shortages or interruption of recycled water delivery, including but not limited to any loss or damage to crops or the cost of obtaining other water. USER understands that the interruptible nature of recycled water delivery is reflected in the CITY's determination of any applicable fee set by the CITY for recycled water for agricultural uses.

CITY advises that USER should maintain a backup water supply for use in the event that CITY is unable to deliver recycled water for any reason.

8. PERMISSION TO ENTER

USER agrees at all times during the Term of this Agreement to allow CITY to install or remove any necessary pumps, electric service, meters, appurtenances, and portable irrigation equipment on land controlled by USER and intended for recycled water irrigation. In addition, USER hereby grants CITY, acting through its duly authorized employees, agents, representatives, or contractors, reasonable access to USER's property to do any necessary work associated with installation and maintenance of equipment required by this Agreement, meter reading, verification of recycled water use, or any other monitoring of recycled water-related activity on said property. When entering USER's property, CITY shall interfere as little as possible with USER's other operations and land usages of the property.

9. OTHER USERS

USER recognizes and understands that CITY is obligated to deliver recycled water to other users pursuant to other agreements. CITY will endeavor to maximize recycled water supply to serve the needs of all recycled water users. In the event of shortage for any reason, USER hereby acknowledges and agrees that CITY may in its sole discretion determine the method pursuant to which recycled water will be allocated to and among all users. CITY cannot assure uninterrupted supply of recycled water to USER.

10. RECYCLED WATER QUALITY

The recycled water delivered to USER by CITY shall be of a quality that is in accordance with the regulations and guidelines of the RWQCB, the SWRCB-DDW, and the SCHS-EH for the use included herein. USER shall not allow the recycled water to be used in violation of any law, ordinance, or regulation now in effect or hereafter enacted or adopted. USER's attention is directed to the regulations contained in the California Administrative Code, Title 22, Division 4, which USER acknowledges that he/she/it has read and is familiar with its content and shall comply with the parts of said regulations that are pertinent to USER's use of the recycled water.

11. ADDITIONAL RECYCLED WATER APPLICATION RESTRICTIONS

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In addition to the restrictions on and requirements or recycled water use as set forth in this Agreement, USER hereby agrees to adhere to the restrictions set forth in this Section. USER shall not apply recycled water within fifty (50) feet of any well located on USER's or neighboring properties. USER shall not allow recycled water to run off from the application area into depressions or drainage ways leading off of USER's property and shall not allow excessive ponding of recycled water on USER's property causing recurring vector problems. If USER allows runoff of recycled water to leave USER's property because of lack of reasonable agricultural practices and monitoring of system during application, or excessive ponding resulting in recurring vector problems, or if USER does not observe the property boundary and well buffers, CITY may immediately curtail recycled water delivery, notify USER of such infraction in writing and, if USER does not rectify the infraction within two (2) days after notice, CITY may terminate this Agreement.

12. TAXES

USER recognizes that this Agreement may create a possessory interest subject to property taxation and that USER may be subject to the payment of property taxes levied on such interest (Revenue and Taxation Code Section 107.6). USER shall pay, before delinquency, all taxes, assessments, license fees, and other charges (hereinafter referred to as "taxes") that are levied or assessed during the term against USER'S interest in personal property installed or located in or upon USER'S premises and any such taxes measured by the value of CITY'S interest in such personal property. Upon CITY'S demand, USER shall furnish CITY with satisfactory evidence of any such tax payments. If any taxes are levied against CITY or if, as a consequence of this Agreement, CITY incurs a tax obligation greater than, or in addition to, that which would be borne by CITY in the absence of this Agreement, USER, upon demand of CITY, shall immediately reimburse CITY for the sum of taxes so levied against or borne by CITY.

13. GENERAL CONDITIONS

- (a) This Agreement shall be construed and interpreted in accordance with the laws of the State of California, and venue shall be in the State courts in the County of Sonoma.
- (b) This Agreement contains all agreements of the parties with regard to the subject of this Agreement and cannot be enlarged, modified, or changed in any respect except by written agreement between the parties.
- (c) The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal, but the parties shall negotiate as to the effect of said unenforceability, invalidity, or illegality on the rights and obligations of the parties.

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- (d) The captions, titles and headings in this Agreement shall have no effect on the interpretation of this Agreement or any part thereof.
- (e) This Agreement shall be binding on the heirs, successors, lessees, sublessees, assigns, and transferees of USER.

14. TERMINATION

- 14.1 USER shall have the right to terminate this Agreement without cause at any time during the Term upon on hundred-eighty (180) days written notice to CITY.
- 14.2 In the event that USER is using or allowing the use of recycled water delivered hereunder in violation, or an imminent threat of violation, of local, state or federal laws or regulations such that the CITY determines immediate action is necessary to address such violation, the CITY shall immediately contact the Site Supervisor for USER who shall assure that all steps are taken to immediately remedy any violation or imminent violation hereunder. In the event that Site Supervisor fails to remediate such matter to the satisfaction of CITY, CITY shall have the right to take any actions it deems necessary to remedy such violation or imminent threat of violation, including but not limited to entering upon USER's property, immediately halting delivery of recycled water hereunder and continuing to suspend deliver until such time as all actions have been taken to resolve the identified source of the violation or imminent threat of violation. In the event CITY must (i) contact the Site Supervisor three or more times per year on the same issue, (ii) contact the Site Supervisor 15 times or more during the Term of this Agreement, or (iii) take actions to redress a violation or imminent threat of violation due to the failure of the Site Supervisor to do so after CITY's request more than three times during the Term of this Agreement, then the CITY shall have the right, in CITY's discretion, to terminate this Agreement upon one hundred-eighty (180) days written notice to USER.
- 14.3 The City acknowledges the importance of the agricultural irrigation system to achieving the City's goals of recycled water reuse and affirms its intentions to support this program. If the City, notwithstanding any provision herein to the contrary, determines, in its sole discretion, at any time during the Term of this Agreement that it is no longer in the City's interests to operate any portion of the recycled water distribution network serving USER, the City may terminate this Agreement by written notice to USER no later than July 1 of the year prior to termination. In the event of damage or inoperability of any portion of the recycled water distribution network serving USER which CITY determines, in its sole discretion, cannot cost effectively be repaired, then the CITY may immediately suspend delivery of recycled water hereunder and may then terminate this Agreement upon ninety (90) days written notice to USER.

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14.4 In the event that USER fails to accept or use any recycled water from CITY for a period of two consecutive years or more, then CITY shall have the right to terminate this Agreement upon ninety (90) days written notice to USER.

14.5 Except as otherwise expressly provided herein, should one party breach any of the terms and conditions in this Agreement, written notice of such breach shall be given to the other party. If reasonable steps toward correcting the breaching conditions are not taken within five (5) days from such notice, the other party may, in addition to any remedies provided by this Agreement, or by law, terminate this Agreement on ten (10) days written notice to the breaching party.

15. INTENTION

USER understands and acknowledges that CITY is legally required to dispose of recycled water on land and is not permitted to release it into the Russian River watershed during certain times of the year. Therefore, CITY is relying on a good-faith performance of USER in accepting and using recycled water.

16. NOTICES AND AMENDMENTS

Any notice or amendment to this Agreement necessary to be given to either party by the other shall be in writing. Both parties agree that any such notice or amendment shall be effective when signed by the City of Santa Rosa, Director of Santa Rosa Water and/or USER, as appropriate, and deposited, postage paid, in the U.S. Mail addressed as follows:

CITY:

Director of Santa Rosa Water
City of Santa Rosa
69 Stony Circle
Santa Rosa, CA 95401

USER:

17. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

USER hereby represents and warrants to CITY that it is (a) a duly organized and validly existing [enter type of entity], formed and in good standing under the laws of the State of [enter state of formation for corporations, LPs and LLCs], (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. USER hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on USER in accordance with the

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terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

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IN WITNESS WHEREOF, CITY and USER have executed this Agreement as of the date and year first written above.

USER:

Name:

- _____ Individual/Sole Proprietor
- _____ Partnership
- _____ Corporation
- _____ Limited Liability Company
- _____ Other (please specify: _____)

By (Signature): _____

Print Name: _____

Print Title: _____

Telephone: _____

USER: (SECOND SIGNATURE FOR CORP)

By (Signature): _____

Print Name: _____

Print Title: _____

Telephone: _____

CITY:

CITY OF SANTA ROSA,
A Municipal Corporation

By: _____

Director of Santa Rosa Water

APPROVED AS TO FORM:

Office of the City Attorney

Exhibit A – USER’s Property; location of Application Areas

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EXHIBIT A

LOCATION OF APPLICATION AREA(S)

The location(s) of USER'S application area(s), the aggregate of which shall be known as USER'S Site, is (are) as follows:

<u>Application Area Name</u>	<u>Application Area Street Address</u>	<u>Approximate Irrigation Area (Acres)</u>	Type of Crop
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