

**AMENDMENT NO. 18 OF
NAPA COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT AGREEMENT NO. 1573
(CITY OF NAPA AGREEMENT NO. 1482)**

(WATER SUPPLY CONTRACT WITH THE CITY OF NAPA)

THIS AMENDMENT NO. 18 OF NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. 1573 (CITY OF NAPA AGREEMENT NO. 1482), hereinafter referred to as “Amendment No. 18,” is made as of this _____ day of _____, 2022, by and between the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as “Agency,” and the CITY OF NAPA, hereinafter referred to as “City;”

RECITALS

WHEREAS, Agency is party to a water supply agreement (“State Water Supply Agreement”) with the State of California, initially approved on December 19, 1963, and subsequently amended by the parties thereto, that specifies the amount of water available to Agency for disbursement to its Member Units (defined by Agreement paragraph 1(f)) in any given year and a number of component charges for water allocated and delivered through the North Bay Aqueduct; and

WHEREAS, City and Agency entered into the “Contract for Water Supply from North Bay Aqueduct Between Napa County Flood Control and Water Conservation District and City of Napa (Agency Agreement No. 1573, and City Agreement No. 1482, hereinafter “Contract”) as of April 5, 1966, subsequently modified by Amendment No. 1 as of December 21, 1982, Amendment No. 2A as of April 6, 1993, Amendment No. 2B as of December 15, 1998, Amendment No. 3 as of September 19, 2000, Amendment No. 4 as of November 16, 2004, Amendment No. 5 as of December 7, 2004, Amendment No. 6 as of November 7, 2006, Amendment No. 7 as of November 7, 2006, Amendment No. 8 as of March 4, 2008, Amendment No. 9 as of April 15, 2008, Amendment Nos. 10 as of April 7, 2009, Amendment Nos. 11 and 12 as of August 4, 2009, Amendment No. 13 as of October 6, 2009, and by Amendment No. 14 as of June 18, 2013, and by Amendment 15 as of October 15, 2013, and by Amendment 16 as of March 19, 2019, and by Amendment 17 as of December 15, 2020, under which Agency disburses to City as a member unit, a portion of the water allocated to Agency under the State Water Supply Agreement; and

WHEREAS, as authorized under Amendment 9 of this Agreement, Agency has been involved in litigation over its contract with the State of California Department of Water Resources (DWR) and what is commonly referred to as the Area of Origin (AOO) Litigation; and

WHEREAS, the AOO litigation as outlined in paragraph 19 of this Agreement culminated in a Settlement Agreement with DWR, and

WHEREAS, subsequent to the approval of the Settlement Agreement, the Agency on behalf of its subcontractor cities, and other North of Delta SWP Contractors, Solano County Water Agency and the City of Yuba City, collectively “AOO parties”, have disputed the AOO parties rights under the Settlement Agreement with DWR and Article 45 of the State Water Supply Agreement. The AOO parties seek an agreement with DWR, or otherwise desire to pursue appropriate judicial relief to restore the parties’ carryover storage water lost in water year 2020 due to DWR’s interpretation of the parties North of Delta (NOD) Allocation, or obtain monetary compensation for the loss (hereinafter “NOD Allocation negotiations and litigation”), and

WHEREAS, the governing boards of the AOO parties have each retained the law firm of Somach, Simmons and Dunn, and authorized negotiations with, and filing a claim against, and if necessary, the commencement of litigation against DWR and others, and have entered into a MOU (Exhibit A) governing the allocation of attorney’s fees and other costs arising from the NOD Allocation negotiation and litigation (hereinafter the 2021 AOO MOU).

TERMS

NOW, THEREFORE, IT IS MUTUALLY AGREED by Agency and City that the 2021 AOO MOU shall be incorporated into the State Water Supply Agreement and the Contract shall be amended as follows:

1. Paragraph 22 is added to the Contract for Water Supply from North Bay Aqueduct between Agency and City as part of Amendment No. 18, as follows:

22. Memorandum of Understanding with Solano County Water Agency and the City of Yuba City for participation in the negotiations and litigation against the California Department of Water Resources ("DWR") for the purpose of determining the Agency's rights under AOO Settlement Agreement and Article 45 of the State Water Supply Agreement.

(a) Agency has signed the 2021 AOO MOU with Solano County Water Agency and the City of Yuba City to govern the allocation of attorney's fees and other costs arising from determining the contractor’s rights under the AOO Settlement Agreement and Article 45 negotiations claims and potential litigation (as defined in the 2021 AOO MOU), the designation of leadcounsel, and related confidentiality and administrative issues in order to pursue appropriate judicial relief to restore the parties’ carryover storage water lost in water year 2020 due to DWR’s interpretation of the parties North of Delta (NOD) Allocation, or obtain monetary compensation for the loss.

ATTACHMENT 1

(b) (i) City shall reimburse Agency for its proportionate share of costs incurred due to the prosecution of the NOD Allocation negotiations and litigation against DWR, including the fees of any and all attorney's hired, in accordance with Paragraph 20(e) below, to represent the Agency on this item, and costs associated with the Memorandum of Understanding including but not limited to litigation and expert costs, administrative costs, and potential costs under Code of Civil Procedure Section 1032. These costs shall be apportioned to all Member Units directly proportional to their ultimate Table A (29,025 AF total for Napa County) annual entitlements.

(ii) City shall pay its share of the costs described in sub-paragraph (b) (i) not later than thirty (30) days after receipt of Agency's invoices. Agency's invoices shall be in amounts sufficient to allow Agency to receive funds to pay City's proportionate share of Agency's current obligations of the 2021 AOO MOU no sooner than thirty (30) days prior to the date the same become due.

(c) Agency shall keep City informed of the status of litigation and/ or settlement negotiations and shall enter into a settlement agreement only after each of the Member Units agree in writing to the settlement agreement. The Agency shall not execute any settlement agreement unless each Member Unit has provided Agency with written consent to the settlement agreement. Settlement proceeds, if any, shall be apportioned among all Member Units directly proportional to their ultimate Table A Entitlements (29,025 AF total for Napa County) annual entitlements. City and Agency agree that the terms of the Confidentiality Agreement for the original AOO Litigation, entered into on November 18, 2008 remain in effect.

(d) City shall provide compensation for its proportionate share (21,900 AF of 29,025 AF or 75.45%) of the costs associated with the Agency's portion of the 2021 AOO MOU.

(e) Agency shall not withdraw from the 2021 AOO MOU without written authorization from each of the Member Units and after compliance with 2021 AOO MOU.

(f) Agency shall change attorneys and/or hire new attorneys to represent Agency on this AOO litigation only after each of the Member Units agrees in writing to the change(s)."

2. Regarding Paragraph 1 above, Agency and City acknowledge that it is the intent of the parties that the other Member Units (defined in Paragraph 1(f) of the Contract for Water Supply from North Bay Aqueduct between Agency and City) within the service area of Agency under the State Water Supply Agreement will also be amending their respective Agreements with Agency in substantially the same manner as set forth above.

ATTACHMENT 1

3. Except as provided in (1) and (2) above, all of the terms and provisions of the Agreement shall remain, after the effective date set forth above, in full force and effect as previously approved and last amended.

4. The effective date of Amendment No. 18 shall be the date of execution by Agency and City.

[SIGNATURE PAGE TO FOLLOW]

ATTACHMENT 1

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 18 as of the date first above written.

CITY OF NAPA

**NAPA COUNTY FLOOD CONTROL
AND WATER CONSERVATION
DISTRICT**

By _____
PHIL BRUN
Utilities Director

By _____
BRAD WAGENKNECHT
Vice-Chairperson

ATTEST:

ATTEST:

By _____
TIFFANY CARRANZA
City Clerk

By _____
NEHA HOSKINS
District Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By _____
MICHAEL W. BARRETT
City Attorney

By _____
SHANA A. BAGLEY
District Legal Counsel

COUNTERSIGNED:

By _____
JOY RIESENBERG
City Auditor