

RESOLUTION NO. 1688

A RESOLUTION APPROVING AN ASSIGNMENT OF WATER RIGHTS AGREEMENT BETWEEN CITY, WILD RIVER ORCHARDS, INC AND DEL RIO VINEYARDS, LLC AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAME

RECITALS:

- A. On April 7th, 2004, Wild River executed a "Water Right Sale Agreement" with the City. Pursuant to the Water Right Sale Agreement, Wild River transferred its water rights to the City, which thereafter converted them for municipal purposes. Wild River at the same time secured irrigation water from the U.S. Bureau of Reclamation from its Lost Creek Reservoir to enable continued irrigation of the subject property. In exchange for the water rights, the City is obligated to pay to Wild River and its successors and assigns the yearly charges resulting from the Contract for Water Services for the initial term of the Contract for Water Services, which is the period of 2005 through 2045. All of the obligations of the Parties under the Water Right Sale Agreement have been fulfilled or satisfied, except for the City's obligation to reimburse Wild River and its successors and assigns for the yearly charges it pays associated with the initial term of the Contract for Water Services and the associated Attorney Fee and Notice clauses.
- B. Wild River has entered into a Real Estate Sales Agreement dated July 30th, 2021, whereby Wild River has agreed to sell the subject property to Del Rio. As part of that agreement, Wild River will assign its water rights to Del Rio Vineyards.
- C. Under the terms of the Water Right Sale Agreement, the City remains obligated to reimburse Wild River's successor, Del Rio, for the yearly charges associated with the Replacement Contract for Water Services for years 2021 through 2045.
- D. The parties have negotiated an Assignment Agreement in which the City consents to consent to the assignment and acknowledges the City's obligation to continue the annual payments through 2045.

The City of Central Point resolves:

Section 1. The attached Assignment Agreement – Water Right Sale Agreement (the "Agreement"), in substantially the form attached hereto as Exhibit "A" is approved.

Section 2. The City Manager is hereby authorized, on behalf of the City and without further action by the City Council, to execute the attached Agreement and to perform all

necessary acts, sign all necessary documents, and complete any other necessary matters in order to effectuate this Resolution.

Passed by the Council and signed by me in authentication of its passage this 14 day of October, 2021.


Mayor Hank Williams

ATTEST:

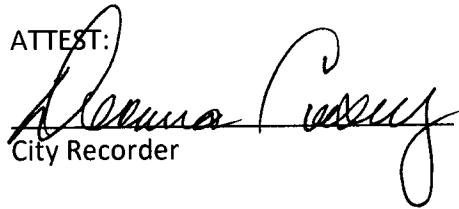

City Recorder

Exhibit A to Resolution

Assignment Agreement Water Right Sale Agreement

THIS ASSIGNMENT AGREEMENT (“Agreement”) is executed by Wild River Orchards, Inc., an Oregon corporation (herein “Wild River”), and Del Rio Vineyards, LLC, an Oregon limited liability company (herein “Del Rio”), hereinafter collectively called the “Parties”, for themselves, their successors, grantees, and assigns.

Recitals

A. Wild River is the record owner of certain real property located in Jackson County, Oregon, commonly known as Township 36 South, Range 2 West, Section 11, Tax Lots 401, 501, and 1801 (herein the “subject property”).

B. On April 7th, 2004, Wild River executed a “Water Right Sale Agreement” with the City of Central Point, Oregon (the “City”), a copy of which is attached hereto as **Exhibit “A”**. Pursuant to the Water Right Sale Agreement, Wild River transferred its water rights to the City, which thereafter converted them for municipal purposes. Wild River at the same time secured irrigation water from the U.S. Bureau of Reclamation from its Lost Creek Reservoir to enable continued irrigation of the subject property pursuant to the Lost Creek Reservoir Contract for Water Services #059E101522 (“Contract for Water Services”). In exchange for the water rights, the City is obligated to pay to Wild River and its successors and assigns the yearly charges resulting from the Contract for Water Services for the initial term of the Contract for Water Services, which is the period of 2005 through 2045. All of the obligations of the Parties under the Water Right Sale Agreement have been fulfilled or satisfied, except for the City’s obligation to reimburse Wild River and its successors and assigns for the yearly charges it pays associated with the initial term of the Contract for Water Services and the associated Attorney Fee and Notice clauses.

C. The Parties have entered into a Real Estate Sales Agreement dated July 30th, 2021, whereby Wild River has agreed to sell the subject property to Del Rio. After closing, the Parties will cooperate with each other such that a Water Services Contract in the name of Del Rio will be issued by the Bureau of Reclamation to replace Contract No. 059E101522 (the “Replacement Contract for Water Services”). The Parties hereto and the City acknowledge and agree that the City will remain obligated under the terms of the Water Right Sale Agreement to reimburse Del Rio for the yearly charges

associated with the Replacement Contract for Water Services for years 2021 through 2045.

D. The Parties desire to enter into this Agreement, and obtain the City's agreement and consent to the form and terms of this Agreement to ensure that the City's obligation under the terms of the Water Right Sale Agreement to reimburse Del Rio the yearly charges associated with the Contract for Water Services applies to the yearly charges associated with the Replacement Contract for Water Services, and that after the transfer of the subject property from Wild River to Del Rio, the City will be obligated to reimburse Del Rio for all of the yearly charges associated with the Replacement Water Services Contract for the years 2022 through 2045 ("City's Reimbursement Obligation").

Agreement

NOW THEREFORE, for valuable consideration, the Parties agree as follows:

1. Recitals. The above-stated Recitals are incorporated herein and deemed a material part of this instrument.

2. Effective Date. This Agreement is made concurrently with and as an incident to the conveyance by Wild River of the subject property to Del Rio. This Agreement will become effective when Del Rio receives title to the subject property.

3. Assignment. Wild River hereby sells and assigns to Del Rio, without representation or warranty, all its rights to the City's Reimbursement Obligation contained in the Water Right Sale Agreement. Wild River will deliver to the City a copy of this Agreement so that future notices concerning the Water Right Sale Agreement are directed to Del Rio at the following address:

Del Rio Vineyards, Inc.
Attn: Robert Wallace
P.O. Box 906
Gold Hill, Oregon 97525

The Parties agree to execute other documents, including an amendment to the Contract for Water Services, as reasonably necessary to conclude this Agreement .

4. Acceptance of Assignment of City's Reimbursement Obligation. Del Rio hereby accepts the assignment of Wild River's rights to the City's Reimbursement Obligation under the Water Right Sale Agreement.

5. Miscellaneous.

5.1 Attorney Fees. If any suit or action is filed by any party to enforce this instrument or otherwise with respect to the subject matter of this instrument, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of such suit or action as fixed by the trial court or arbitrator, and if any appeal is taken from the decision of the trial court or arbitrator, reasonable attorney fees as fixed by the appellate court.

5.2 Applicable Law and Venue. This instrument has been entered into in the State of Oregon and the subject property is located in the State of Oregon. The laws of the State of Oregon will be used in construing this instrument and enforcing the rights and remedies of the Owners. Venue will be in Jackson County, Oregon.

5.3 Waiver. A provision of this instrument may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this instrument shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this instrument shall not operate as a waiver of such provision or any other provision.

5.4. Time. Time is of the essence for the performance of all obligations set forth in this instrument.

5.5. Construction. This instrument will not be construed more strictly against one party than against the other merely because it may have been prepared primarily by counsel for one of the Parties.

5.6. Counterparts. This instrument may be executed in any number of counterparts, each of which will constitute an original, but all of which, taken together, will constitute but one and the same instrument. For the purposes of this Agreement, a facsimile or electronic copy of a signature shall have the same force and effect as an original signature.

5.7. Amendment. This Agreement may be amended only by written instrument executed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this instrument on the dates set forth below:

WILD RIVER ORCHARDS, INC.

Dated:

By: Michael Naumes
Its: President

DEL RIO VINEYARDS, LLC

Dated:

By: Robert Wallace
Its: President

AGREEMENT AND CONSENT TO ASSIGNMENT: Effective as of the Effective Date, City hereby (a) consents to the assignment effected hereby; (b) acknowledges the accuracy of Section (b) of the Recitals set forth in the above Agreement; (c) agrees to recognize Del Rio as the payee under the Water Right Sale Agreement and thereby establish direct privity of contract with Del Rio; and (d) acknowledges that the City is obligated to Del Rio under Section 6 of the Water Right Sale Agreement to reimburse Del Rio for the yearly payments due under the Replacement Water Services Contract for years 2021 through 2045. In addition, the City acknowledges that upon the transfer of the subject property to Del Rio, Sections 6, 10 and 11 of the Water Right Sale Agreement remain in effect with Del Rio Vineyards, LLC substituted for Wild River Orchards, Inc., and any notice sent to Del Rio Vineyards, LLC pursuant to Section 10 shall be sent to the following address:

Del Rio Vineyards, LLC
P.O. Box 906
Gold Hill, OR 97525

CITY OF CENTRAL POINT

Dated:

By:
Its:

Water Right Sale Agreement

This agreement, made this 7th day of April, 2004, by and between the City of Central Point, Oregon (City) and Wild River Orchards, Inc. (Wild River).

RECITALS

The contract dated April 23, 2004 between City and Medford Water Commission requires City to obtain water rights independent of Medford Water Commission water right for City supply;

The water right subject to this agreement will be processed by Medford Water Commission and delivered to City;

There will be a separate agreement between City and Water Commission governing treatment and transport of the water subject to this agreement;

Wild River owns land to which water right certificates 32728, 32734, 32742, 32746 and 32748, or a portion thereof are attached;

Wild River has full right and authority to make application to change the place of use and the type of use to the Oregon Water Resources Department, and;

It is the desire of City to acquire water right for the municipal water supply for City.

Now, therefore, it is agreed by and among the parties listed herein as follows: ..

- 1) Wild River shall cause to be transferred to City the full rate and duty as Wild River can prove has been used within the past 5 (five) years pursuant to ORS 540.610, to City for municipal use.
- 2) City shall pay Wild River \$3,500.00 for each acre of water right successfully transferred to City as municipal right, so long as the total accumulated amount of water transferred to City, in acre feet, throughout the irrigation season is/equal to or greater than 450 acre feet. The acre foot of water calculation will be made by multiplying the number of acres of irrigation right transferred and converted from irrigation use to municipal use by the duty (acre feet per acre) approved for transfer by the Oregon Water Resources Department. Payment shall be made in the amount of \$110,000 down at the execution of this agreement, and the remainder, as calculated at the above rate per acre of water right, transferred within 30 day of the issuance of the order of transfer from the Oregon Water Resources Department approving the transfer of the irrigation water right to municipal use by City.
- 3) It is agreed by all parties that the rate will be 1/80th cubic foot per second for each acre of water right converted to municipal use. It is further agreed that the season of use shall be the same as the original right, that being as stated in paragraph 36 of the decree of the "waters of Rogue River and its tributaries" as being "1st of April of each year, and terminates before the 1st of November of each year".

- 4) Wild River will be entering into a contract with the United States Department of Interior, Bureau of Reclamation for irrigation water from Lost Creek Reservoir for water right to replace the water right being sold to City. Should acquiring water right from Lost Creek Reservoir be impracticable, the agreement shall be null and void.
- 5) It is anticipated that acquiring water right from Lost Creek Reservoir and the transfer to City shall occur simultaneously. In the event the contract with the Bureau of Reclamation is delayed, City agrees that Wild River shall have full use of the water right for irrigation until the water from Lost Creek Reservoir is available for use by Wild River.
- 6) City agrees to pay to Wild River each year the yearly charges from the Bureau of Reclamation for the Lost Creek Reservoir water storage contract. Said payment shall be made within 30 days of receipt of a copy of said bill from Wild River for that year.
- 7) It is agreed that the costs related to securing the replacement water right from Lost Creek Reservoir, and the transfer of the water rights listed on the aforementioned water right certificates to municipal use shall be born 50 percent by Wild River and 50 percent by City. Wild River shall initiate the application for water right permit from Lost Creek Reservoir and the transfer of water right to City. City shall pay the above percentage within 30 days of submission of a bill, properly documenting the expenses incurred, by Wild River.
- 8) In the event the transfer of water right is not approved by the Oregon Water Resources Department or Wild River cancels this agreement according to article 4, Wild River will refund in full the deposit herein paid within 30 days of date of denial by the Oregon Water Resources Department or notice of cancellation by Wild River. This agreement shall expire and become null and void two years from the date listed hereon if the transfer of water right has not been completed, unless it is mutually agreed to extend the expiration date.
- 9) Medford Water Commission's Duff water treatment plant intake will be the point of diversion for the municipal water right subject to this agreement.
- 10) Notices. Any and all notices required by this agreement or pursuant hereto shall be in writing and shall be effective when actually delivered by hand, facsimile, U.S. mail or private courier to the address and or facsimile number stated below:


City of Central Point

Wild River ~~Inc~~ Orchards, Inc.
P.O. Box 996
Medford, OR 97501

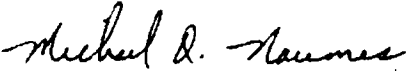
- 11) Attorneys Fees. In the event suit, action or other proceeding is brought to enforce, or for the breach of, this Agreement, the prevailing party in such suit, action or other proceeding shall be entitled to recover from the losing party, the prevailing parties' reasonable attorney fees, including attorney fees on appeal.

Parties have executed this Agreement on the date set forth above.

CITY OF CENTRAL POINT

By: 
Its Authorized Representative
4-23-04

WILD RIVER ORCHARDS, INC.

By: 
Michael D. Naumes, President

CITY OF CENTRAL POINT • CENTRAL POINT, OREGON 97502

16599

Vendor: WILD RIVER ORCHARDS, INC	Check Date: 04/23/2004
Vendor No: WIL003	Check Amount: \$110,000.00
Invoice Number	Invoice Amount
Date: 04/20/2004	110,000.00
Description: WATER RIGHT PURCHASE DOWN PAYMENT	

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND • THIS PAPER CONTAINS FLOURESCENT FIBERS AND OTHER SECURITY FEATURES

usbank
CENTRAL POINT, OREGON

16599

CITY OF CENTRAL POINT
155 SO. 2ND STREET
CENTRAL POINT, OREGON 97502

DATE: 04/23/2004
AMOUNT: \$110,000.00

One hundred ten thousand dollars and Zero cents

WILD RIVER ORCHARDS, INC

WILSON BERRY

11016599 123000220153604684768