FIRST AMENDED AGREEMENT AMONG PARTIES CONTRIBUTING FUNDS TOWARD LOCAL SPONSOR SHARE OF THE U.S. ARMY CORPS OF ENGINEERS COYOTE DAM FEASIBILITY STUDY

This First Amended Agreement ("Agreement") is entered on _____, 2010 ("Effective Date") in Ukiah, California, among the Mendocino County Inland Water and Power Commission ("Commission") and those of its members who participate in funding the local sponsor's share of the cost of the Army Corp of Engineers Coyote Dam Feasibility Study ("Study Participants"). It amends and supercedes the **AGREEMENT AMONG PARTIES CONTRIBUTING FUNDS TOWARD LOCAL SPONSOR SHARE OF THE U.S. ARMY CORPS OF ENGINEERS COYOTE DAM FEASIBILITY STUDY,** dated May 26, 2006. Study Participants consist of two groups: (1) those Study Participants who sign this Agreement on the Effective Date ("Initial Study Participants"), and (2) those Study Participants who sign this Agreement after the Effective Date and who do not make an Initial Contribution toward the Local Sponsor's share of the project costs ("Subsequent Study Participants").

RECITALS

This Agreement is made with reference to the following facts:

1. The Commission is a joint powers authority comprised of the Potter Valley Irrigation District, the Redwood Valley County Water District, the City of Ukiah, Mendocino County and the Mendocino County Russian River Flood Control and Water Conservation Improvement District and such additional agencies as may in the future sign the Joint Powers Agreement ("JPA") creating the Commission and thereby join the Commission.

2. The Commission has entered an Agreement between the Department of the Army and the Inland Water and Power Commission for the Coyote Valley Dam Feasibility Study, dated October 14, 2005 (the "Feasibility Study Agreement"). Under the Feasibility Study Agreement, the Army Corp of Engineers ("ACOE") agrees, pursuant to a Project Study Plan, attached as an exhibit to the agreement, to study the feasibility of various options to improve flood control and increase the storage capacity and/or yield of Lake Mendocino, including (1) raising the existing earth-fill dam, (2) dredging the reservoir and (3) changing the operating conditions of the dam (the "Feasibility Study"). A copy of the Feasibility Study Agreement is attached hereto as Exhibit A and incorporated herein by this reference.

3. The Commission is designated as the "Local Sponsor" in the Feasibility Study Agreement, which is obligated to contribute 50% of the cost of the Feasibility Study, 25% of which may consist of certain in-kind services as specified in the agreement.

4. The Feasibility Study Agreement makes clear that there is no guarantee that any of the alternatives examined will be determined to be feasible or become a federally sponsored project.

5. The members of the Commission who are the initial signatories to this Agreement, the Initial Study Participants, are willing to contribute funds to meet the Local Sponsor's funding

obligation under the Feasibility Study Agreement, and assume the risk that the funds contributed toward the study may not result in the construction of a project that produces additional water that is available to the Study Participants, provided that, subject to the provisions of this Agreement, any benefits that do result from the study, including additional water supplies, are shared by the Initial Study Participants in proportion to each Initial Study Participant's contribution toward the Local Sponsor's share of the study and that any Subsequent Study Participants can become Subsequent Study Participants only as further provided in this Agreement.

AGREEMENT

In consideration of the above-recited facts and the terms and conditions as further stated below, the parties agree as follows.

Definitions:

1. Initial Study Participant – A member of the Commission which contributed its proportionate share of the local matching funds from the beginning of the Coyote Dam Feasibility Study.

2. Subsequent Study Participant – A member of the Commission which did not participate in the Coyote Dam Feasibility Study when it began, but has requested to become a Study Participant and has satisfied the requirements in Section II.

3. Study Participant – A commission member which is participating in the Coyote Dam Feasibility Study by paying its proportionate share of the local matching funds, regardless of when it began such participation or whether it withdrew and later reinstated its participation, as provided in Section IV.

I. CONTRIBUTION OF INITIAL STUDY PARTICIPANTS

1.0 Each Initial Study Participant agrees to contribute an equal share of matching funds required under the Project Study Agreement as of the Effective Date. That share equals 25% of the matching fund payment of $100,000, or $25,000 per Initial Study Participant.

1.1 The payment specified in section 1.0 above must be received by the Commission by June 10, 2006. If the Commission has not received a payment from a Study Participant by this deadline, it shall provide written notice to the Study Participant that its failure to make the payment within 10 days from the date the notice is given shall result in the Study Participant being subject to Section 3.2 of this Agreement.

1.2 The current Study Participants and the amount they have each contributed as their proportionate share of the local match, as of the Effective Date, are set forth in Exhibit B, which is incorporated herein by this reference.

II. SUBSEQUENT STUDY PARTICIPANTS

2. 0 A Commission member may request to become a Subsequent Study Participant by submitting a written request to the Commission. Upon receipt of the request, the Commission shall determine the amount that member would have paid toward the Feasibility Study, if it had been an Initial Study Participant. In addition, a Subsequent Study Participant must pay a proportional share of administrative costs for the two year period, ending on the date it requests participation as a Study Participant. The Commission shall add to these the amount of interest those funds would have earned during that time period, if invested in the Local Agency Investment Fund maintained by the State of California under the authority of Sections 16429.1 et seq. of the California Government Code. ("Buy-in Interest") on that amount. The Commission may impose additional charges it deems appropriate based on considerations the Commission deems relevant, including, but not limited to, the time remaining for the completion of the study, the contents of the study at that time, and the Federal participation in the funding of the study. The total of these amounts constitutes the "buy-in" that the member will be required to pay before it will be permitted to become a Subsequent Study Participant. In addition, a Subsequent Study Participant must agree to any other conditions which the Commission imposes based on considerations deemed relevant by the Commission, including, but not limited to, the time remaining for the completion of the study, the contents of the study at that time, and the Federal participation in the funding of the study

2.1 The Commission shall allocate among the Initial Study Participants the funds received as a result of a buy-in in proportion to each participant's share of the matching fund payments prior to the addition of the Subsequent Study Participant.

2.2 No member may become a Subsequent Study Participant, unless all of the Initial Study Participants approve the addition of the member as a Subsequent Study Participant. The Subsequent Study Participant's Project Entitlement and the commensurate adjustment of the existing Study Participant's Project Entitlements shall be determined by the Initial Study Participants concurrently with approval of the Subsequent Study Participant's participation.

2.3 A member shall become a Subsequent Study Participant, subject to the rights and obligations in this Agreement, upon approval of the Subsequent Study Participant by the Initial Study Participants, payment of the buy-in, and approval of this Agreement by the governing body of the member and execution of this Agreement by an authorized representative of the member.

2.4 Upon admission of a Subsequent Study Participant, the payment obligations of the Study Participants shall be adjusted so that each Study Participant pays an equal share of the Local Sponsor match required by the Feasibility Study Agreement.

III. STUDY PARTICIPANT PAYMENT OBLIGATIONS

3.0 As long as the Commission continues as the Local Sponsor and agrees to continue making matching fund payments under the Feasibility Study Agreement, each Study Participant shall pay its proportional share of the matching fund payment. Its payment must be received by the Commission not less than ten (10) days prior to the date the Local Sponsor's payment is due under the Feasibility Study Agreement.

3.1 The Study Participants may provide "in kind services" in lieu of cash as a means of meeting cost share obligations if said in kind services are approved by the other Study Participants and the ACOE. The cash value of any in kind services rendered will be determined by the ACOE.

3.2 In the event a Study Participant fails to make a payment as required under this Agreement, it shall forfeit its Project Entitlement. However, in the event a Study Participant elects to terminate this Agreement or defaults in the payment of its share of matching funds under the Feasibility Study Agreement, whether "study costs" or "excess study costs" as defined in the Feasibility Study Agreement, that Study Participant is not relieved of liability for any such obligations arising and forfeits the full amount of all contributions paid prior to its payment default or termination of its participation under this Agreement.

3.3 In the event of the failure of a Study Participant to pay, the resulting costs and benefits shall be shared equally among the remaining Study Participants. Those Participants may agree to a different allocation of such costs and benefits.

IV. WITHDRAWAL AND REINSTATEMENT OF STUDY PARTICIPANTS.

4.0 Redwood Valley County Water District ("RVCWD") has terminated its participation in this Agreement on March 23, 2008. It may reinstate its participation under this Agreement as an Initial Study Participant, if it both notifies the Commission of its election to reinstate and pays the Commission a reinstatement fee within one year from the Effective Date. The reinstatement fee is the amount the Study Participants each would have paid during the period RVCWD was not a Study Participant, if RVCWD had not terminated its participation under this Agreement. The Commission shall add to that the amount of interest those funds would have earned during that time period, if invested in the Local Agency Investment Fund maintained by the State of California under the authority of Sections 16429.1 et seq. of the California Government Code. If RVCWD fails to reinstate under this Section 4.0, it may reinstate under Section 4.1, below.

4.1 Subject to Section 4.0, above, in the case of RVCWD, any Study Participant which terminates its participation under this Agreement (a "Terminating Participant") on or before January 30, 2011, may reinstate as a Study Participant, if within twenty-four (24) months from the effective date of its termination of this Agreement, the Terminating Participant notifies the Commission of its election to reinstate as a Study Participant and pays a reinstatement fee. The reinstatement

fee is the amount the Study Participants each would have paid during the period when the Terminating Participant terminated its participation as a Study Participant, if the Terminating Participant had not terminated its participation under this Agreement, including administrative costs, plus 10% simple annual, interest on that amount.

4.2 A Terminating Participant that terminates its participation after January 30, 2011, may reinstate its participation as a Study Participant as provided in Section 4.1; provided, however, that the Commission may impose additional charges or other requirements as a condition of Terminating Participant's reinstatement based on considerations deemed relevant by the Commission, including, but not limited to, the time remaining for the completion of the study, the contents of the study at that time, and the Federal participation in the funding of the study.

V. STUDY MANAGEMENT AND COORDINATION

5.0 The Feasibility Study Agreement requires the ACOE and the Local Sponsor to appoint a representative to an Executive Committee. The members of the Executive Committee are required to appoint representatives to a Study Management Team. All decisions of the Commission in relation to the Feasibility Study Agreement, including appointments to the Executive Committee and the Study Management Team shall be made by majority vote of the Project Entitlements, through their representatives on the Commission Board of Directors.

VI. ALLOCATION OF PROJECT BENEFITS

6.0 Definitions – The following terms shall have the following meaning when used in this Agreement:

"Project Costs" means the portion of the costs to construct a feasible project, including design, construction management and similar costs, in addition to the actual construction costs, and any other costs required to make Project Benefits available to Study Participants, including costs expended to apply and obtain approval for water rights.

"Project Benefits" means additional water produced by a feasible project which is available to the Study Participants for beneficial use within the areas served by the Study Participants pursuant to the terms of this Agreement.

"Project Entitlement" means the percentage of Project Costs and Project Benefits to which a Study Participant is entitled under the terms of this Agreement, or upon completion of a project, of Project Benefits only.

6.1 If no feasible project is identified at the conclusion of the Feasibility Study, then, for the purposes of this Agreement, it will be assumed that there are no Project Benefits to distribute among the Study Participants.

6.2 If the Feasibility Study identifies a feasible project with Project Benefits, then each Study Participant that has paid its full share of the Local Sponsor matching funds required under the Feasibility Study Agreement and that is in full compliance with its obligations under this Agreement shall be entitled to its Project Entitlement. The details of how a Study Participant or its assignee will participate in the construction of any such project and receive Project Benefits shall be set forth in a "Construction Project Agreement," to be negotiated and executed among the Study Participants at the conclusion of the Coyote Dam Feasibility Study. No Study Participant shall receive any Project Benefit, until the Study Participants execute a Construction Project Agreement.

VII. OTHER TERMS AND CONDITIONS

7.1. ***Participant Assignments***

This Agreement, and the rights, duties and benefits given in it, may not be assigned by a Study Participant without the advance written consent of the other Study Participants and the U.S. Army Corps of Engineers. However, at the conclusion of the Feasibility Study, if a construction project is determined to be feasible, a Study Participant may assign all or any portion of its Project Entitlement to another IWPC member. However, before it may do so, it must first provide written notice to the other Study Participants, offering that portion of its Project Entitlement to the other Study Participants on the same terms and conditions. If no other Study Participant agrees in writing to accept such assignment on those same terms and conditions within ninety (90) days after such notice was given, then the Study Participant may assign that portion of its Project Entitlement, but only on those same terms and conditions.

7.2. ***Term***

This Agreement commences on the Effective Date and shall remain in effect until the earlier of the following: (i) a determination by the parties to withdraw from further participation in the Feasibility Study before its completion, (ii) the completion of the Feasibility Study and determination by the ACOE that a construction project is not feasible, or (iii) the effective date of a subsequent agreement among the parties, including a Project Construction Agreement.

Nothing in this Agreement shall be construed in any way by any signatory or any other party hereto to effect or result in any current or future change, modification, reduction, diminishment, or apportionment of any existing water rights, water rights permits, water rights applications or filings, or existing water supplies or allocations that are held by or which have been applied for by an individual member of the IWPC prior to the date of this Agreement.

7.3. ***Counterparts***

This Agreement may be executed in several duplicate counterparts, each of which shall be an original.

MENDOCINO COUNTY INLAND WATER AND POWER COMMISSION

By _____
Chairwoman

Date_____

Attest: _____
Secretary of Inland Water
and Power Commissioner

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SIGNATURE PAGE
March, 2010

IWPC Study Participants

City of Ukiah **Potter Valley Irrigation District**

By: _____

Its: _____

Attest:

_____
City Clerk

By: _____

Its: _____

Mendocino County

By: _____

Its: _____

Attest:

_____
Clerk of the Board

Mendocino County Russian River Flood Control and Water Conservation Improvement District

By: _____

Its: _____

Redwood Valley County Water District

By: _____

Its: _____