

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (Agreement) is entered into this ____ day of _____ 2021, by and between the parties listed in Exhibit “A” attached hereto (collectively “Contractors”).

RECITALS

A. The governing boards of the Contractors have authorized negotiations with, filing a claim against, and if necessary, the commencement of litigation against, the California Department of Water Resources (DWR) and others, for the purpose of determining the parties’ rights under the Settlement Agreements with DWR and Article 45 of the State Water Project Water Supply Contracts (SWP Contracts). In particular, the Contractors will seek an agreement with DWR, or otherwise pursue appropriate judicial relief (i.e., consent decree, declaratory judgment, etc.), to restore the Contractors’ carryover storage water lost in Water Year 2020 due to DWR’s interpretation of the Contractors’ North of Delta (NOD) Allocation, or obtain monetary compensation for the loss (hereinafter “NOD Allocation negotiations and litigation”).

B. The Contractors desire to enter into this Agreement governing the allocation of attorneys’ fees and other costs arising from the NOD Allocation negotiations and litigation, the designation of lead counsel, and related confidentiality and administrative issues.

NOW, THEREFORE, the parties enter into this Agreement as follows:

1. Allocation of Attorneys’ Fees and Costs. The parties agree that all attorneys’ fees, expert fees, and other costs collectively incurred, and arising from and reasonably related to the NOD Allocation negotiations and litigation shall be divided among the Contractors based on the percentage share that each Contractor’s loss of carryover in 2020

bears to the loss of carryover of all Contractors in 2020. The Contractors agree that the percentages set forth in Exhibit "A" of this Agreement illustrate the allocation of all attorneys' fees and costs collectively incurred in the NOD Allocation negotiations and litigation.

2. Addition and Withdrawal of Contractors. In the event that, following initial execution of this Agreement, additional Contractors desire to become parties to any litigation and this Agreement, or in the event of withdrawal from the NOD Allocation negotiations and litigation of one or more Contractors, the percentage shares designated in the formula set forth in paragraph 1 above shall be modified to conform with the allocation formula specified in paragraph 1 of this Agreement; provided, however, that a withdrawing Contractor shall remain obligated to pay its share of fees and costs incurred up to and including the date on which written notice of withdrawal is delivered to the lead attorney. In addition, if any Contractor withdraws, such Contractor shall not object to, and hereby waives any conflict regarding, the lead attorney's continued representation of the other remaining Contractors in the NOD Allocation negotiations and litigation, in accordance with paragraph 3, below.

3. Lead Counsel.

a. For the sake of efficiency and cost savings, the Contractors designate Andrew Hitchings and the law firm of Somach Simmons & Dunn to serve as Lead Counsel in the NOD Allocation negotiations and litigation. Lead Counsel shall be responsible for coordinating the conduct of the negotiations and litigation, and for keeping each Contractor's counsel informed as to the status thereof. In this regard, Lead Counsel shall timely schedule and coordinate meetings or conference calls with

the other Contractors' legal counsel as may be reasonably necessary to make strategic decisions.

b. The Contractors hereby authorize Somach Simmons & Dunn to file a claim against DWR with the Department of General Services, Government Claims Program, and, if necessary, a complaint and all other required pleadings on behalf of Contractors to pursue the litigation referenced above, in consultation with each Contractor's own counsel. Lead Counsel shall provide copies of draft pleadings to the other Contractors' legal counsel sufficiently in advance of court filing deadlines so as to allow adequate time for the other Contractors' legal counsel to review and comment on such draft pleadings before they are finalized and filed on behalf of the Contractors. Each Contractor may, in its discretion, elect to have its own counsel appear as attorney of record on its behalf in the NOD Allocation negotiations and litigation.

c. The reasonable fees and costs incurred by an attorney of a Contractor who has executed this Agreement that were provided at the request of Lead Counsel shall be allocated among the parties for reimbursement in accordance with paragraph 1; provided, however, that Lead Counsel shall use best efforts to ensure that fees and costs incurred by other counsel at the Lead Counsel's request are not duplicative of fees and costs incurred by Lead Counsel.

d. Lead Counsel serves as special counsel to Napa County Flood Control and Water Conservation District and the City of Yuba City on water matters. However, Lead Counsel's representation of all other Contractors is limited in scope to simply facilitate efficient administration of negotiations and litigation. This

Agreement shall not be construed as creating an attorney-client relationship between Somach Simmons & Dunn and any of the Contractors not specifically represented by Somach Simmons & Dunn on a regular basis, except for that limited purpose.

4. Billing Procedures. The Contractors agree that Somach Simmons & Dunn shall have the responsibility for issuing invoices for attorneys' fees, and other fees and costs arising from the NOD Allocation negotiations and litigation, and that Somach Simmons & Dunn shall have the responsibility to apportion the invoices in accordance with the percentages allocated pursuant to paragraph 1, above. The Contractors agree to make payments on these invoices within 30 days of the date of the specific invoice.

5. Privileged Communications. All information related to the litigation that is shared between the Contractors and Somach Simmons & Dunn is privileged and confidential. In addition, the Contractors agree that the attorney-client privilege and work product doctrine apply to all communications between and among Contractors, their legal counsel, Lead Counsel, and any experts retained by Contractors under this Agreement. To the maximum extent permitted by law, legal counsel and Contractors agree to maintain the confidentiality of all such communications.

6. Entire Understanding. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior understandings, whether written or oral. This Agreement may not be modified except by an instrument in writing executed by all of the parties hereto.

7. Counterparts. This Agreement may be executed in any number of counterparts which, taken together, shall constitute one and the same Agreement.

8. Conflicts of Interest. The Contractors acknowledge that there may be conflicts of interest between them or between them and other petitioners/plaintiffs represented by Somach Simmons & Dunn in the negotiations and potential litigation, have been advised of these potential conflicts of interest, and hereby each waive any conflict of interest that may arise with respect to the negotiations or litigation. The Contractors also acknowledge that there may be conflicts of interest between them and existing or future clients represented or to be represented by Somach Simmons & Dunn on matters not related to the subject matter of this Agreement and hereby each waive any conflict of interest that exists or may arise with respect to these unrelated matters. Each Contractor warrants that it has consulted with legal counsel of its own choosing regarding these waivers before executing this document.

IN WITNESS WHEREOF, the parties hereto have entered into this Memorandum of Understanding effective as of the first date set forth above.

Dated: _____, 2021

CITY OF YUBA CITY

By: _____

Title: _____

Dated: Dec. 7, 2021

NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: Phil Wright

Title: Chairperson of the Board of Directors

Dated: _____, 2021

SOLANO COUNTY WATER AGENCY

By: _____

Title: _____

EXHIBIT A

PARTY	2020 LOSS OF CARRYOVER (AF)	PERCENTAGE OF SHARE
City of Yuba City	960	20%
Napa County Flood Control and Water Conservation District	1,208	26%
Solano County Water Agency	2,533	54%
Total:	4,701	100%

*Percentages are rounded.