

**SECOND AMENDMENT TO
WATER SUPPLY CONTRACT BETWEEN
THE CITY OF NAPA AND
THE CONGRESS VALLEY WATER DISTRICT
(CITY AGREEMENT NO. 5387)**

THIS SECOND AMENDMENT to the Water Supply Contract (hereinafter “Second Amendment”) between the CITY OF NAPA, a California charter city (hereinafter referred to as the “City”) and CONGRESS VALLEY WATER DISTRICT, a County Water District (formerly the Congress County Water District, and hereinafter referred to as “District”) is made and entered into as of the ____ day of _____, 2018, with reference to the following facts and intentions:

RECITALS

- A. On or about July 1987, the City and District entered into the Water Supply Contract (City Agreement No. 5387) wherein District requested that City furnish a specified supply of wholesale water to enable District to provide retail potable water to customers connected to the District’s water system.
- B. On or about May 2017, the City and District entered into a First Amendment to the Water Supply Contract (hereinafter referred to collectively as the “Agreement”) to extend the term and modify other conditions.
- C. Pursuant to the First Amendment, the Parties agreed that the City would establish Outside City rates and fees in accordance with all requirements of State law, including Proposition 218, and the District would be charged for wholesale water at the Outside City rate.
- D. Following notice and a public hearing pursuant to Proposition 218, the City adopted a rate schedule for “Inside City” and “Outside City” water rates by approving Resolution No. R2017-153 on November 7, 2017, which may be amended from time to time and is incorporated by this reference as though set forth herein in full.
- E. The parties have agreed to further revise the Agreement in order to address billing practices between the parties.
- F. Accordingly, the parties now desire to amend the terms of the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained in this Second Amendment, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. AMENDMENT

Section 6 of Article 3 (Price and Payment) of the Agreement is hereby deleted in its entirety and replaced with the following:

“6. PRICE AND PAYMENT.

6a. It is the intent of this Agreement to memorialize the City and the District’s respective roles as wholesaler and retailer of water, and to provide parameters for the payment of charges under this Agreement. In return for all water provided by the City to the District, and customers within the District, the District shall pay the City the wholesale rate for water, which shall be equal to the rates and fees formally adopted by the City and then in effect for “Outside City” customers, including the fees to cover the City’s costs to install or modify water services. Each rate and fee identified in this Section 6 (6a through 6f) shall be as defined by resolution adopted by the City Council. The first effective billing period under the Second Amendment shall be from April 1 through May 31, 2018.

6b. In lieu of the City collecting charges directly from the District (pursuant to Section 6a), the District hereby authorizes the City to directly bill and collect payment from District customers for deliveries of water to those customers under this Agreement that would otherwise be owed by the District, under the terms set forth in Sections 6b through 6f.

In recognition of the long-standing billing practices of the Parties, the City is authorized to directly bill District customers at the “Inside City” rate in effect at the time of billing. In addition, the City shall bill the District directly for the differential between the Inside City rate charged to District customers and the Outside City rate owed to the City pursuant to this Agreement, under the terms set forth in Sections 6c through 6f. The District directs the City to implement this billing practice beginning with the billing period of April 1 through May 31, 2018.

The District reserves the right to authorize the City to directly bill District customers at any other rate specified by the District up to the Outside City rate in effect at the time of billing. All funds received would be retained by the City. The City shall bill the District directly for the differential between the rate specified by the District and the Outside City rate owed to the City pursuant to this Agreement, under the terms set forth in Sections 6c through 6f. Prior to any such change in billing, the District shall provide sixty (60) days advance written notice to the City.

District shall hold the City, and its officers, agents and employees, free and harmless of and from, and shall defend (with counsel acceptable to City), indemnify, and protect the City, and its officers, agents and employees, against all liability, loss, claims, demands, damage, expense, costs (including, without limitation, reasonable attorneys’ fees and all

costs and fees of litigation) of any kind or nature arising out of or in any way connected with the District, its associates', employees', sub-consultants', or other agents' negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance of this Agreement, including but not limited to the District's establishment of water rates under this Agreement, to the maximum extent permitted by law. The expiration or termination of this Agreement shall not relieve District from liability under any indemnity provisions of this Agreement as to matters occurring or accruing during the Term hereof.

City shall hold the District, and its officers, agents and employees, free and harmless of and from, and shall defend (with counsel acceptable to District), indemnify, and protect the District, and its officers, agents and employees, against all liability, loss, claims, demands, damage, expense, costs (including, without limitation, reasonable attorneys' fees and all costs and fees of litigation) of any kind or nature arising out of or in any way connected with the City, its associates', employees', sub-consultants', or other agents' negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance of this Agreement, including but not limited to the City's calculation of the amounts owed or billed to any particular District customer pursuant to this Agreement, to the maximum extent permitted by law. The expiration or termination of this Agreement shall not relieve City from liability under any indemnity provisions of this Agreement as to matters occurring or accruing during the Term hereof.

6c. The City shall establish an individual account with each customer (property owner or other responsible party) within the District in order to directly bill and collect the applicable water rates and fees from each customer as set forth in Section 6b; and the City shall bill the District directly for any differential between the amounts billed to District customers and the amounts owed by the District under this Agreement on a bi-monthly basis or other period as established by the City for "Outside City" customers. The City shall provide to the District detailed records of the charges to District customers and the District under this Agreement.

6d. As a condition of the City providing any new or modified water service: (1) the District shall provide written approval to the City, and (2) the customer shall pay to the City a water capacity fee (formerly called "connection fee").

6e. Any District customer receiving City water under the terms of this Agreement shall be subject to the requirements imposed on any other person receiving City water service in accordance with Napa Municipal Code Title 13.

6f. This Agreement does not prohibit the District from establishing separate fees or charges, in addition to the charges described above, to be imposed on customers and collected by the District."

2. GENERAL PROVISIONS

- A. **Integration.** Except as expressly modified by this Second Amendment, all terms and conditions contained in the Agreement (as defined in Recital B) shall remain in full force and effect.

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[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, City and District have executed this Second Amendment as of the day and year first above written.

CITY OF NAPA:

**CONGRESS VALLEY WATER
DISTRICT, A COUNTY WATER
DISTRICT:**

By: _____
(Signature)

By: _____
(Signature)

Jacques R. LaRochelle, Public Works Director
(Type Name and Title)

(Type Name and Title)

ATTEST:

ATTEST:

(Signature)

(Signature)

Dorothy Roberts, City Clerk
(Type Name and Title)

(Type Name and Title)

COUNTERSIGNED:

COUNTERSIGNED:

(Signature)

(Signature)

Desiree Brun, City Auditor
(Type Name and Title)

(Type Name and Title)

APPROVED AS TO FORM:

APPROVED AS TO FORM:

(Signature)

(Signature)

Michael Barrett, City Attorney
(Type Name and Title)

(Type Name and Title)