

**RESTRUCTURED AGREEMENT FOR WATER SUPPLY**

by and between

SONOMA COUNTY WATER AGENCY  
CITY OF COTATI  
CITY OF PETALUMA  
CITY OF ROHNERT PARK  
CITY OF SANTA ROSA  
CITY OF SONOMA  
FORESTVILLE WATER DISTRICT  
NORTH MARIN WATER DISTRICT  
VALLEY OF THE MOON WATER DISTRICT  
TOWN OF WINDSOR

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## RESTRUCTURED AGREEMENT FOR WATER SUPPLY

THIS AGREEMENT is made on \_\_\_\_\_ by and between the following public entities:

SONOMA COUNTY WATER AGENCY, herein called "Agency",  
CITY OF COTATI, herein called "Cotati",  
CITY OF PETALUMA, herein called "Petaluma",  
CITY OF ROHNERT PARK, herein called "Rohnert Park",  
CITY OF SANTA ROSA, herein called "Santa Rosa",  
CITY OF SONOMA, herein called "Sonoma",  
FORESTVILLE WATER DISTRICT, herein called "Forestville",  
NORTH MARIN WATER DISTRICT, herein called "North Marin",  
VALLEY OF THE MOON WATER DISTRICT, herein called "Valley of the Moon", and  
TOWN OF WINDSOR, herein called "Windsor",

The parties hereto hereby mutually covenant and agree as follows:

### PART 1 - GENERAL

#### 1.1 Recital of Purposes

Among the purposes of this Agreement are to provide a water supply or a supplemental water supply for each of the Water Contractors, to encourage water conservation and recycled water use that reduces potable water use, to provide environmental improvements and enhancements to allow for sustainable and continued use of Russian River Project water, to encourage the development of local supply projects to offset potable water use, and to provide for payment to the Agency for water delivered hereunder sufficient to enable it to pay the capital costs of major replacements and additions to the Transmission System and to meet its Revenue Bond Obligations and its expenses of operating and maintaining the Transmission System.

#### 1.2 Definitions

When used herein, unless otherwise distinctly expressed or manifestly incompatible with the intent of this Agreement, the terms:

- (a) "Acre feet" and "AF" mean one acre-foot or 325,850 gallons of water.
- (b) "Additional Facilities" means the additional facilities that must be constructed or acquired after the completion of the Russian River-Cotati Intertie in order for the Agency to be able to make the deliveries authorized by Sections 3.1 and 3.2, including, but not limited to: an aqueduct generally paralleling the Intertie Aqueduct; an aqueduct generally paralleling the south part of the Petaluma Aqueduct from the Intertie Aqueduct to Kastania Reservoir; an aqueduct generally paralleling the Sonoma Aqueduct; an aqueduct connecting the Kawana Springs and Ralphine reservoirs; the transmission line pumping plants necessary to regulate flows to Storage Facilities; 55.5 million gallons of reservoir storage; 56.9 mgd of Russian River water production capacity; water-treatment facilities; and Emergency Wells.
- (c) "Aqueduct Facilities" means the pipelines of the Intertie, Petaluma, Santa Rosa and Sonoma Aqueducts, an additional pipeline to be constructed generally paralleling the Intertie Aqueduct, a pipeline to be constructed generally paralleling the south part of the Petaluma Aqueduct from the Intertie Aqueduct to Kastania Reservoir, and a pipeline to be constructed or acquired generally paralleling the Sonoma Aqueduct.
- (d) "Capital Cost" means the total funds expended for capital improvements, major replacements, or portions thereof, as context requires, including, but not limited to, planning, engineering, environmental impact analysis, right of way, financial and legal fees, interest during construction, and materials, construction, and replacement costs.
- (e) "Common Facilities" means all Transmission System facilities except Storage Facilities and Aqueduct Facilities, but including additional facility aqueduct capacity constructed specifically to make the deliveries that have been authorized by Section 3.12, and including the Potter Valley Project or portion thereof if acquired pursuant to Section 2.4.
- (f) "Corporate Territory" means the boundary from time to time existent of a city, agency, district or other governmental entity with powers to accept and distribute water.
- (g) "Customer" means any of the following customers of the Agency:
- (1) "Water Contractor" means a party signatory to this Agreement except the Agency and Forestville.

(2) "Other Agency Customer" means the Agency, the County of Sonoma, California-American Water Company (with respect to the Larkfield Water District), Forestville Water District, Lawndale Mutual Water Company, Kenwood Village Water Company, Penngrove Water Company, the City of Sebastopol, the State of California, and Santa Rosa Junior College.

(3) "Marin Municipal" means the Marin Municipal Water District.

(4) "Russian River Customer" means any Agency customer within Sonoma County who has or in the future will have contracts with the Agency to divert or redivert water directly from the Russian River or Dry Creek without the use of the Transmission System.

(5) "Regular Customer" means the any of the Water Contractors or the Other Agency Customers.

(h) "Emergency Wells" means auxiliary groundwater production wells that may be utilized to provide additional delivery capacity when necessary due to drought, equipment failure, or other transmission capacity impairment, inability to divert Russian River Project water (for water quality reasons or otherwise), or any other reason beyond the control of the Agency.

(i) "Entitlement" means the quantity of water a Regular Customer shall from time to time require at such rates of flow as are necessary to meet its peak day's demand, subject to the delivery limitations set forth in Sections 2.2, 3.1, 3.2, and 3.5.

(j) "Entitlement Limits" means the maximum amounts of water the Agency is obligated to deliver to any Regular Customer from the Transmission System, as specified in Sections 3.1(a), 3.2(a), 3.2(c), and 3.2(d).

(k) "Fiscal Year" (abbreviated FY) means the period from July 1 through the following June 30.

(l) "Forestville Aqueduct" means the existing pipeline from the Santa Rosa Aqueduct to Forestville, the existing booster pumping plant, the existing 300,000-gallon reservoir, and all other facilities financed with the proceeds of the sale of Series E of the Agency's 1955 Bonds.

(m) "Intertie Aqueduct" means the existing 48-inch inside diameter pipeline extending from the Mirabel Park intake facilities on the Russian River to the Petaluma Aqueduct in the vicinity of Cotati with appurtenances thereto including turnouts to serve Forestville, Santa Rosa, Cotati and Rohnert Park. The Intertie Aqueduct consists of three reaches: "Reach 1" from the Mirabel intake facilities to Forestville, "Reach 2" from Forestville to the extension of Hall Road and "Reach 3" from the extension of Hall Road to the junction with the Petaluma Aqueduct at Cotati. Reach 3 is further divided into "Reach 3a" from the extension of Hall Road to Occidental Road, "Reach 3b" from Occidental Road to the Cotati reservoirs and "Reach 3c" from the Cotati reservoirs to the Petaluma Aqueduct.

(n) "Kawana Pipeline" means the pipeline connecting the Reach 3a of the Intertie Aqueduct with Kawana Springs Reservoirs.

(o) "Local Supply Project" means a water supply project undertaken by one or more Water Contractors, which reduces demand on the Transmission System during the months of June, July, August, or September.

(p) "Marin Municipal" means the Marin Municipal Water District.

(q) "mgd" means a million gallons of water per day.

(r) "Oakmont Pipeline" means that certain pipeline and appurtenances generally paralleling the Sonoma Aqueduct that were constructed by the Agency pursuant to an agreement between the City of Santa Rosa and Agency dated April 29, 1986.

(s) "Operation and Maintenance Costs" means the Agency's costs of operating the Transmission System including its power costs, costs of maintaining the Transmission System in a good state of repair, payments made to the owner of the Potter Valley Project to insure the continued operation of the Potter Valley Project provided they are annually approved by the Water Advisory Committee, regardless of whether or not such payments result in the ultimate transfer of title to all or part of the Potter Valley Project to the Agency, and costs of administering the Transmission System and furnishing the water supplies pursuant to this Agreement; provided, however, that costs relating to the use of Transmission System facilities for public recreation purposes, except (1) costs to permit limited passive public recreation on Transmission System lands not in conflict with operational or water quality requirements, or (2) necessary

costs associated with land ownership, shall not constitute "Operation and Maintenance Costs."

(t) "Ordinance No. 1" means Ordinance No. 1 of the Agency adopted on December 28, 1970, providing for the issuance of the Revenue Bonds, together with any other ordinances of the Agency supplemental thereto or amendatory thereof.

(u) "Other Agency Customer" means the Agency, the County of Sonoma, California-American Water Company (with respect to the Larkfield Water District), Forestville Water District, Lawndale Mutual Water Company, Kenwood Village Water Company, Penngrove Water Company, the City of Sebastopol, the State of California, and Santa Rosa Junior College.

(v) "Petaluma Aqueduct" means the existing pipeline and appurtenances, including turnouts, from the Santa Rosa Aqueduct to Petaluma. The "south part" of the Petaluma Aqueduct means the portion thereof south of the junction thereof with the Intertie Aqueduct and the "north part" means the portion north of said junction to Scenic Avenue.

(w) "Potter Valley Project" means Federal Energy Regulatory Commission Project No. 77.

(x) "Recycled Water" means wastewater treated to applicable standards set forth in Title 22 of the California Code of Regulations, Division 4 Environmental Health, as may be amended from time to time.

(y) "Recycled Water and Local Supply Sub-Charge" and "Recycled Water and Local Supply Fund" mean the sub-charge and fund established by the Agency under Section 4.15.

(z) "Recycled Water Project"<sup>ms</sup> means any programs, projects, or facilities that produce or deliver recycled water, provided that the recycled water produced or delivered by such projects or facilities (1) results in a reduction in use of potable water from the Transmission System, (2) reduces the amount of water diverted from the Russian River or its tributaries, (3) provides an environmental benefit which increases or avoids reduction to the water supply or Transmission System capacity available to the Water Contractors, or reduces the cost of providing such supply or capacity, or (4) assists the Agency to comply with the federal or state Endangered Species Act or any other environmental law or regulation, which compliance is required for the Agency to



provide the water supply or Transmission System capacity to the Water Contractors as provided in this Agreement.

(aa) "Regular Customer" means the any of the Water Contractors or the Other Agency Customers.

(bb) "Remaining Facilities" means those portions of the Russian River-Cotati Intertie authorized to be constructed or acquired by the Tenth Amended Agreement For Water Supply and Construction of the Russian River-Cotati Intertie Project, dated November 14, 1997, which have not been constructed or acquired on the effective date of this Agreement, including, but not limited to, 20 mgd of standby pump and collector capacity; the Wohler-Forestville pipeline; the Eldridge-Madrone pipeline; Collector No. 6, and the Oakmont Pipeline.

(cc) "Revenue Bond Obligations" means the payment of principal of and interest on the Revenue Bonds and all other obligations and covenants of the Agency with respect to the Revenue Bonds, including specifically any covenant to establish and maintain rates and charges to provide revenue coverage in excess of a specified amount.

(dd) "Revenue Bonds" means any of the following if issued or entered into for sole purpose of financing the Capital Cost of Transmission System facilities or other facilities authorized to be constructed, acquired, or funded under this Agreement: (1) all series or issues of revenue bonds issued pursuant to ordinances and resolutions of the Agency or of any joint powers authority of which the Agency is a member or (2) any loan agreement, grant agreement, lease-purchase agreement, certificate of participation agreement, note, commercial paper, or other debt or financing agreement entered into by the Agency or by any joint powers authority of which the Agency is a member. As used in this Agreement, the term "issue Revenue Bonds" includes entering into any of the agreements set forth in clause (2) of the preceding sentence, and the term "holders of Revenue Bonds" includes any holders of or counterparties to any such agreements.

(ee) "Russian River Conservation Charge" means the charge established in Subsection (a) of Section 4.18 of this Agreement.

(ff) "Russian River-Cotati Intertie" means the Intertie Aqueduct and associated intake facilities on the Russian River, including the diversion dam, intake works, infiltration ponds, collectors, water treatment facilities, groundwater wells having a minimum production capacity of 7 mgd, a Russian River water quality monitoring system,

pumps, telemetry equipment and related buildings and appurtenances, and associated storage facilities.

(gg) "Russian River Customer" means any Agency customer within Sonoma County who has or in the future will have contracts with the Agency to divert or redivert water directly from the Russian River or Dry Creek without the use of the Transmission System.

(hh) "Russian River Project" means Coyote Valley Dam/Lake Mendocino on the Russian River, Warm Springs Dam/Lake Sonoma on Dry Creek, and related works as contemplated by House Document Number 585, 81st Congress, 2nd Session, House Document Number 547, Eighty-Seventh Congress, Agency Board of Directors Resolutions No. 6847 adopted May 24, 1955, No. 7798 adopted September 27, 1955, No. DR00793-1 adopted September 25, 1961 and Resolution No. DR68485 adopted December 23, 1980, or any agreement between the Agency and the United States related to Coyote Valley Dam or Warm Springs Dam.

(ii) "Russian River Projects Charge" means the charge established in Subsection (b) of Section 4.18.

(jj) "Russian River Projects Fund" means the fund established by the Agency to pay or partially pay for: (1) carrying out the Agency's Coyote Valley Dam Project and Warm Springs Dam Project channel-stabilization works obligations to the United States Government and the State of California under Agency Board of Directors Resolutions No. 6847 adopted May 24, 1955, No. 7798 adopted September 27, 1955, No. DR00793-1 adopted September 25, 1961 and Resolution No. DR68485 adopted December 23, 1980; (2) securing and defending appropriative water rights which are necessary for the realization of the full benefits of the Coyote Valley Dam and Warm Springs Dam Projects; (3) the Agency's share of the United States Government's investment, operation and maintenance, and major replacement costs associated with the Coyote Valley Dam and Warm Springs Dam Projects; (4) the acquisition of all or part of the Potter Valley Project or contributions made to the Project owner to insure the continued operation of all or part of the Project; and (5) fishery mitigation and enhancement projects undertaken by the Agency in the Russian River and Eel River and their tributaries.

(kk) "Santa Rosa Aqueduct" means the existing pipeline and appurtenances, including turnouts, from the collector wells at Wohler to the Ralphine Tank farm on the east extension, and to Scenic Avenue on the south extension.

(ll) "Sonoma Aqueduct" means the existing pipeline and appurtenances, including turnouts, from the Ralphine reservoirs to Sonoma. The Sonoma Aqueduct consists of two reaches: "Reach 1" from the Ralphine reservoirs to Pythian Road and "Reach 2" from Pythian Road to the Sonoma reservoirs.

(mm) "Storage Facilities" means all reservoirs on the Transmission System, the pipeline connecting the Kawana Springs Reservoirs with the Intertie Aqueduct; the pipeline connecting the Kawana Springs and Ralphine reservoirs; the Oakmont Pipeline; the pipeline connecting the Kastania reservoir with the Petaluma Aqueduct; the existing booster pumping plant and the existing 300,000-gallon reservoir components of the Forestville Aqueduct; and transmission line pumping plants necessary to regulate flows to storage facilities.

(nn) "Surplus Customer" means any person or entity who, as of the date of this agreement, was being served Surplus Water by the Agency.

(oo) "Surplus Water" has the meaning defined in subsection (a) of Section 3.4 of this Agreement.

(pp) "Transmission System" means the Agency's water production, storage, treatment and transmission facilities, including but not limited to the Santa Rosa, Petaluma, and Sonoma Aqueducts, the Russian River-Cotati Intertie, Emergency Wells, the Warm Springs Hydroelectric Project, future water production, storage, treatment and transmission facilities to be constructed as set forth in Sections 2.2 and 2.3, and the Potter Valley Project, if acquired by the Agency pursuant to Section 2.4.

(qq) "Trustee" means the Trustee or Trustees for the Agency (or for any joint powers authority of which the Agency is a member) and the holders of the Revenue Bonds appointed pursuant to ordinances or resolutions of the Agency relating to Revenue Bonds, or any successor(s) or assignee(s) thereof.

(rr) "Warm Springs Dam Project" means that certain project authorized for the Russian River, Dry Creek, California, by the Flood Control Act of 1961, enacted October 23, 1962 (Public Law 874, 87th Congress).

(ss) "Warm Springs Hydroelectric Project" means Federal Energy Regulatory Commission Project No. 3351.

(tt) "Water Advisory Committee" means the advisory committee established in Part 5 of this Agreement.

(uu) "Water Conservation Project" means (1) any program, project, or activity that will reduce potable water use within a Regular Customer's service area (including, but not limited to, activities undertaken pursuant to Section 1.12 of this Agreement, but excluding Recycled Water Projects or Local Supply Projects approved after the date of this Agreement), or (2) any materials, supplies, Agency staff time, or contractor services provided by the Agency in support of any Regular Customer's Water Conservation Project.

(vv) "Water Contractor" means a party signatory to this Agreement except the Agency and Forestville.

### **1.3 Term of Agreement**

This Agreement shall become effective upon its execution by all the parties hereto and shall remain in effect until June 30, 2040, or, if any Revenue Bonds are outstanding on June 30, 2040, until such date as all Revenue Bonds shall have been paid in full and all obligations and covenants of the Agency with respect to any Revenue Bonds shall have been discharged. The Agency shall enter into renewal agreements for periods not to exceed forty years each with any or all of the Water Contractors requesting the same for water supplies within the delivery capabilities of the Agency's Transmission System, at a cost no greater than the Agency's Operation and Maintenance Costs and unreimbursed Capital Costs allocated on a proportionate use basis, it being understood that such renewal agreements shall provide for Entitlements and Entitlement Limits for each customer as set forth herein.

### **1.4 Previous Agreements Terminated or Modified**

(a) The Eleventh Amended Agreement for Water Supply, dated January 26, 2001, between the Agency and the Water Contractors is terminated as of the effective date of this Agreement and superseded by this Agreement.

(b) Existing agreements between the Agency and Windsor are terminated and amended as follows, effective as of the effective date of this Agreement:

(1) All prior agreements between the Agency and Windsor for water deliveries from the Transmission System are terminated as of the effective date of this

Agreement, including the Application for Water Service, dated April 1, 1987. All water deliveries to Windsor from the Transmission System shall be made in accordance with this Agreement.

(2) The Agreement for the Sale of Water between the Sonoma County Water Agency and the Windsor Water District, dated June 8, 1991, is amended as follows:

(i) By deleting the text of Section 4 ("Shortage of Water and Apportionment") thereof and replacing it with the following: "In the event of a shortage in the quantity of water available to its customers, including the Town of Windsor, the Agency shall apportion water as provided in the Restructured Agreement for Water Supply, dated \_\_\_\_\_. In such event, (1) the Town of Windsor shall limit its total diversions and rediversions of water from the Russian River, including both diversion and rediversions pursuant to this agreement and all of its other diversions and rediversions, to the amounts of water that the Agency allocates to the Town of Windsor, and (2) in determining the amount of water available for allocation, the Agency shall include the amount of water available for diversion or rediversion by the Town of Windsor under its water rights in addition to the amount available to the Agency under its own water rights."

(ii) By adding at the end of Section 10 ("Payment") the following: "The Town of Windsor shall also pay any charges required by the Restructured Agreement for Water Supply, dated \_\_\_\_\_, including the charges required by Section 4.17(b) of that agreement."

### **1.5 Enforcement**

The failure of any Water Contractor to perform its obligations hereunder shall not excuse the remaining Water Contractors from performing their obligations hereunder nor excuse the Agency from performing its obligations hereunder to said remaining Water Contractors. Each and all of the provisions of this Agreement shall be enforceable by action brought by any party hereto for specific performance or any other appropriate action at law for damages or in equity for other appropriate relief to the end that no party hereto shall suffer from the default of any other party. Nothing in this Agreement shall preclude any Water Contractor from seeking unilateral redress under the law from the Agency, or any other party, Customer, or entity. Any owner or holder

of Revenue Bonds may also enforce any provision of this Agreement inuring to the benefit of the holders of the Revenue Bonds.

### 1.6 Amendments

- (a) Except as hereafter provided, this Agreement may be amended only with the consent of all the parties hereto.
  
- (b) Any annual delivery limit contained in Section 3.1 may be modified by written Agreement between the Agency and the Water Contractor to which such annual delivery limit applies without the consent of the other parties to this Agreement for the purpose of conforming such annual delivery limits to a general plan which is applicable to the service area of such Water Contractor. Copies of any such written agreements shall be provided to all the parties to this Agreement.
  
- (c) As of the effective date of this Agreement, Forestville is no longer a Water Contractor, and this Agreement may be amended without the consent of Forestville, provided, however, that Forestville's consent shall only be required for any amendment that impairs or affects any then-existing obligation of the Agency to supply water to Forestville from the Transmission System.
  
- (d) If any amendment to this Agreement reduces the revenues to be received by the Agency or otherwise impairs the ability of the Agency to meet its Revenue Bond Obligations, then such amendment shall be effective only with the consent of the Trustee. The Trustee shall give such consent if the Trustee determines that, following such amendment, the Water Contractors will be obligated under this Agreement to make payments to the Agency sufficient to enable the Agency to pay principal of and interest on the Revenue Bonds and to meet all its other Revenue Bond Obligations. In making such determination, the Trustee may rely upon such certificates or opinions from qualified attorneys, engineers or accountants as the Trustee may deem necessary and obtain from the Agency.

### 1.7 Pledge of Revenues

Each party hereto acknowledges that anything herein to the contrary notwithstanding, all sums paid to the Agency pursuant to this Agreement are "Revenues of the Transmission System" of the Agency as defined in Ordinance No. 1, except (a) the payments and credits set forth in Section 4.4, (b) the payments of the Russian River Conservation Charge and the Russian River Projects Charge made

pursuant to Section 4.11 and 4.18, (c) the payments of the Water Management Planning Sub-Charge made pursuant to Section 4.13, (d) the payments of the Watershed Planning and Restoration Sub-Charge made pursuant to Section 4.14, (e) the payments of the Recycled Water and Local Supply Sub-Charge made pursuant to Section 4.15, and (f) the payments of the Water Conservation Sub-Charge made pursuant to Section 4.16, and are pledged to the payment of the Agency's Transmission System Revenue Bond Obligations. All said sums shall be received, allocated and paid out pursuant to and consistent with Ordinance No. 1 and other obligations and covenants of the Agency with respect to Revenue Bonds. All references in this Agreement to the accounting for, allocating, paying, and crediting of monies are subject to the priority established by Ordinance No. 1 on all such revenues.

The parties hereto recognize that the Revenue Bonds are to be paid from revenues, as provided herein, and that it is the intention of the parties that the charges set forth herein will be sufficient to pay the Revenue Bonds and to meet the Revenue Bond Obligations not met from other sources of funds. The Water Contractors, therefore, agree to pay promptly such charges notwithstanding any deficiency in the quantity or quality of water to which they or any of them would be entitled pursuant to this Agreement. The provisions of this Agreement are made for the benefit of the owners and holders from time to time of the Revenue Bonds and may be enforced by or on behalf of any such owner or holder.

### **1.8 Books, Records and Accounts**

The Agency shall keep or cause to be kept, proper books, records and accounts in which complete and accurate entries shall be made of all monies received from all entities, including the Agency's Regular Customers, and of the basis for and application of said money, including detailed sub accounts showing expenditures made from Operation and Maintenance Charge revenues for Water Conservation Projects, Recycled Water Projects, Local Supply Projects, water management planning, and watershed planning and restoration. Said books, records and accounts will be available during normal business hours for inspection by the Water Contractors or their authorized representatives. The Agency will transmit to the Water Contractors two reports each year of the receipts and expenditures of the Transmission System. The first report will be issued no later than February 1 and shall be accompanied by a preliminary budget for the following Fiscal Year, and will show expenditures for the first half of the Fiscal Year together with estimated year-end expenditures and estimated expenditures for the following Fiscal Year. The second report will be issued after the end of each Fiscal Year and will contain a budgetary accounting of Transmission System expenditures,

revenues and balances for the Fiscal Year. Each month the Agency shall supply each Water Contractor with a summary showing the amount of water delivered during the preceding month to each Regular Customer and Surplus Customer.

### **1.9 Water Contractors' Duty to Provide Funds**

Each Water Contractor shall use any and all means legally available to it (including, without limitation, the enactment and maintenance in effect of legislation establishing fees, tolls, rates and charges pertaining to the operation of its water distribution system) so as to produce monies sufficient in amount to meet the monetary obligations incurred by it pursuant to this Agreement and to enable it to maintain its water distribution system in good working order.

### **1.10 Severability**

If any one or more sections, provisions, promises, or conditions of this Agreement is declared void or voidable for any reason by a final judgment or order of a court of competent jurisdiction, it is hereby declared to be the intention of each party and agreed that each and all of the other sections, provisions, promises and conditions of this Agreement shall be and remain in full force and effect.

### **1.11 Third Party Beneficiaries**

Except for the holders of the Revenue Bonds, no third party beneficiaries are intended or established by this Agreement.

### **1.12 Water Conservation Requirements**

(a) The Regular Customers of the Agency, and the Agency, shall (1) become members of the California Urban Water Conservation Council ("CUWCC") within six months of the effective date of this Agreement and remain as members in good standing; (2) sign the "Memorandum of Understanding Regarding Urban Water Conservation in California" ("MOU") maintained by the CUWCC and implement the Best Management Practices ("BMPs") of water conservation as are promulgated by CUWCC from time to time, or implement alternative water conservation measures that secure at least the same level of water savings, and shall complete and file the annual CUWCC report form; and (3) implement or use their best efforts to secure the implementation of any water conservation requirements that may be added as terms or conditions of the Agency's appropriative water rights permits or licenses, or with which the Agency must



comply under compulsion of regulation or law. In addition to and notwithstanding the foregoing, all Regular Customers of the Agency shall require metered billing of all customer accounts they serve.

(b) Should the Water Advisory Committee determine and so notify any Water Contractor that its efforts to achieve compliance with the water conservation practices required by this Section 1.12 are unsatisfactory, then such Water Contractor shall bring its water conservation program into compliance within six months after such notice, or within such additional time as may be granted by the Water Advisory Committee. Should such Water Contractor's noncompliance as determined by the Water Advisory Committee continue for six months after such notice of noncompliance, or beyond such additional time as may be granted by the Water Advisory Committee, then the Water Contractor shall thereafter pay a surcharge on all water delivered by the Agency pursuant to this Agreement equal to ten percent of the Operation and Maintenance Charge until the Water Advisory Committee determines that such Water Contractor is in compliance. The proceeds of any surcharge paid pursuant to this section shall be deposited and paid out in the same manner as the proceeds of the Water Conservation Fund.

(c) The Agency shall use its best efforts to modify its rules and regulations and existing contracts with Other Agency Customers to implement the water conservation requirements set forth in Section 1.12(a) and the default provisions set forth in Section 1.12(b). With respect to Russian River Customers, the Agency shall use its best efforts to encourage and, where and when possible, require said customers to sign the "MOU" maintained by the CUWCC and implement the "BMPs" of water conservation as are promulgated by CUWCC from time to time.

(d) Nothing in this section shall limit Regular Customers to implementing only those Water Conservation Projects contemplated by the CUWCC BMPs. Regular Customers are encouraged to implement Water Conservation Projects that go beyond the CUWCC BMPs.

### **1.13 Recycled Water and Local Supply Project Requirements**

Within ten (10) years from the effective date of this Agreement, the Water Contractors shall use their best efforts to carry out or participate in Recycled Water or Local Supply Projects capable of delivering Recycled Water or potable water sufficient to reduce the Water Contractors' collective deliveries from the Transmission System (including, in the case of Windsor, reductions in withdrawals from Windsor's Russian

River wells), by at least 7,500 acre-feet per year, with approximately 50% of such reduction resulting from Recycled Water Projects.

#### **1.14 Transitional Provisions Applicable to Forestville**

As of the effective date of this Agreement, the Agency's right, title, and interest in facilities comprising the Forestville Aqueduct shall be transferred as follows:

(a) The existing Forestville pipeline from the Santa Rosa Aqueduct to Forestville and the storage building at the existing booster pumping plant shall be transferred to Forestville.

(b) The existing booster pumping plant and the existing 300,000-gallon reservoir shall become Storage Facilities.

(c) Subject to the limitation in subsection (d) of this section, the Agency shall provide funding to Forestville for the Capital Costs of an 8" pipeline to be constructed by Forestville from the Intertie Aqueduct at the extension of Templeman Road, west on Templeman Road to State Highway 116, then north on State Highway 116 West to Kay Lane. The pipeline shall be funded as a common facility. Forestville shall commence construction on the pipeline within five years of the effective date of this Agreement; provided, however, that if the commencement of construction is delayed due to the application to Forestville of any circumstance specified in the second paragraph of Section 2.2 of this Agreement, then the Agency's General Manager/Chief Engineer may authorize an extension of the commencement date.

(d) The Agency's funding obligation under this section shall be limited to \$690,000, increased by the change in the ENR Construction Cost Index between the effective date of this Agreement and the date of commencement of construction of the pipeline.

#### **1.15 Local Production Capacity Goal**

In order to mitigate against drought, earthquakes, spills, temporary impairments, and other events impacting the quantity or quality of water available from the Transmission System, and other emergencies that can befall an urban water supply system, it is highly desirable that each Water Contractor achieve and maintain local water production capacity capable of satisfying approximately forty percent (40%) of the Water Contractor's average day of the maximum month demand.

**PART 2 - PLANNING, FINANCING, ACQUISITION, CONSTRUCTION,  
OPERATION AND MAINTENANCE**

**2.1 Financing Additions to the Existing Transmission System**

The Agency will, subject to all applicable limitations specified in this Agreement and all applicable legal and regulatory limitations, finance additions to the Transmission System with cash available pursuant to Sections 3.6, 4.2, 4.6, 4.7, 4.8, 4.12, payments made by Marin Municipal pursuant to Section 4.11, payments made by North Marin pursuant to Section 4.4 and 4.9, any state, federal, or other grants or loans which may become available, and, if the Agency decides to issue new series or issues of Revenue Bonds, proceeds from the sale of Revenue Bonds.

**2.2 Scheduling of Additions and Replacements to the Existing Transmission System**

Subject to the availability of sufficient cash or proceeds from the sale of Revenue Bonds (if the Agency decides to issue new series or issues of Revenue Bonds) and any state, federal, or other grants or loans which may become available, and subject to all applicable limitations specified in this Agreement, the Agency will (1) construct or acquire additions to the existing Transmission System sufficient to meet the delivery Entitlements set forth in Section 3.1 and 3.2 at such times as may be necessary to enable it to reliably deliver to each of the Water Contractors such Entitlements at the time that each contractor shall require the same and to make the deliveries authorized pursuant to Section 3.12; (2) construct additional Russian River water production facilities (up to a total capacity of 168.9 mgd) so that the total water production capacity available at all times is not less than the average daily delivery to the Regular Customers and Marin Municipal (excluding Surplus Water and water in excess of Entitlement Limits) during the month of highest historical use plus 20 mgd; (3) construct, acquire, or lease Emergency Wells with capacities which are from time to time determined by the Water Advisory Committee; (4) construct Additional Facilities (up to a total capacity of 174.3 million gallons) to the extent necessary to maintain a quantity of water in storage equal to 1.5 times the average daily delivery to the Regular Customers except North Marin during the month of highest historical use; and (5) replace existing facilities and construct Additional Facilities, related buildings and appurtenances as necessary to insure the reliable and efficient operation of the Transmission System and to insure that the quality of the water delivered complies with all applicable state and federal water quality requirements.

The time within which the Agency shall be obligated to construct such additions and replacements to the existing Transmission System shall be extended, however, as a result of any delays caused by fire, earthquake, other acts of God, acts of the public enemy, riots, insurrections, governmental regulations on the sale or transportation of materials or supplies, strikes affecting such construction or transportation of materials or supplies in connection therewith, any State or Federal environmental regulations or restrictions, shortages and/or delay in the obtaining of materials, shortages of or allocations of fuel and other sources of energy, litigation resulting in court orders restraining the construction of such additions and replacements, inability of Agency for any reason to deliver the Revenue Bonds or any series thereof, or any other causes beyond the control of Agency or any contractor constructing any part of such additions and replacements.

### **2.3 Further Modifications to Transmission System**

(a) With the approval of the Water Advisory Committee and subject to the availability of sufficient funds, the Agency may undertake studies, and prepare technical reports, financial plans, and environmental documents for Transmission System facilities in addition to those authorized to be constructed by this Agreement. If such activities are undertaken pursuant to this paragraph, the cost thereof shall be considered to be costs of Common Facilities and shall be paid from funds available pursuant to subsection (c) of Section 4.2, or from the proceeds of Revenue Bonds and payments made by North Marin pursuant to Section 4.4. If the cost is paid from the proceeds of Revenue Bonds and payments made by North Marin, the cost shall be allocated as provided in subsection (b), paragraph 9 of Section 4.3 and Section 4.9.

(b) Except for the facilities described in Section 2.2, the Agency will not construct or acquire additions to the Transmission System that would increase the charges payable by, or diminish or impair the water available to, any of the Water Contractors except on such terms and conditions as may be agreed upon in writing by the Agency and each Water Contractor who would be required to make any additional payment by reason of such construction or whose water supply might be diminished or impaired by such construction. If such addition is a booster pump or any other device, method, or system that would enlarge or increase the capacity of any one customer to the detriment of other users, then such addition or alteration shall not be made by Agency except by amendment to this Agreement. If a question arises as to whether an addition or alteration to the Transmission System requires an amendment of this Agreement pursuant to this section, then such question shall be submitted to the Water Advisory Committee and its decision shall be conclusive.

## 2.4 Potter Valley Project

(a) All or part of the Potter Valley Project may be acquired upon a determination by the Board of Directors of the Agency that such acquisition is necessary to insure the Agency's continued ability to make the water deliveries authorized by this Agreement and maintain fisheries and other incidental benefits to the Russian River basin, provided, however, that no part nor all of the Potter Valley Project shall be acquired without the affirmative vote of at least six (6) representatives of the Water Contractors on the Water Advisory Committee representing at least two-thirds of the total weighted votes as calculated pursuant to Section 5.3(a). The Agency shall not be liable to any of its Customers for any damage resulting from any Agency decision regarding the acquisition or non-acquisition of any part or all of the Potter Valley Project.

(b) The Agency shall commence a process upon the effective date of this Agreement to evaluate the water supply and fisheries benefits provided by the Potter Valley Project within the Russian River watershed, the economic and operational feasibility of acquiring the Potter Valley Project, and whether alternative actions could reduce the need for the Agency to acquire the Potter Valley Project. Alternative actions to be evaluated may include the increased use of recycled water to reduce agricultural and other diversions from the Russian River and its tributaries; the modification of instream flow requirements in the Russian River; and the completion of state and/or federal recovery plans for salmonid species listed as threatened or endangered in the Russian River watershed. The cost of such evaluations shall be paid from Watershed Planning and Restoration Sub-Charge funds available pursuant to subsection 4.14; however, the Agency shall use its best efforts to obtain the agreement of other interested parties who divert water from the Russian River or its tributaries (including municipal and agricultural diverters) to pay for a portion of such costs and to participate in the implementation of such alternative actions. Before acquiring the Potter Valley Project, the Agency shall conduct an environmental analysis of the acquisition pursuant to CEQA, which analysis may include an evaluation of alternative flow regimes from the Potter Valley Project into the Russian River and the Eel River.

(c) Upon determination by Agency that alternative actions could reduce the need for the Agency to acquire the Potter Valley Project, the Agency and the Water Contractors shall engage in a cooperative process to implement said other actions.

## **2.5 Water Conservation Projects**

Subject to the restrictions set forth in Section 4.16, the Agency may undertake or fund any cost-effective Water Conservation Project that has been approved by the Water Advisory Committee.

## **2.6 Recycled Water and Local Supply Projects**

Subject to the approval of the Water Advisory Committee, the Agency may (a) construct, fund, or partially fund studies or investigations or the Capital Cost of local Recycled Water Projects and Local Supply Projects, or (b) enter into agreements for the acquisition and sale of Recycled Water (or the rights to Recycled Water). The Agency and the Water Contractors shall seek financial contributions for local Recycled Water and Local Supply Projects funded under this section from benefitted wastewater treatment plant owners, sanitation districts, and other benefitted parties. Projects constructed, funded, or partially funded by the Agency under this section shall not be part of the Transmission System, and the operation and maintenance cost of such projects shall be the responsibility of the Water Contractors or other parties carrying out, sponsoring, or participating in such projects. The benefits from any Recycled Water Project shall be apportioned equitably based upon the respective financial contributions to the Recycled Water Project by the parties funding such project. The Capital Costs (including Revenue Bond Obligations, if any) of Local Supply Projects or Recycled Water Projects or of acquiring Recycled Water or the rights thereto shall be paid or partially paid from the Recycled Water and Local Supply Fund.

## **2.7 Water Management Planning**

The Agency shall periodically prepare a draft regional Urban Water Management Plan pursuant to the Water Code for consideration by the Water Contractors. Each Water Contractor shall provide the Agency with all information and data the Agency reasonably determines to be necessary to allow the Agency to prepare the draft regional Urban Water Management Plan. The Agency shall use its best efforts to prepare a draft regional Urban Water Management Plan that meets the requirements of the Water Code. Each Water Contractor shall either adopt the draft regional Urban Water Management Plan prepared by the Agency as its Urban Water Management Plan, or prepare and adopt its own Urban Water Management Plan pursuant to the Water Code. Before adopting the Urban Water Management Plan prepared by the Agency, a Water Contractor shall evaluate the Plan, and adoption of the Plan by a Water

Contractor shall constitute a determination by that Water Contractor that the Plan meets the requirements of the Water Code as to that Water Contractor.

### **2.8 Watershed Planning and Restoration**

(a) The Agency may undertake any action, study, or project approved by the Water Advisory Committee related to (1) the development or implementation of watershed restoration and maintenance plans and projects (including, but not limited to, stream restoration projects, water quality monitoring studies and projects, public education and outreach activities, and funding of third-party studies and projects) or (2) groundwater studies and investigations. Before undertaking any such action, study or project: (1) the Agency shall consider suggestions received from the public, Water Contractors, and interested parties and organizations such as the Russian River Watershed Association as to the actions, studies, and projects to be undertaken by the Agency hereunder; and (2) the Agency and the Water Contractors shall identify and use their best efforts to obtain funding contributions from other parties that would benefit from the actions, studies, or projects authorized hereunder, including but not limited to federal and state loans and grants, municipalities (including Russian River Customers, county and special district governments), and urban and industrial development, gravel mining, agriculture, forest harvesting, recreation, and sport and commercial fishing interests.

(b) The authority granted to the Agency under this Section 2.8 is permissive and not mandatory, and that nothing in this Section 2.8 shall (1) require the Agency to undertake any action or project unless such action or project is approved by the Agency, (2) impair or affect the Agency's right to undertake any action or project not funded under this Agreement, or (3) require the Agency to engage in any regulatory activity.

(c) The Agency may carry out projects and activities within the scope of subsection (a) above that primarily or exclusively benefit one or more Water Contractors, provided (1) each such project and activity is approved by the Water Advisory Committee and the benefitted Water Contractors, and (2) some or all benefitted Water Contractors enter into an agreement with the Agency for such project or activity and agree to pay supplemental charges as approved by the Agency and the Water Advisory Committee to defray all or a portion of the cost of the project or activities.

### **2.9 Planning Coordination**

(a) The parties to this Agreement shall consult with agencies that have planning and zoning powers within their water service territories in the manner set forth in California Government Code Section 65352.5 in order to promote close coordination and consultation between water supply agencies and land use approval agencies to ensure that proper water supply planning occurs in order to accommodate projects that will result in increased demands on water supplies.

(b) The parties to this Agreement shall consult with agencies that have building regulatory powers pursuant to the Government Code and Health and Safety Code to promote use of water conservation equipment, fixtures, appliances, devices and techniques.

#### **2.10 Operation and Maintenance**

The Agency shall operate and maintain the Transmission System in a good state of repair.



## PART 3 - WATER SUPPLY

### 3.1 Delivery Entitlements of Water Contractors

Subject to Section 3.5, the Agency shall deliver to each Water Contractor at the points of delivery hereinafter set forth such quantities of water as the Water Contractor shall from time to time require at such rates of flow as are necessary to meet its peak day's demand, subject to the following:

(a) The Agency shall not be obligated to deliver water in excess of the following:

Water Contractor/Aqueduct	Average Daily Rate of Flow During Any Month	Annual Amount During Fiscal Year (excluding Surplus Water)
Santa Rosa		
From Reach 1, 2, and 3a of the Intertie Aqueduct	40.0 mgd	
From the Santa Rosa Aqueduct	40.0 mgd	
From the Sonoma Aqueduct	4.0 mgd	
Maximum combined total from all aqueducts	56.6 mgd	29,100 AF
North Marin		
From Petaluma Aqueduct	19.9 mgd	14,100 AF
Petaluma		
From Petaluma Aqueduct	21.8 mgd	13,400 AF
Rohnert Park		
From Petaluma Aqueduct or Reach 3 of Intertie Aqueduct	15.0 mgd	7,500 AF

Valley of the Moon		
From Sonoma Aqueduct	8.5 mgd	3,200 AF
Sonoma		
From Sonoma Aqueduct	6.3 mgd	3,000 AF
Cotati		
From Petaluma Aqueduct or Reach 3 of Intertie Aqueduct	3.8 mgd	1,520 AF
Windsor		
From Santa Rosa Aqueduct	1.5 mgd	900 AF
From Russian River Diversions	7.2 mgd	4,725 AF

The delivery limits for Windsor include both water delivered by the Agency through the Transmission System and water diverted by Windsor through facilities owned by Windsor under its own water rights and under the Agency's water rights pursuant to the agreement between the Agency and Windsor dated January 8, 1991. Windsor shall not divert any water under the Agency's water rights through its own facilities except and to the extent that water is unavailable for diversion under any of Windsor's available water rights, as such rights currently exist or may exist in the future. Windsor shall act with diligence to take all actions necessary to obtain and retain any water rights to which Windsor may be entitled. For purposes of allocations pursuant to Section 3.5(a), (1) Windsor shall be considered to be a "Russian River Customer" with respect to its direct Russian River diversions, and (2) in determining the amount of water available for allocation under Section 3.5(a), the Agency shall include the amount of water available for diversion by Windsor under Windsor's water rights in addition to the amount available to the Agency under its own water rights. For purposes of allocations pursuant to Section 3.5(b), Windsor's average daily rate of flow during any month Entitlement Limit shall be 1.5 mgd.

(b) North Marin shall not take delivery of water at an instantaneous delivery rate greater than its average delivery rate for such day, if such instantaneous delivery rate would increase the Agency's cost of electrical energy. North Marin shall not take delivery of water at a rate of more than 19.9 mgd during more than 14 days of any month, nor at a rate of more than 20.9 mgd during any day of any month. Irrespective of its delivery Entitlement, North Marin shall nevertheless have the right to a flow rate of 14.8 mgd in the Petaluma Aqueduct.

(c) No Water Contractor shall take delivery of water at an average rate during any month that is greater than 2.0 times the average rate of delivery to that contractor during the preceding 12 months. The Agency also shall adopt this requirement as a service rule applicable to Other Agency Customers. However, if any Regular Customer was during the preceding 12 months subject to a curtailment in deliveries pursuant to Section 3.5, then the limit prescribed by this subsection shall be 2.0 times the average rate of delivery that such customer would have received in the absence of such curtailment. This rule shall not apply to Water Contractors who utilize local sources of supply to reduce demand on the Transmission System during the peak summer period of June 1 through September 30, and whose average production rate for said period from all of the contractor's local sources is equal to at least 2.0 times the average production rate of all of that contractor's local sources during the eight months immediately preceding the peak summer period.

(d) No Water Contractor shall take delivery of water during any month at an average rate that is greater than 1.3 times the average rate of delivery to that contractor during the peak month of the prior three calendar years without the written consent of the Agency. The Agency also shall adopt this requirement as a service rule applicable to Other Agency Customers. Such consent shall be given by the Agency if and only if sufficient transmission capacity exists to make such increased deliveries and the deliveries to the other Water Contractors required to be made pursuant to this section. However, if any Water Contractor was during the preceding three calendar years subject to a curtailment in deliveries pursuant to Section 3.5, then the limit prescribed by this subsection shall be 1.3 times the average rate of delivery that such contractor would have received during the peak month of the prior three calendar years in the absence of such curtailment.

(e) For purposes of determining Santa Rosa's average daily rate of flow during any month Entitlement Limit under this subsection, all water delivered to Santa Rosa from the Kawana Pipeline or from the pipeline connecting the Kawana Springs and Ralphine reservoirs shall be deemed delivered from Reach 3a of the Intertie Aqueduct.

### **3.2 Conditions on Other Agency Customer Deliveries**

The Agency may furnish water from the Transmission System to Other Agency Customers subject, however, to the following conditions:

(a) The total quantity of water delivered to all the Other Agency Customers shall not exceed an average of 2.7 million gallons per day during any month.

(b) The Agency shall not enter into contracts to furnish water to any Other Agency Customer except itself or the County of Sonoma for use on land within two miles of the Corporate Territory of a Water Contractor or Forestville except with the prior written consent of such Water Contractor or Forestville, which consent will be subject to the condition that the Agency shall cease delivering water to such customer whenever a Water Contractor or Forestville is willing and able to furnish water to such customer. Water delivered by the Agency from the Transmission System to the Agency or the County of Sonoma shall not be used for residential, commercial, or private industrial purposes.

(c) The Agency shall not deliver more than an average of 0.5 million gallons per day during any month from the south part of the Petaluma Aqueduct to Other Agency Customers.

(d) The Agency shall not deliver more than an average of 1.5 million gallons per day during any month from Reach 1 of the Intertie Aqueduct to Forestville.

(e) The Agency shall not sell water from the Transmission System except as expressly authorized by this Agreement.

### **3.3 Deliveries in Excess of Entitlement Limits**

(a) No Regular Customer may take delivery of water in excess of its average daily rate of flow during any month Entitlement Limit as set forth in Sections 3.1 or 3.2, except upon the following conditions:

first, that such excess delivery does not impair or delay the delivery to any other Regular Customer of its Entitlements; and

second, that the Regular Customer taking the excess delivery is then proceeding in good faith, with plans and funding to develop a reliable water supply, sufficient to supply its needs in excess of its Entitlement Limits; and

third, that either

(1) all the Water Contractors approve such excess delivery; or

(2) such excess delivery is made during a period when deliveries to another Water Contractor are less than its Entitlement Limits, such excess delivery does not exceed the unused amounts of said contractor's Entitlement Limits, and said contractor has notified the Agency in writing of its consent to said delivery.

(b) Any Water Contractor may transfer any portion of its annual amount during any fiscal year Entitlement Limit to any other Water Contractor for such periods of time and pursuant to such terms as agreed to by the transferor Water Contractor and the transferee Water Contractor, subject to the following:

(1) Such transfer shall not impair or delay the delivery to any other Regular Customer of its Entitlements.

(2) Notice of a proposed transfer, including adequate information to identify any impacts to deliveries of water to other Water Contractors, shall be provided to all the other Water Contractors individually, to the Water Advisory Committee, and to the Agency. Upon request of any other Water Contractor, the transferor and transferee Water Contractors shall promptly meet to identify and resolve any potential impacts of the proposed transfer. If any Water Contractor determines that the proposed transfer will impair or delay the delivery of its Entitlements, such Water Contractor may file a written objection to the proposed transfer with the Water Advisory Committee, with a copy to the Agency. Such objection must be filed no later than 45 days after the Water Contractor receives notice of the proposed transfer. Thereafter, the Water Advisory Committee shall determine whether the proposed transfer will impair or delay the delivery of the objecting Water Contractor's Entitlements, and whether there are measures that will eliminate such impairment or delay. In the absence of an objection to a proposed transfer by any Water Contractor, the approval of the Water Advisory Committee is not required.

(3) The average daily rate of flow during any month Entitlement Limit of the transferee Water Contractor as set forth in Sections 3.1 or 3.2 and the other delivery limitations applicable to the transferee Water Contractor shall not be affected by, and shall remain applicable notwithstanding, any transfer under this subsection.

(4) Payments to the Agency for delivery of the transferred water to the transferee Water Contractor shall be based upon the Aqueduct rate applicable to the transferee Water Contractor pursuant to this Agreement.

(5) The transferor and transferee Water Contractors shall be responsible for all regulatory compliance relating to the transfer, including compliance with the provisions of the California Environmental Quality Act. To the greatest extent permitted by law, the transferor and transferee Water Contractors shall indemnify and defend each of the other Water Contractors and the Agency from any claims, damages, or judicial or administrative proceedings arising out of any actions related to this Subsection 3.3(b), whether or not there is concurrent negligence on the part of the other Water Contractors or the Agency or each of them, but excluding liability due to the sole active negligence or willful misconduct of any of the other Water Contractors, the Agency, or each of them. The latter exclusion shall operate only as to the particular Water Contractor or Agency whose sole active negligence or willful misconduct caused the exclusion.

### **3.4 Surplus Water**

(a) Surplus Water is water that from time to time may be available for delivery from the Transmission System in excess of the amounts required to meet the Agency's contractual obligations and the requirements of all the Agency's Regular Customers for uses other than those described in subdivision (b) of this section.

(b) Surplus Water may be used only for the following purposes:

(1) replenishment of surface water supply reservoirs or recreational lakes, including but not limited to Ralphine, Spring, and Stafford Lakes, or

(2) replenishment of groundwater basins;

provided, however, that Surplus Water also may be provided for use for irrigation of land used for commercial production of food or fiber if such provision of water is required by any agreement in existence on the effective date of this Agreement.

(c) The Agency shall deliver Surplus Water only from separate metered turnouts on the Transmission System or the North Marin Aqueduct.

(d) The Water Contractors shall have first priority on deliveries of Surplus Water.

(e) The Agency desires to transfer all of its Surplus Customers to the Water Contractors. The parties to this Agreement shall cooperate in the voluntary permanent transfer of Surplus Customers from the Agency to the party whose corporate territory encompasses the site of a given Surplus Customer or whose corporate territory boundary is within two miles of the turnout(s) serving said customer. Should a given Surplus Customer lie within two miles of more than one party, the parties shall meet and confer with the Agency and by mutual agreement determine who is best suited to take over said Surplus Customer. Nothing in this subsection shall require a Water Contractor to take over service of any Agency Surplus Customer. Should a given party opt not to take over Surplus Customers who lie within their corporate territory or within two miles of the boundary of same, then any other party to this Agreement whose corporate territory lies within Sonoma County may apply to the Agency to take over said Surplus Customers. Parties who agree to take on such service shall be known as Surplus Water providers.

(f) Surplus Water providers agree to interrupt delivery of Surplus Water upon notification by Agency if Agency determines, in its sole discretion, that there exists an immediate or pending problem involving loss of Transmission System storage, inadequate pumping capacity, a valid complaint from any Regular Customer that they are not receiving their appropriate Entitlement as a result of Surplus Water deliveries, or any other problem impacting the delivery capability of the Transmission System. Surplus Water providers shall notify their customers of Agency's right to require such delivery interruptions. Notwithstanding the right of the Agency to notify and cause the interruption of delivery of Surplus Water, a Surplus Water provider may also interrupt delivery of Surplus Water at any time it determines it is necessary or prudent to do so in order to satisfy the demands of its non-Surplus Customers; or for water system maintenance, repair, or planned or unplanned outage of any nature whatsoever, including but not limited to a perceived, threatened or actual water shortage. Deliveries of Surplus Water shall not be deemed to be included as part of any Regular Customer's Entitlement or Entitlement Limit.

### **3.5 Shortage of Water and Apportionment**

(a) (1) The Agency shall use its best efforts to obtain, perfect, and maintain appropriate water rights in amounts sufficient to be able to make the water deliveries provided for in this Agreement. In its operation of the Russian River Project, the Agency shall use all reasonable means to prevent a deficiency in the

quantity of water that is available to the Agency for diversion and rediversion under the Agency's water rights. However, nothing in the preceding two sentences shall be construed to limit the Agency's discretion to take appropriate actions in good faith to resolve any issue that may arise under the federal Endangered Species Act or any other federal or state law affecting the Agency's water rights or operation of the Russian River Project.

(2) If by reason of drought, environmental laws or regulations, other causes beyond the control of the Agency, or any change in the amounts of water imported by the Potter Valley Project into the Russian River watershed (whether or not such change is caused by any action or inaction of the Agency) a deficiency does occur, the Agency shall not be liable to any of its customers for any damage arising therefrom.

(3) In the event of a deficiency pursuant to subsection 3.5(a)(2), the Agency first shall cease all deliveries of Surplus Water to other than the Water Contractors; second, shall cease deliveries of all Surplus Water; third, shall cease deliveries to Regular Customers in excess of their respective annual Entitlement Limits; and fourth, shall apportion the available supply of water as follows:

(i) first, deliver to each of its Regular Customers, not in excess of their respective Entitlement Limits, authorize Agency's Russian River Customers to divert or redivert not in excess of the amounts for which those customers have contracted to purchase from the Agency, and deliver to Marin Municipal not in excess of the amounts, if any, that are required to be delivered pursuant to the Third Amended Offpeak Water Supply Agreement dated January 25, 1996, the Amended Agreement for the Sale of Water between the Sonoma County Water Agency and the Marin Municipal Water District dated January 25, 1996, amendments to these agreements that have been approved by the Water Advisory Committee, or subsequent agreements between the Agency and Marin Municipal that have been approved by the Water Advisory Committee, the quantities of water required by each such customer for human consumption, sanitation, and fire protection as determined by the Agency after taking into consideration all other sources of potable water then available to said customer, including, for Russian River Customers, water available under their own water rights;



(ii) second, to the extent additional water is available to the Agency, allocate that water proportionately as follows: deliver such water to Agency's Regular Customers based upon their respective average daily rate of flow during any month Entitlement Limits, authorize the Agency's Russian River Customers to divert or redivert such water based upon the delivery limits set forth in the agreements between the Agency and its Russian River Customers, and deliver such water to Marin Municipal pursuant to and to the extent required by the Third Amended Offpeak Water Supply Agreement dated January 25, 1996, the Amended Agreement for the sale of Water between the Sonoma County Water Agency and the Marin Municipal Water District dated January 25, 1996, amendments to these agreements that have been approved by the Water Advisory Committee, or subsequent agreements between the Agency and Marin Municipal that have been approved by the Water Advisory Committee;

(iii) provided, however, that no Customer shall receive under subsections 3.5(a)(3)(i) and 3.5 (a)(3)(ii) a total quantity of water in excess of its reasonable requirements or its said Entitlement Limits or contracted amount, whichever is less.

- (b) (1) In the event of a temporary impairment of the capacity of the Transmission System by reason of natural disaster, sabotage or other causes beyond the control of the Agency, the Agency shall not be liable to any of its customers for any damage arising therefrom.
- (2) In the event of a Section 3.5(b)(1) impairment, the Agency shall:
- (i) first, deliver to each of its Regular Customers the quantity of water, not in excess of the respective average daily rate of flow during any month Entitlement Limit, required by it for human consumption, sanitation, and fire protection as determined by the Agency after taking into consideration all other sources of potable water then available to said customer;
- (ii) second, to the extent additional Transmission System capacity is available to the Agency, deliver a quantity of water to the Regular Customers in proportion to their respective average daily rate of flow during any month Entitlement Limits, provided, however, that no Regular

Customer shall receive under subsections 3.5 (b)(2)(i) and (b)(2)(ii) a total quantity of water in excess of its reasonable requirements or its average daily rate of flow Entitlement Limit, whichever is less;

(iii) third, to the extent additional Transmission System capacity is available, deliver water to Regular Customers in excess of their average daily rate of flow Entitlement Limits pursuant to Section 3.3;

(iv) fourth, to the extent additional Transmission System capacity is available, deliver water to Marin Municipal not in excess of the delivery limitations in Section 3.12;

(v) fifth, to the extent additional Transmission System capacity is available, deliver Surplus Water to the Water Contractors;

(vi) sixth, to the extent additional Transmission System capacity is available, deliver Surplus Water to other than the Water Contractors.

(3) However, deliveries to Marin Municipal shall not be reduced or curtailed under this Section 3.5(b) because of inadequate capacity in the new aqueduct to be constructed generally paralleling the portion of the Petaluma Aqueduct that extends from the Ely Pumping Plant to Kastania Reservoir, if such new aqueduct is paid for and dedicated to the Agency pursuant to Section 13 of the Amended Agreement for the Sale of Water between the Sonoma County Water Agency and the Marin Municipal Water District dated January 25, 1996.

- (c) (1) In determining "human consumption, sanitation, and fire protection" amounts pursuant to this Section 3.5, the Agency shall take into account the level of water conservation achieved by the Customer and the resulting decrease in end user ability to reduce water use (the hardening of demand) resulting from such conservation. The allocations pursuant to subsection 3.5(a)(3)(i) shall be determined using a methodology which rewards and encourages water conservation; avoids cutbacks based upon a percentage of historic consumption, and, among other things, bases the amounts necessary for "human consumption, sanitation, and fire protection" upon no greater than average indoor per capita water use determined from recent retail billing records for winter water use by all of the Water Contractors; and, if necessary or appropriate for equitable purposes, considers commercial, industrial and institutional water uses separately and determines that element of the subsection 3.5(a)(3)(i) allocation

based on winter water use from recent retail billing records for commercial, industrial, and institutional uses.

(2) The fundamental purpose of the "reasonable requirements" limitation is to ensure that no Customer receives more water during a shortage than that Customer reasonably needs. In determining "reasonable requirements" pursuant to this Section 3.5, the Agency may take into account the hardening of demand resulting from the level of conservation achieved by the Customer; the extent to which the Customer has developed Recycled Water Projects and Local Supply Projects; and the extent to which the Customer has implemented water conservation programs (including conservation required pursuant to the provisions of Section 1.12 of this Agreement). It is the intention of the parties to this Agreement that the Agency make its "reasonable requirements" determinations so as to encourage Customers to implement water conservation, Recycled Water, and Local Supply Projects.

(d) The Agency shall at all times have an adopted water shortage allocation methodology sufficient to inform each Customer of the water that would be available to it pursuant to Section 3.5(a) in the event of reasonably anticipated shortages, which methodology shall be consistent with this Section 3.5 and shall be included in the Urban Water Management Plan prepared pursuant to Section 2.7.

(e) The parties agree that it is extremely difficult and impractical to determine the damage caused to the Agency or other Customers as a result of the taking of water by any Customers in excess of the limitations contained in this Section 3.5. If any Customer takes delivery of water from the Transmission System or otherwise from the Russian River system in violation of this Section 3.5, then it shall pay the Agency, in addition to all other applicable charges, liquidated damages in an amount equal to 50 percent of the applicable Operation and Maintenance Charge (including all sub-charges) times the amount of water taken in violation of the provisions of this Section 3.5. The Agency shall use its best efforts to incorporate this liquidated damages provision into its agreements with Other Agency Customers, Russian River Customers, Marin Municipal Water District, and into the Agency's rules and regulations for the provision of water service, and impose liquidated damages pursuant to this Section 3.5(e). The existence of this liquidated damage provision shall not limit or restrict the Agency from physically limiting the quantity of water taken to the amounts authorized by this Section 3.5 or from pursuing all other available legal and equitable remedies applicable to such violations. By affirmative vote, the Water Advisory Committee may request that the Agency physically limit the quantity of water taken by a Regular

Customer to the amounts authorized by this Section 3.5 or that the Agency pursue all other available legal and equitable remedies applicable to such violations. The proceeds of any liquidated damages assessed pursuant to this subsection shall be deposited and paid out in the same manner as the proceeds of the Operation and Maintenance Charge.

(f) Notwithstanding subsections (a) and (b) above, as an alternative method for allocation under this Section 3.5 during a period of water deficiency or temporary Transmission System impairment, the Water Advisory Committee (or, in the event of a Transmission System temporary impairment affecting fewer than all of the Water Contractors, the Water Advisory Committee representatives of the Water Contractors affected by the temporary impairment) may, by unanimous vote, determine how water shall be allocated among the affected Water Contractors. The Agency shall provide a calculation methodology or other information adequate to enable the determination, in a manner consistent with this Section 3.5, of the volume of water to which (i) the Water Contractors as a group, and (ii) all other Customers would be respectively entitled. Any alternative method for allocation determined by the Water Advisory Committee pursuant to this subsection shall apply only to the volume of water to which the Water Contractors are entitled as a group.

(g) In the event that Transmission System capacity is expanded by the construction of facilities other than those authorized by this Agreement, then notwithstanding anything in this Section 3.5 to the contrary, any allocations made pursuant to this section to Forestville that are based upon the average daily rate of flow during any month Entitlement Limits shall not use a denominator greater than 133.4 mgd.

### **3.6 Fire Fighting Service**

Anything herein to the contrary notwithstanding, the Agency may furnish water for fire fighting from hydrants or standpipes on the Transmission System, provided, however, that such service within two miles of the Corporate Territory of a Water Contractor may be furnished only if and during the period of time said Water Contractor consents thereto in writing. The Agency shall set fees sufficient to recover the full cost of installing and maintaining and supplying water to fire hydrants. All revenue from such fees shall be treated the same as money received from the Operation and Maintenance Charge and shall be deposited and paid out as set forth in Section 1.7 and subdivision (b) of Section 4.1. Agency shall adopt service rules limiting hydrant water usage to fire suppression, fire training and limited temporary uses such as providing metered construction water.

### **3.7 Quality of Water**

(a) The Agency warrants that it will use its best efforts to insure that all water delivered hereunder shall be of such purity and quality required to meet minimum standards for human domestic consumption from time to time established by the state and federal governments. The Agency shall not be liable to any of its Customers for any damage arising from the quality of water that it delivers under this Agreement, except for damages based on any breach of the warranty described in the preceding sentence.

(b) The payment obligations of the Water Contractors set forth in Part 4 shall not be affected in any manner by the quality of the water delivered by the Agency hereunder.

### **3.8 Points of Delivery**

All water furnished to each Water Contractor hereunder shall be delivered at the discharge flange of meters at turnouts owned and maintained by the Agency. Turnouts in addition to those now existing shall be constructed from time to time at such locations as shall be agreed upon by the Agency and the Water Contractors involved. Water delivered to Petaluma and North Marin at the McNear meter station shall be delivered at a hydraulic gradient of not less than 175 feet mean sea level. Turnouts installed for Regular Customers shall be not less than 8 inches in diameter. Turnout installation charges shall be determined from time to time by resolution of the Board of Directors of the Agency and shall be payable by the Customer prior to turnout installation by Agency.

### **3.9 Risk of Loss and Responsibility**

Title and risk of loss with respect to all water delivered hereunder shall pass from the Agency to the Water Contractor at the point of delivery thereof as set forth in Section 3.8. The Agency shall not be responsible for the control, transmission, distribution, handling or use of water beyond the point of delivery thereof. Each Water Contractor shall be responsible for installing and maintaining any device it deems necessary to reduce or regulate the pressure under which the water may be delivered hereunder.

### **3.10 Place of Use of Water Delivered to North Marin**

(a) North Marin may exchange water delivered under this Agreement for an equal amount of water delivered to it by Marin Municipal.

(b) Except as provided in subdivision (a) of this section, North Marin shall not permit any water delivered under this Agreement to be used outside of its own distribution system service areas.

### **3.11 Measurement**

All water delivered by the Agency from the Transmission System shall be measured by meters installed and maintained by the Agency. The Agency shall test the accuracy of each meter not less frequently than annually and provide each Water Contractor with a report of such test. Each Water Contractor shall have the right at any time and at its expense to make additional tests of any meter. If a meter is found to be reading 2 percent or more fast or slow, it shall immediately be repaired to bring it within 2 percent accuracy or be replaced by the Agency.

### **3.12 Marin Municipal Water Deliveries**

The Agency, pursuant to the Third Amended Offpeak Water Supply Agreement dated January 25, 1996 and the Amended Agreement For The Sale Of Water Between The Sonoma County Water Agency and the Marin Municipal Water District dated January 25, 1996, amendments to these agreements that have been approved by the Water Advisory Committee, or subsequent agreements between the Agency and Marin Municipal that have been approved by the Water Advisory Committee, may deliver water to Marin Municipal when and to the extent that the Transmission System has capacity in excess of that required by Agency to supply its Regular Customers the Entitlements set forth in Sections 3.1 and 3.2. However, deliveries to Marin Municipal shall not be reduced or curtailed because of inadequate capacity in the new aqueduct to be constructed generally paralleling the portion of the Petaluma Aqueduct that extends from the Ely Pumping Plant to Kastania Reservoir, if such new aqueduct is paid for by Marin Municipal and dedicated to the Agency pursuant to Section 13 of the Amended Agreement for the Sale of Water between the Sonoma County Water Agency and the Marin Municipal Water District dated January 25, 1996.

The maximum delivery rate to Marin Municipal between May 1 and October 31 shall not exceed 12.8 mgd. The total quantity of water delivered to Marin Municipal in any Fiscal Year shall not exceed 14,300 Acre Feet. Deliveries of water to Marin Municipal shall be made either through a separately metered turnout or through North Marin's metered turnout(s). If water is delivered through North Marin's metered turnout(s), then North Marin shall maintain in good repair and calibration metered turnouts at points of delivery from its system into Marin Municipal's system and shall

read such meters on or about the end of each month and provide to Agency an accounting of water delivered during the preceding month to Marin Municipal. In making such accounting, North Marin shall deduct from the total of water delivered to Marin Municipal any exchange water as provided in Section 3.10 of this Agreement and any water produced by North Marin and delivered to Marin Municipal.

**3.13 Damages for Peaking on the Transmission System or Taking Water in Excess of Average Daily Rate of Flow Entitlement Limits in Violation of Section 3.3**

The parties to this Agreement recognize that the Agency will have increased costs, in amounts that will be difficult to determine, if any Regular Customer takes water in violation of subsection (b), (c) or (d) of Section 3.1 or subsection (a) of Section 3.3. Accordingly, if any Regular Customer takes delivery of water from the Transmission System in violation of subsection (b), (c) or (d) of Section 3.1 or subsection (a) of Section 3.3, then it shall pay the Agency, in addition to all other applicable charges, liquidated damages in an amount equal to twenty-five percent (25%) of the applicable Operation and Maintenance Charge (including all sub-charges) times the amount of water taken in violation of these provisions. The assessment of liquidated damages pursuant to this section for a violation by a Regular Customer of subsection (b), (c) or (d) of Section 3.1 or subsection (a) of Section 3.1 may be waived by the Agency upon a showing by the contractor that the taking of delivery of water in violation thereof resulted from an act of God or other unforeseeable circumstances over which the Regular Customer had no control. The existence of this liquidated-damage provision shall not limit or restrict the Agency from physically limiting the quantity of water taken to the amounts authorized by this Agreement or from pursuing all other available legal and equitable remedies applicable to such violations. The proceeds of any liquidated damages assessed pursuant to this subsection shall be deposited and paid out in the same manner as the proceeds of the Operation and Maintenance Charge.

## PART 4 - CHARGES AND PAYMENTS

### 4.1 Separate Charges and Funds

(a) On or before April 30 preceding each Fiscal Year during which any of the following charges are payable, the Agency will establish the amount of the following charges for the ensuing Fiscal Year:

- (1) the Operation and Maintenance Charge, including
  - (a) the Water Management Planning Sub-Charge,
  - (b) the Watershed Planning and Restoration Sub-Charge,
  - (c) the Recycled Water and Local Supply Sub-Charge,
  - (d) the Water Conservation Sub-Charge,
- (2) the Aqueduct Facilities Capital Charges, including
  - (a) the Santa Rosa Aqueduct Capital Sub-Charge,
  - (b) the Sonoma Aqueduct Capital Sub-Charge,
  - (c) the Petaluma Aqueduct Capital Sub-Charge,
- (3) the Storage Facilities Capital Charge,
- (4) the Common Facilities Capital Charge, and
- (5) the North Marin Capital Charge.

In determining the amount of these charges, the Agency shall include a reasonable allowance for usual contingencies and errors in estimation, and to maintain a prudent reserve in an amount determined from time to time by the Water Advisory Committee.

(b) All monies received in payment of said charges shall be received, allocated, and paid out consistent with the obligations and covenants of the Agency with respect to Revenue Bonds.

(c) In establishing each of said charges, the Agency shall assume that the quantity of water (other than Surplus Water) to be delivered from each aqueduct of the Transmission System shall be the same as the amount of water delivered from said aqueduct during the twelve months preceding such establishment, or the average annual amount of water delivered during the preceding 36 months, whichever is less.

If because of drought or other water-supply reduction, state or federal order, or other similar condition, the Agency anticipates that any such quantities will not be predictive of future usage, the Agency may use a different amount with the prior approval of the Water Advisory Committee.



## 4.2 Operation and Maintenance Charge

(a) The Operation and Maintenance Charge shall be a uniform annual charge per acre foot and shall be paid by all Regular Customers for all water delivered from the Transmission System.

(b) The aggregate amount of money to be received by the Agency from the Operation and Maintenance Charge for each Fiscal Year shall be sufficient to produce water sale revenues to cover the Agency's estimate of its Operation and Maintenance Costs for such Fiscal Year, to produce water sale revenues as required by Sections 4.13, 4.14, 4.15, and 4.16, and to produce additional revenues in amounts determined from time to time by the Water Advisory Committee to pay the Capital Costs of Common Facilities and Storage Facilities pursuant to subdivision (c) of this section.

(c) All money received by the Agency in payment of the Operation and Maintenance Charge shall be deposited and paid out as set forth in Section 1.7, and subdivision (b) of Section 4.1. After making the payments required by Section 1.7, remaining money received from the Operation and Maintenance Charge may be used to pay the Agency's operation and maintenance expenses, to make the deposits required by Sections 4.13, 4.14(g), 4.15, and 4.16(a), and to fund a prudent reserve for those expenses. Money received from the Operation and Maintenance Charge in excess of that necessary for operation and maintenance expenses, to make the deposits required by Sections 4.13, 4.14(g), 4.15, and 4.16(a), and to maintain a prudent reserve may from time to time be disbursed as provided in Section 4.5 to pay Capital Costs of Common Facilities and Storage Facilities. If money received from the Operation and Maintenance Charge is appropriated for expenditure for Storage Facilities, the funds shall be transferred to the Storage Facilities capital fund referred to in subsection (c) of Section 4.7. At the time of the transfer, an amount shall also be transferred to North Marin's account established pursuant to subsection (c) of Section 4.4, which amount shall bear the same proportion to the amount transferred to the Storage Facilities capital fund that the total amount payable by North Marin for the Operation and Maintenance Charge, exclusive of sub-charges, in the prior Fiscal Year bears to the total operation and maintenance revenue, exclusive of revenue from sub-charges, received by the Agency from sources other than North Marin during the prior Fiscal Year.

### 4.3 Allocation of Capital Costs to North Marin

(a) The Capital Costs of Remaining Facilities shall be allocated to North Marin in proportion to the following ratios:

	<u>Facility</u>	<u>Ratio</u>
1.	Storage Facilities	-0-
2.	Common Facilities	11.2/90.4

(b) The portions of the Capital Costs of the Additional Facilities, replacement facilities, and the Potter Valley Project, or the portion thereof that is to be acquired pursuant to Section 2.4 hereof, shall be allocated to North Marin are as follows:

	<u>Facility</u>	<u>Ratio</u>
1.	2nd pipeline, generally paralleling Intertie Aqueduct Reach 1	8.7/55.8
2.	2nd pipeline, generally paralleling Intertie Aqueduct Reach 2	8.7/55.8
3.	2nd pipeline, generally paralleling Intertie Aqueduct Reach 3a	8.7/55.8
4.	2nd pipeline, generally paralleling Intertie Aqueduct Reach 3b and 3c	8.7/42.4
5.	2nd pipeline, generally paralleling Petaluma Aqueduct from its junction with Intertie Aqueduct to Kastania Reservoir	5.1/38.8
6.	2nd pipeline, generally paralleling Sonoma Aqueduct	-0-
7.	Storage Facilities	-0-
8.	Russian River Water Production Facilities	8.7/55.8

9. All Common Facilities except Russian River Water Production Facilities, but including the Potter Valley Project 19.9/146.2

**4.4 Remaining Facility, Additional Facility and Replacement Facility Capital Cost Payments by North Marin**

The portion of the Capital Costs of the facilities allocated to North Marin pursuant to Section 4.3 shall be recovered by the Agency as follows:

(a) Each time the Agency decides to issue further series or issues of Revenue Bonds to finance the Capital Costs of constructing or acquiring any Remaining Facilities, Additional Facilities, or replacement facilities, or acquiring all or part of the Potter Valley Project, the Agency shall, prior to initiating the procedures for the issuance of such Revenue Bonds, notify North Marin of the Agency's estimate of the total cost of the Remaining Facilities, replacement facilities, Additional Facilities, or Potter Valley Project acquisition proposed to be financed by said series or issues of Revenue Bonds and of North Marin's portion of the cost allocated in accordance with Section 4.3. North Marin shall have the right, at its election, to pay North Marin's portion, or any part or parts thereof, of the cost of such Remaining Facilities, replacement facilities, Additional Facilities, or Potter Valley Project acquisition in cash, provided, however, that North Marin shall make its election on or before such date as the Agency shall specify, which date will give the Agency sufficient time to determine the amount of Revenue Bonds to be sold, but shall not be earlier than 30 days after said notification. If North Marin elects to make a cash payment, it shall do so on the date the Revenue Bonds are sold or on such later date as the Agency may agree upon and which will nevertheless enable the Agency to meet its obligations for said construction or acquisition. If North Marin elects to make a cash payment, the amount payable shall exclude interest during construction and financing charges.

(b) Upon completion of the construction or acquisition referred to in subdivision (a) of this section, any deficiency in the amount theretofore paid or credited and the actual amount of North Marin's portion thereof shall be paid by North Marin to the Agency.

(c) All payments made by North Marin pursuant to subdivisions (a) and (b) of this section shall be deposited in a separate account from which the Agency will make disbursements only to make payments that otherwise must be made by revenues received from the North Marin Capital Charge, or for the Agency's expenses in constructing the Remaining Facilities, Additional Facilities, and replacement facilities or

in acquiring all or part of the Potter Valley Project, up to the proportionate amounts allocated to North Marin utilizing the ratios contained in Section 4.3. The balance of the account shall earn interest at the Sonoma County Treasurer's pooled investment fund rate, which interest income shall be credited to the account on June 30 of each year. Any surplus funds in the account shall be paid to North Marin within 30 days of receipt of a written request therefor.

(d) If the Agency decides to levy one or more Aqueduct Capital Charges to produce revenue to fund, without issuing Revenue Bonds, (a) major replacements of portions or all of any aqueduct facility pursuant to Section 4.6(e) of this Agreement or (b) capital improvements to existing Aqueduct Facilities, then North Marin shall pay its portion of the Capital Costs of such replacements or improvements to the Agency in cash at the time such Capital Costs are incurred by the Agency. The Capital Costs of major replacements to the facilities specified in Subsection 4.3(b) shall be allocated to North Marin based upon the ratios set forth in Subsections 4.3(b). The Capital Costs of major replacements to the Intertie Aqueduct shall be allocated to North Marin based on the following cost distribution ratios:

Intertie Aqueduct Reach 1	11.2/70.4
Intertie Aqueduct Reach 2	11.2/68.9
Intertie Aqueduct Reach 3	11.2/58.9

**4.5 Payment of Remaining Facilities, Additional Facilities, Replacement Facilities, and Potter Valley Project Capital Costs**

(a) The Capital Costs of Remaining Facilities, Additional Facilities, replacement facilities and Potter Valley Project, except the portions thereof paid by North Marin pursuant to Section 4.4, shall be paid by the Agency with cash available pursuant to Sections 4.2, 4.6, 4.7 and 4.8, subdivision (b) of Section 4.11, and, if the Board of Directors of the Agency decides to issue Revenue Bonds, with the proceeds from the sale of Revenue Bonds. The Agency may sell Revenue Bonds to the extent necessary to pay for said Capital Costs, to establish bond reserves and to pay all expenses incurred in the issuance of such bonds.

(b) From time to time the Agency shall determine the percentage of the Revenue Bonds that are attributable to Aqueduct Facilities, Storage Facilities, Common Facilities, and North Marin's Capital Costs. In making these calculations, the Agency shall not include in the portions of the Revenue Bonds that are attributable to Aqueduct Facilities, Storage Facilities and Common Facilities, the portions of the Revenue Bonds, if any, that

are attributable to North Marin's Capital Costs. The Agency shall not include in these calculations any Capital Costs for which North Marin paid cash pursuant to Section 4.4, or the costs of any major replacement facilities financed by the imposition of Aqueduct Facilities Capital Charges without the issuance of Revenue Bonds pursuant to subdivision (e) of Section 4.6.

**4.6 Aqueduct Facilities Capital Charges**

(a) Aqueduct Facilities Capital Charges consist of the Santa Rosa Aqueduct Capital Sub-Charge, the Sonoma Aqueduct Capital Sub-Charge, and the Petaluma Aqueduct Capital Sub-Charge. The Aqueduct Facilities Capital Charges shall be annual charges per acre foot set for each aqueduct as provided in subdivision (b) of this section and shall be paid by all Regular Customers of the Agency except North Marin for all water delivered from the Transmission System except Surplus Water. All water delivered to Santa Rosa and Windsor shall be deemed to be delivered from the Santa Rosa Aqueduct, all water delivered to Rohnert Park, Cotati, and Petaluma shall be deemed to be delivered from the Petaluma Aqueduct, and all water delivered to Sonoma and Valley of the Moon shall be deemed to be delivered from the Sonoma Aqueduct.

(b) The aggregate amount to be received by the Agency from the various Aqueduct Facilities Capital Charges for each Fiscal Year shall be sufficient to produce water sale revenues to pay the Agency's Revenue Bond Obligations (after crediting any projected payments to be made pursuant to subdivision (e) of Section 4.6) for such Fiscal Year times the percentage for Aqueduct Facilities determined pursuant to subdivision (b) of Section 4.5, and to produce additional revenues in amounts determined from time to time by the Water Advisory Committee to pay the Capital Costs of Aqueduct Facilities pursuant to subdivision (c) of this section. The aggregate amount shall be allocated to the respective aqueducts based on the following cost distribution ratios applied to the estimated, or when known, actual Capital Costs for the various Aqueduct Facilities:

<u>Facility</u>	<u>Ratio</u>
2nd pipeline, generally paralleling Intertie Aqueduct, Reach 1, Reach 2 and Reach 3a	
Santa Rosa Aqueduct	6.6/55.8
Petaluma Aqueduct	20.9/55.8
Sonoma Aqueduct	6.8/55.8

2nd pipeline, generally paralleling Intertie Aqueduct,  
Reach 3b and 3c

Santa Rosa Aqueduct	-0-
Petaluma Aqueduct	20.9/42.4
Sonoma Aqueduct	-0-

2nd pipeline, generally paralleling Petaluma Aqueduct from its junction with the  
Intertie Aqueduct to Kastania Reservoir

Santa Rosa Aqueduct	-0-
Petaluma Aqueduct	20.9/38.8
Sonoma Aqueduct	-0-

2nd pipeline, generally paralleling Sonoma Aqueduct

Santa Rosa Aqueduct	-0-
Petaluma Aqueduct	-0-
Sonoma Aqueduct	6.8/6.8

(These ratios are determined with the allocations in Sections 4.3 and 4.4 of Capital Costs  
to North Marin, and with the following allocations to Common Facilities:

2nd pipeline generally paralleling Reaches 1, 2 and 3a of  
the Intertie Aqueduct: 12.8/55.8

2nd pipeline generally paralleling Reach 3b and 3c of the Intertie Aqueduct:  
12.8/42.4

2nd pipeline generally paralleling the Petaluma Aqueduct from its junction with  
the Intertie Aqueduct to Kastania Reservoir: 12.8/38.8)

(c) All money received by the Agency in payment of Aqueduct Facilities Capital  
Charges shall be deposited and paid out as set forth in Section 1.7 and subdivision (b) of  
Section 4.1. After making the payments required to satisfy the Agency obligations and  
covenants with respect to the Revenue Bonds used to finance the Capital Cost of the  
Aqueduct Facilities, remaining money received from the Aqueduct Facilities Capital

Charges may be disbursed from time to time to pay pursuant to subdivision (a) of Section 4.5 the portions of the Capital Costs of the Remaining Facilities and Additional Facilities which are also Aqueduct Facilities that are not allocated to North Marin in Section 4.3.

(d) If at the end of any Fiscal Year the balance in the Aqueduct Facilities Capital Charge fund is insufficient to meet said Revenue Bond Obligations for the ensuing Fiscal Year attributed to the Aqueduct Facilities, Agency will determine the deficits in the payment received by it for deliveries from the Santa Rosa, Petaluma, and Sonoma Aqueducts respectively. Before August 1 of the following Fiscal Year:

(1) Additional charges for water delivered in amounts equal to the deficits with respect to the Santa Rosa Aqueduct shall be paid by Santa Rosa and Windsor in the following manner: The share of such additional charge to be paid by each of said Water Contractors shall be proportionate to the difference between the base share component and the sum of the Aqueduct Facilities Capital Charge payments made by said Water Contractor during said Fiscal Year. The base share component allocated to a Water Contractor is the number obtained by multiplying the said total principal and interest payment for said Fiscal Year by said Water Contractor's average daily rate of flow during any month Entitlement Limit set forth in subdivision (a) of Section 3.1 and by dividing by the total of said average daily rate of flow during any month Entitlement Limits for all Water Contractors being served from the Santa Rosa Aqueduct.

(2) Additional charges for water delivered in an amount equal to the deficit with respect to the Sonoma Aqueduct shall be paid by Sonoma and Valley of the Moon in the following manner: The share of such additional charge to be paid by each of said Water Contractors shall be proportionate to the difference between the base share component and the sum of the Aqueduct Facilities Capital Charge payments made by said Water Contractor during said Fiscal Year. The base share component allocated to a Water Contractor is the number obtained by multiplying the said total principal and interest payment for said Fiscal Year by said Water Contractor's average daily rate of flow during any month Entitlement Limit set forth in subdivision (a) of Section 3.1 and by dividing by the total of said average daily rate of flow during any month Entitlement Limits for all Water Contractors being served from the Sonoma Aqueduct.

(3) Additional charges for water delivered in an amount equal to the deficit with respect to the Petaluma Aqueduct shall be paid by Rohnert Park, Cotati and Petaluma in the following manner excluding North Marin and Marin Municipal: The share of such additional charge to be paid by each of said Water Contractors shall be

proportionate to the difference between the base share component and the sum of the Aqueduct Facilities Capital Charge payments made by said Water Contractor during said Fiscal Year. The base share component allocated to a Water Contractor is the number obtained by multiplying said total principal and interest payment for said Fiscal Year by said Water Contractor's average daily rate of flow during any month Entitlement Limit set forth in subdivision (a) of Section 3.1 and by dividing by the total of all said average daily rate of flow during any month Entitlement Limits for all Water Contractors being served from the Petaluma Aqueduct.

(e) If the Agency decides to issue a new series or issue of Revenue Bonds to finance major replacements of portions or all of any aqueduct facility or if, with the approval of the Water Advisory Committee, the Agency decides to levy one or more Aqueduct Facilities Capital Charges to produce revenue to finance major replacements of portions or all of any aqueduct facility, then the aggregate amount to be received by the Agency from the respective Aqueduct Facilities Capital Charges for each Fiscal Year shall be sufficient to produce water sales revenues, in addition to those required by subdivision (b) of this section, in amounts determined from time to time by the Water Advisory Committee to pay the Capital Costs of such major replacements. The Capital Costs of major replacements to the facilities specified in Subsection 4.6(b) above shall be allocated based upon the ratios set forth in Subsection 4.6(b). The Capital Costs of major replacements to the Intertie Aqueduct shall be allocated to the respective aqueducts based on the following cost distribution ratios:

Intertie Aqueduct Reach 1:

Santa Rosa Aqueduct	31.5/70.4
Petaluma Aqueduct	19.7/70.4
Sonoma Aqueduct	8.0/70.4

Intertie Aqueduct Reach 2:

Santa Rosa Aqueduct	30.0/68.9
Petaluma Aqueduct	19.7/68.9
Sonoma Aqueduct	8.0/68.9



Intertie Aqueduct Reach 3:

Santa Rosa Aqueduct	20.0/58.9
Petaluma Aqueduct	19.7/58.9
Sonoma Aqueduct	8.0/58.9

**4.7 Storage Facilities Capital Charge**

(a) The Storage Facilities Capital Charge shall be a uniform annual charge per acre foot and shall be paid by all Regular Customers of the Agency for all water delivered from the Transmission System except Surplus Water, provided however, that North Marin shall not be obligated to pay any Storage Facilities Capital Charge if North Marin maintains potable storage reservoirs within its system with a total capacity equal to or greater than one and one-half times the average daily volume of water delivered by the Agency to North Marin during the previous July with the highest water delivery to North Marin.

(b) The aggregate amount to be received by the Agency from the Storage Facilities Capital Charge for each Fiscal Year shall be sufficient to produce water sale revenues to pay the Agency's Revenue Bond Obligations for such Fiscal Year (after crediting any projected payments to be made pursuant to subdivision (e) of Section 4.6) times the percentage for Storage Facilities determined pursuant to subdivision (b) of Section 4.5, and to produce additional revenues in amounts determined from time to time by the Water Advisory Committee to pay the Capital Costs of Storage Facilities pursuant to subdivision (c) of this section.

(c) All money received by the Agency in payment of the Storage Facilities Capital Charge shall be deposited and paid out as set forth in Section 1.7, and subdivision (b) of Section 4.1. After making the payments from the Storage Facilities capital fund required by Section 1.7, remaining money in said fund may be disbursed from time to time to pay Capital Costs of Remaining Facilities, Additional Facilities and replacement facilities that also are Storage Facilities, pursuant to Section 4.5.

(d) If at the end of any Fiscal Year the balance in the Storage Facilities capital fund is insufficient to meet said Revenue Bond Obligations for such Fiscal Year attributed to the Storage Facilities, each Water Contractor except North Marin will, before August 1, pay to the Agency an additional charge per acre foot for all water delivered to it during the Fiscal Year which additional charge when multiplied by all Acre Feet sold to Regular Customers except North Marin shall be equal to said deficit.

#### **4.8 Common Facilities Capital Charge**

(a) The Common Facilities Capital Charge shall be a uniform annual charge per acre foot and shall be paid by all Regular Customers of the Agency except North Marin for all water delivered from the Transmission System except Surplus Water.

(b) The aggregate amount to be received by the Agency from the Common Facilities Capital Charge for each Fiscal Year shall be sufficient to produce water sale revenues to pay the Agency's Revenue Bond Obligations for such Fiscal Year (after crediting any projected payments to be made pursuant to subdivision (e) of Section 4.6) times the percentage for Common Facilities determined pursuant to subdivision (b) of Section 4.5.

(c) All money received by the Agency in payment of the Common Facilities Capital Charge shall be deposited and paid out as set forth in Section 1.7 and subdivision (b) of Section 4.1. After making the payments required by Section 1.7, additional money received from the Common Facilities Capital Charge may be disbursed from time to time pursuant to subdivision (a) of Section 4.5 to pay the portions of the Capital Costs of Remaining Facilities, Additional Facilities, replacement facilities and the Potter Valley Project that also are Common Facilities and that are not allocated to North Marin in Section 4.3, and to satisfy the requirements of Section 6.04 of Ordinance No. 1 if the amount of money received from the charge established by Section 4.2 is insufficient in any Fiscal Year.

(d) If at the end of any Fiscal Year the balance in the Common Facilities capital fund is insufficient to meet the Agency's Revenue Bond Obligations for such Fiscal Year on the Revenue Bonds attributed to Common Facilities, each Water Contractor except North Marin shall, before August 1, pay to the Agency an additional charge per acre foot for water delivered to it during the Fiscal Year, which additional charge when multiplied by all Acre Feet sold to the Water Contractors shall be equal to said deficit.

#### **4.9 North Marin Capital Charge**

(a) The North Marin Capital Charge shall be a uniform annual charge per acre foot and shall be paid by North Marin for all water delivered to it from the Transmission System except Surplus Water.

(b) The aggregate amount to be received by the Agency from the North Marin Capital Charge for each Fiscal Year shall be sufficient to produce water sale revenues to pay the Agency's Revenue Bond Obligations for such Fiscal Year (after crediting any projected

payments to be made pursuant to subdivision (e) of Section 4.6) times the percentage for North Marin's Capital Costs determined pursuant to subdivision (b) of Section 4.5.

(c) All money received by the Agency in payment of North Marin Capital Charge shall be deposited and paid out as set forth in Section 1.7 and subdivision (b) of Section 4.1. After making any payments required by Section 1.7, additional money received from the North Marin Capital Charge shall be deposited in the separate account described in subdivision (c) of Section 4.4.

(d) If at the end of any Fiscal Year the balance in the separate fund described in subdivision (c) of Section 4.4 is insufficient to meet the portion of the Agency's Revenue Bond Obligations for such Fiscal Year on the Revenue Bonds attributed to North Marin's Capital Costs, North Marin will, before August 1, pay to the Agency an additional charge per acre foot for water delivered to it during the Fiscal Year, which additional charge when multiplied by all Acre Feet sold to North Marin shall be equal to said deficit.

(e) If any money received pursuant to the Common Facilities Capital Charge is used pursuant to subdivision (c) of Section 4.8 to satisfy the requirements of Section 6.04 of Ordinance No. 1, then the North Marin Capital Charge shall be increased by the appropriate amount so that North Marin pays its appropriate share of such requirements.

(f) If North Marin has not maintained storage reservoirs within its system with at least the capacity required by subdivision (a) of Section 4.7, and if, as a result, the Agency constructs additional storage, then the North Marin Capital Charge shall be increased by an amount sufficient to pay for the Capital Costs or Revenue Bonds costs of such additional storage.

#### **4.10 Power; Revenues**

All power from the Warm Springs Hydroelectric Project and the Potter Valley Project shall be applied to the operation of the Transmission System or shall be sold, as the Agency shall from time to time determine. All revenues arising from the operation of these projects shall be treated the same as money received from the Operation and Maintenance Charge and shall be deposited and paid out as set forth in Section 1.7 and subdivision (b) of Section 4.1.

#### **4.11 Payment for Surplus Water and Water Sold To Marin Municipal**

(a) The Agency will sell Surplus Water at a price per acre foot of not less than 120% of the then current Operation and Maintenance Charge. All revenue from the sale of Surplus Water shall be treated the same as money received from the Operation and Maintenance Charge and shall be deposited and paid out as set forth in Section 1.7 and subdivision (b) of Section 4.1.

(b) Water delivered to Marin Municipal shall be sold at a per acre foot price that shall not be less than the sum of the Operation and Maintenance Charge determined pursuant to Section 4.2, the Russian River Conservation and Russian River Projects Charges determined pursuant to Section 4.18, and a capital charge. For the Third Amended Offpeak Water Supply Agreement dated January 25, 1996, or any amendment to that agreement that has been approved by the Water Advisory Committee, the capital charge shall be the total of all charges paid to Agency by Marin Municipal minus the sum of the Operation and Maintenance Charge and the Russian River Conservation and Russian River Projects Charges. For the Amended Agreement For The Sale of Water Between the Sonoma County Water Agency and Marin Municipal Water District dated January 25, 1996, or any amendment to that agreement that has been approved by the Water Advisory Committee, the capital charge shall be the charge established by paragraph b. of Section 10 of that agreement. Any subsequent agreement between the Agency and Marin Municipal for the sale of water to be transported through the Transmission System pursuant to Section 3.12 shall specify the capital charge that applies to this section of this Agreement. All money received by the Agency from the Operation and Maintenance Charge on water sold to Marin Municipal shall be credited to the operation and maintenance fund. All money received by the Agency from the Russian River Conservation and Russian River Projects Charges on water sold to Marin Municipal shall be credited to the Russian River Projects Fund and shall be used only for the purposes set forth in subsection (jj) of Section 1.2. The balance of the money received by the Agency from water sold to Marin Municipal shall be deposited and paid out as set forth in Section 1.7, and subdivision (b) of Section 4.1. After making the payments required by Section 1.7 and Ordinance No. 1, additional money received may be disbursed from time to time to pay the Capital Costs of Storage Facilities or Common Facilities authorized to be constructed in Section 2.2, provided, however, that only the money received from \$31.50 per acre foot of the capital charge (which rate is based on the Agency's past and projected future capital investment in Storage Facilities) may be used to pay the Capital Costs of new Storage Facilities.

#### **4.12 Minimum Payments by Other Agency Customers**

Anything herein to the contrary notwithstanding, the Agency will not sell any water to be delivered through the Transmission System (other than Surplus Water) to any Other Agency Customer at a total price per acre foot that is less than 120% of the highest price per acre foot then currently being paid by any Water Contractor; provided, however, that this limitation shall not apply to water sold to Forestville. The respective components of said price shall be credited to the appropriate fund referred to in subdivision (a) of Section 4.1 and the excess shall be credited to the aqueduct capital fund for the aqueduct from which service is taken. Forestville's charge shall be the same as the total charge for Water Contractors for water delivered from the Santa Rosa Aqueduct, except that during the first ten (10) full Fiscal Years following execution of this Agreement, Forestville shall not pay the Santa Rosa Aqueduct Capital Sub-Charge.

#### **4.13 Operations and Maintenance Charge – Water Management Planning**

The Agency shall calculate and collect as a part of the Operations and Maintenance Charge a Water Management Planning Sub-Charge. The aggregate amount of money to be received by the Agency from the Water Management Planning Sub-Charge in each Fiscal Year shall be sufficient to produce water sale revenues to cover the Agency's reasonable estimate of its costs for such Fiscal Year to carry out the provisions of Section 2.7. All money received by the Agency in payment of the Water Management Planning Sub-Charge shall be deposited by the Agency into a Water Management Planning Fund and used to pay the Agency's costs in carrying out the provisions of Section 2.7.

#### **4.14 Operations and Maintenance Charge – Watershed Planning and Restoration**

(a) The Agency shall calculate and collect as a part of the Operations and Maintenance Charge a Watershed Planning and Restoration Sub-Charge.

(b) The aggregate amount of money to be received by the Agency from the Watershed Planning and Restoration Sub-Charge in each Fiscal Year shall be sufficient to produce water sale revenues to cover the Agency's reasonable estimate of costs for such Fiscal Year (net of funding provided by other sources, including the Russian River Projects Fund and the Agency's General Fund) of carrying out: (1) fishery mitigation, enhancement, and environmental compliance activities and projects undertaken by the Agency, including the Agency's costs of complying with the Endangered Species Act or any other applicable federal, state, or local environmental statute or regulation, if such

activities, projects, and costs are reasonably necessary, to enable the Agency to provide water to Regular Customers under this Agreement; (2) the evaluations undertaken pursuant to Section 2.4(b); and (3) actions, studies or projects authorized pursuant to Section 2.8 of this Agreement that are not covered by other funding sources and contributions. The Agency shall not use proceeds from the Watershed Planning and Restoration Sub-Charge to pay for the capital cost or operation and maintenance cost of recreation facilities.

(c) Notwithstanding Subsection 4.14(b) above, during the first five full Fiscal Years following the effective date of this Agreement, the Watershed Planning and Restoration Sub-Charge shall not exceed \$35.00 per acre-foot.

(d) To assist in determining the appropriate share of fishery mitigation, enhancement, and environmental compliance activities and projects undertaken by the Agency to be paid by the Water Contractors under the Watershed Planning and Restoration Sub-Charge, the Agency shall, from time to time as reasonably necessary, prepare an analysis that (1) identifies planned fishery mitigation, enhancement, and environmental compliance activities and projects, (2) identifies the costs and beneficiaries of such activities and projects, (3) proposes an allocation of costs among all benefitted parties, and (4) recommends sources of funding for such activities and projects.

(e) The Agency shall use its best efforts to amend its existing contracts with Russian River Customers to require Russian River Customers to pay the Watershed Planning and Restoration Sub-Charge or fund or implement watershed planning and restoration projects at a level equivalent to that funded by the Agency under this Agreement.

(f) In addition to the Watershed Planning and Restoration Sub-Charge, the Agency may assess against the Water Contractors such supplemental charges as are authorized and agreed to under Section 2.8(c). Supplemental charges under this subsection shall not be included in determining the minimum payments by Other Agency Customers pursuant to Section 4.12 or by Windsor pursuant to Section 4.17.

(g) All money received by the Agency in payment of the Watershed Planning and Restoration Sub-Charge shall be deposited by the Agency into a Watershed Planning and Restoration Fund and used for the purposes set forth in Section 4.14(b). All money received by the Agency in payment of any supplemental charges pursuant to Section 4.14(d) shall be deposited into separate account(s) and used to pay the costs of projects authorized and agreed to pursuant to Section 2.8(c).

#### **4.15 Operations and Maintenance Charge – Recycled Water and Local Supply**

The Agency shall calculate and collect as a part of the Operations and Maintenance Charge a Recycled Water and Local Supply Sub-Charge. The Recycled Water and Local Supply Sub-Charge shall be a uniform charge per acre-foot and shall be paid by all Regular Customers and Russian River Customers for all water taken from the Transmission System or under the Agency's water rights. The aggregate amount of money to be received by the Agency from the Recycled Water and Local Supply Sub-Charge in each Fiscal Year shall be sufficient to produce water sale revenues to cover the Agency's estimate of its costs for such Fiscal Year to carry out the provisions of Section 2.6; provided, however, that during the first five full Fiscal Years following the effective date of this Agreement, the Recycled Water and Local Supply Sub-Charge shall not exceed \$35.00 per acre-foot. The Agency shall use its best efforts to amend its existing contracts with Russian River Customers to require Russian River Customers to pay the Recycled Water and Local Supply Sub-Charge. Monies collected from the Recycled Water and Local Supply Sub-Charge shall be deposited in a Recycled Water and Local Supply Fund created by the Agency. The Recycled Water and Local Supply Fund shall be used only to pay or partially pay for the costs of Recycled Water Projects or the acquisition of Recycled Water or the rights thereto pursuant to Section 2.6 of this Agreement. Notwithstanding the foregoing sentence, revenue from the Recycled Water and Local Supply Sub-Charge collected by the Agency from Windsor pursuant to Section 4.17(b) shall be placed in a separate account and made available to Windsor for funding Windsor's local or regional Recycled Water Projects.

#### **4.16 Operations and Maintenance Charge – Water Conservation**

(a) The Agency shall calculate and collect as a part of the Operations and Maintenance Charge a Water Conservation Sub-Charge. Monies collected from the Water Conservation Sub-Charge shall be deposited in a Water Conservation Fund created by the Agency. The Water Conservation Fund shall be used only to pay or partially pay for the cost of Water Conservation Projects. The aggregate amount of money to be received by the Agency from the Water Conservation Sub-Charge for each Fiscal Year shall be sufficient to cover the Agency's estimate of the total cost of all Water Conservation Projects for such Fiscal Year. From and after July 1, 1998, a total of fifteen million dollars (\$15,000,000) shall be expended to implement Water Conservation Projects pursuant to the Water Conservation Plan dated June 29, 1998. The \$15,000,000 shall be allocated as follows: Cotati 2.10%, Petaluma 18.53%, Rohnert Park 10.37%, Santa Rosa 40.25%, Sonoma 4.15%, Forestville 0.66%, North Marin 19.50%, Valley of the Moon 4.43%. Until the total of \$15,000,000 has been expended as set forth above, the

Agency shall not fund Water Conservation Projects for or on behalf of Windsor. The Water Conservation Projects for which said \$15,000,000 is to be expended, have been approved by the Water Advisory Committee.

(b) The Agency shall use its best efforts to amend its existing contracts with Russian River Customers to require Russian River Customers to fund or implement Water Conservation Projects at a level equivalent to that funded by the Agency under this Agreement. Notwithstanding the penultimate sentence in Section 4.16(a), revenue from the Water Conservation Sub-Charge collected by the Agency from Windsor pursuant to Section 4.17(b) shall be placed in a separate account and made available to Windsor for funding Windsor's Water Conservation Projects.

#### **4.17 Payments by Town of Windsor**

(a) Notwithstanding anything in this Agreement to the contrary, for the first fifteen (15) full Fiscal Years following execution of this Agreement, the amount payable by Windsor for water delivered by the Agency through the Transmission System shall be 120% of the highest price per acre foot then currently being paid by any Water Contractor receiving water from the Santa Rosa Aqueduct. The respective components of said price shall be credited to the appropriate fund referred to in subdivision (a) of Section 4.1 and the excess shall be credited to the aqueduct capital fund for the aqueduct from which service is taken. Beginning with the sixteenth (16th) full Fiscal Year following execution of this Agreement and thereafter, all water delivered to Windsor by Agency through the Transmission System will be deemed delivered from the Santa Rosa Aqueduct and the amount payable by Windsor for said water determined accordingly.

(b) For all water diverted directly by Windsor from the Russian River using its own facilities, whether under the Agency's water rights or Windsor's water rights, Windsor shall pay only the charges set forth in the Agreement for Sale of Water between the Agency and Windsor dated January 8, 1991, as amended, including the sub-charges set forth in Sections 4.13, 4.14, 4.15, and 4.16.

#### **4.18 Payment of Russian River Conservation Charge and Russian River Projects Charge by North Marin**

In addition to the other charges provided for in this Part, North Marin shall pay the following additional per-acre-foot charges:



(a) A Russian River Conservation Charge shall be paid in lieu of the property taxes levied by the Agency on property in Sonoma County, to pay the capital, Operation and Maintenance Costs associated with the Warm Springs Dam Project. The Russian River Conservation Charge shall be a charge per acre foot of water delivered to North Marin hereunder, except Surplus Water. The charge shall be determined annually on or before April 30 preceding each Fiscal Year and shall be payable by North Marin during the ensuing Fiscal Year. The Russian River Conservation Charge shall be determined by multiplying the tax rate levied by the Agency in the then current Fiscal Year to pay the costs associated with the Warm Springs Dam Project times the assessed value of secured and unsecured property situated within Cotati, Petaluma, Rohnert Park, Santa Rosa, Sonoma, Forestville and Valley of the Moon and dividing the product by the total number of Acre Feet of water delivered to Cotati, Petaluma, Rohnert Park, Santa Rosa, Sonoma, Forestville and Valley of the Moon pursuant to Section 3.1 and 3.3 during the twelve month period ending on March 31. All money received by the Agency from the Russian River Conservation Charge on water sold to North Marin shall be credited to the Russian River Projects Fund and shall be used only for the purposes set forth in subsection (jj) of Section 1.2.

(b) A Russian River Projects Charge shall be paid in lieu of the property taxes levied on property in Sonoma County and other Agency general fund monies which are transferred to the Agency's Russian River Projects Fund and expended for the purposes enumerated in subsection (jj) of Section 1.2. The Russian River Projects Charge shall be effective on the first day of the first month following the effective date of this Agreement and shall thereafter be determined annually on or before April 30 preceding each Fiscal Year and shall be payable by North Marin during the ensuing Fiscal Year. The Russian River Projects Charge shall be determined by dividing the total amount of Agency monies expended from the Agency's Russian River Projects Fund in the preceding ten Fiscal Years, exclusive of the funds contributed to the Fund by North Marin and Marin Municipal Water District, and interest earnings attributable to funds contributed by North Marin and Marin Municipal Water District, by the sum of the total acre-feet of water delivered by the Agency to Cotati, Petaluma, Rohnert Park, Santa Rosa, Sonoma, Forestville and Valley of the Moon pursuant to Sections 3.1 and 3.3 of this Agreement during the preceding ten Fiscal Years and multiplying the quotient by the ratio that the assessed value of secured and unsecured property situated within Cotati, Petaluma, Rohnert Park, Santa Rosa, Sonoma, Forestville and Valley of the Moon bears to the assessed value of all secured and unsecured property within Sonoma County, provided, however, in no event shall the Russian River Projects Charge exceed \$20.00 per acre-foot. The Agency shall keep proper books, records and accounts in which complete and accurate entries shall be made of all Agency general fund monies

transferred to the Agency's Russian River Projects Fund and all expenditures made from the fund for the purposes set forth in subsection (jj) of Section 1.2. The Agency shall maintain a separate account within the Russian River Projects Fund for Russian River Projects Charges paid by North Marin and Marin Municipal Water District. Monies expended from the Russian River Projects Fund shall be deemed to have been expended from the North Marin and Marin Municipal Water District account in the proportion that the balance of that account bears to the total Russian River Projects Fund balance at the end of the Fiscal Year quarter preceding the expenditure. All money received by the Agency from the Russian River Projects Charge on water sold to North Marin shall be credited to the Russian River Projects Fund and shall be used only for the purposes set forth in subsection (jj) of Section 1.2.

#### **4.19 Billing and Time of Payment**

Except as otherwise expressly provided herein, all charges payable to the Agency shall be billed each month and paid within 30 days after receipt of bill. Notwithstanding any dispute between the Agency and a Water Contractor, such Water Contractor will pay all its bills when due and shall not withhold all or any part of any payment pending the final resolution of such dispute. If the resolution of the dispute results in a refund to the Water Contractor, the Agency shall make such refund plus any interest earned by investment of the disputed funds as promptly as it is able to do so, consistent with its meeting its Revenue Bond Obligations.

## **PART 5 - Water Advisory Committee/Technical Advisory Committee**

### **5.1 Purpose**

- (a) There is hereby created the Water Advisory Committee and the Technical Advisory Committee.
- (b) The purpose of the Water Advisory Committee is to perform the functions specified herein and to review all proposals set forth by the Agency which involve a significant capital outlay for the Transmission System or any other project which would significantly change the level of service or add significantly to the operations and maintenance expense of the Transmission System or other expense to be borne by the Water Contractors. The purpose of the Technical Advisory Committee is to advise the Water Advisory Committee.

### **5.2 Powers**

Except as provided herein to the contrary, the power of the Water Advisory Committee is limited to that of collective spokesperson for the Water Contractors and shall be advisory only in nature. Nothing shall preclude a Water Contractor from setting forth a view contrary to that of the majority of the Committee. No action of the Committee limits or impairs any right or power of any Water Contractor. The Technical Advisory Committee shall have no powers other than the power to make recommendations to the Water Advisory Committee.

### **5.3 Composition and Voting**

- (a) The Water Advisory Committee shall be composed of one representative and one alternate who shall serve in absence of the representative, to be selected by each Water Contractor. The representative and alternate shall be elected members of and appointed by the governing board of the Water Contractor. The Water Advisory Committee shall generally meet quarterly as it determines necessary, which shall include at least one meeting per calendar year with a liaison from the Board of Directors of the Agency who is a member of and appointed by said Board. Each Water Contractor's representative will be allocated a weighted vote proportional to the average daily rate of flow during any month Entitlement Limit from the Transmission System applicable to such Water Contractor. An affirmative vote of said Committee shall be recorded and require both of the following: (1) the affirmative vote of more than fifty percent (50%) of the total weighted votes as defined above; and (2) the

affirmative vote of at least five (5) representatives. If the Water Advisory Committee does not affirmatively vote to approve any matter before it for a decision, then the matter shall be deemed not approved. A representative or alternate appointed by the Board of Directors of the Marin Municipal Water District, each of which must be members of said board, may attend and participate, debate, express opinions and present information at meetings of the Water Advisory Committee but shall not have a vote. If the approval, determination, or consent of the Water Advisory Committee is authorized or required on any non-advisory matter pursuant to this Agreement, the vote of the Water Advisory Committee on such matter shall be evidenced by a writing, executed by the chairperson or secretary, evidencing (a) the vote of each member, (b) whether the vote of the Committee was in the affirmative, and (c) if the vote was in the affirmative, a description of the approval, determination, or consent given by the Committee.

(b) The Technical Advisory Committee shall be composed of one non-elected representative selected by each Water Contractor. The Technical Advisory Committee shall generally meet monthly as it determines necessary. Each Water Contractor's representative will be allocated the same weighted vote applicable to that Water Contractor under Section 5.3(a). An affirmative vote of said Committee shall require both of the following: (1) the affirmative vote of more than fifty percent (50%) of the total weighted votes as defined above; and (2) the affirmative vote of at least five (5) representatives. A representative or alternate appointed by the Marin Municipal Water District Board of Directors may attend and participate, debate, express opinions and present information at meetings of the Water Advisory Committee but shall not have a vote. The Water Advisory Committee may require the Technical Advisory Committee to create subcommittees and ad hoc committees. Persons serving on such committees shall be elected officials, staff or contract staff of the Water Contractor they represent.

(c) The Technical Advisory Committee shall create a standing Water Conservation Subcommittee. The Water Conservation Subcommittee shall make recommendations to the Technical Advisory Committee with respect to any determination of the Water Advisory Committee contemplated under Section 1.12 of this Agreement, and shall perform other such duties with respect to Water Conservation Projects as may be requested by the Technical Advisory Committee.

(d) Once every two years, on a date selected by the Water Advisory Committee, the Water Advisory Committee shall elect from among its members two officers: a chairperson and vice chairperson. Officers shall serve for the ensuing two Fiscal Years. An officer may serve a second or subsequent consecutive two-year terms only if each

such term is approved by a unanimous vote of the Water Contractors. Furthermore, an officer can be removed and replaced at any meeting called by five Water Advisory Committee members provided all Water Advisory Committee members are notified in writing a minimum of five working days prior to the meeting. In the event an officer either: (1) loses his/her status as a duly elected local official serving on the governing board of the Water Contractor they represent or (2) loses his/her appointment as representative of the Water Contractor on the Water Advisory Committee, the officer position held shall be vacated. The Water Advisory Committee shall elect a new officer who shall fill out the balance of the vacated term. Voting for officers shall be as provided in subsection (a) of this section.

(e) By November of each year, subject to the limitations in Section 4.16(a), the Water Advisory Committee shall review proposed Water Conservation Projects, Recycled Water Projects, and Local Supply Projects and approve and report to the Agency those projects that are to receive funding in the next or later fiscal years. It is the intent of the parties to this Agreement that over the term of the Agreement, Regular Customers shall receive funding support for Water Conservation Projects, Recycled Water Projects, and Local Supply Projects in proportion to the amounts paid by Regular Customers under Sections 4.15 and 4.16.

(f) Commencing with the first Fiscal Year following the effective date of this Agreement, the Agency shall include in its operating budget the amount of \$30,000 which the Agency shall expend as the Water Advisory Committee directs for purposes associated with the orderly implementation and operation of the provisions of this Agreement and other associated purposes deemed appropriate by the Committee. The annual amount may be fixed at a higher or lower amount in subsequent Fiscal Years as determined by vote of the Committee pursuant to subsection (a) of this section. The Water Advisory Committee shall decide which, if any, consultant or consultants, firm or firms shall be hired to carry out this work.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

SONOMA COUNTY WATER AGENCY

By: Paul L. Kelley

Date: 6/23/06

ATTEST:

Eve T. Lewis

CITY OF COTATI

By: Steve Orchard  
Mayor

Date: 5.9.06

ATTEST:

Jay S. Stubbins  
City Clerk

Date: 5-10-06

CITY OF PETALUMA

By: David L. Glass  
Mayor

Date: 5-15-06

ATTEST:

Kate Cump  
Deputy City Clerk

CITY OF ROHNERT PARK

By: Tim Smith  
Mayor

Date: 11/06-05-06

RESTRUCTURED AGREEMENT FOR WATER SUPPLY

ATTEST:

Judy Hauff  
City Clerk

CITY OF SANTA ROSA

By: Jim Bender  
Mayor

Date: 5/31/06

ATTEST:

Sandra Anderson  
Deputy City Clerk

CITY OF SONOMA

By: Don Meyer  
Mayor

Date: 4-19-06

ATTEST:

Gay Rainsberger  
City Clerk

FORESTVILLE COUNTY WATER DISTRICT

Date: 5/12/06

By: C. R. M.  
President

ATTEST:

[Signature]  
Secretary

NORTH MARIN WATER DISTRICT

Date: 5/22/06

By: [Signature]  
President

ATTEST:

[Signature]

Acting Secretary

TOWN OF WINDSOR

Date: 5-17-06

[Signature]  
Mayor

ATTEST:

[Signature]  
Deputy Town Clerk

VALLEY OF THE MOON WATER DISTRICT

Date: 5-25-06

By: [Signature]  
President

ATTEST:

[Signature]  
Deputy Secretary