

WATER SUPPLY CONTRACT

BETWEEN

THE CITY OF NAPA AND THE CONGRESS VALLEY WATER DISTRICT

The CITY OF NAPA, a municipal corporation in the County of Napa, State of California, hereinafter called "City", agrees to sell, and the CONGRESS COUNTY WATER DISTRICT, a county water district, hereinafter called "District", agrees to buy water under the following terms and conditions:

RECITALS

A. The City is the owner and operator of a water system in the County of Napa, State of California, and is engaged in the supply and distribution of water to customers inside and outside of the corporate limits of said City.

B. The District is the owner and operator of a water system in the County of Napa, State of California, and is engaged in the distribution of water to customers within the boundaries of said District.

C. The District is currently purchasing its water supply from the City under an existing agreement dated October 30, 1951, the term of which having expired has been extended by mutual agreement of the District and City until this replacement agreement is executed.

D. The District has no developed water supply resources and no storage facilities.

ATTACHMENT 1

E. The District has requested that the City continue to furnish a supply of water to the District, but under different terms and conditions than provided for in the original agreement.

F. The City is willing to furnish a supply of water to the District.

THEREFORE, the parties hereby agree to the following:

1. TERM OF AGREEMENT. This Agreement shall become effective upon its execution by both parties and shall run for a term of thirty (30) years, or to July 1, 2017, whichever shall occur first.

2. SERVICE AREA. The District shall deliver the water furnished under this Contract to consumers only within the territory shown and described on attached "EXHIBIT B", entitled "Congress County Water District Service Area", and no other or additional territory. No water service shall be provided by the District to any parcel within said service area as shown on attached "EXHIBIT B", until said parcel has been annexed to the District.

3. QUANTITY OF WATER. The City shall furnish water to the District, as it may need to supply its customers only in accordance with the terms and conditions of this Agreement, in an amount not to exceed a total of one hundred (100) acre feet in any calendar year, at a reasonable rate of flow at the delivery point or points.

ATTACHMENT 1

4. CONDITIONS OF SERVICE. The District shall deliver water it receives under this Agreement to a maximum of 140 service connections to serve existing parcels of record as described below and no others, for domestic, agricultural, and winery purposes only. (For the purposes of this Contract, a winery is defined as a facility appurtenant to the manufacture of wine or similar products. Additionally, fifty percent (50%) of the grapes processed must be grown in the service area. Additionally, no items other than the product manufactured at site of the winery may be sold.) The District shall deliver water it receives under this Agreement only to service connections existing or approved on the effective date of this agreement, and to parcels of land existing within the District Service Areas as defined in "EXHIBIT B", on the effective date of this Agreement.

5. ANNEXATION TO CITY. City agrees that if any portion of the District is annexed to the City during the term of this Agreement, City shall annually reimburse the District up to an amount equal to the average annual revenue that would have been derived from the sale of water to that portion of the District so annexed had that portion of the District remained in the District. Such payment shall be applied to any bond redemption, interest payment, or reserve accounts, therefor, which are then an existing obligation of the District. No such payment shall be required, if no such obligations then exist.

6. PRICE AND PAYMENT. The District shall pay to the City the sum of one dollar and twenty-three cents (\$1.23) per one thousand (1,000) gallons. Said quantity rate charge shall be adjusted administratively from time to time, concurrent with adjustments in the quantity rate and service charge applicable

to retail domestic customers inside the City limits. The adjusted quantity rate applicable to the District shall be identical to the quantity rate applicable to retail domestic customers inside the City limits.

7. COLLECTION AND DISBURSEMENT OF FUNDS. City agrees to bill District's customers at the rate specified by the District (subject to change on an annual basis). District's rate structure shall be similar to City's structure. City will collect all proceeds in a fashion consistent with its own procedures and deposit same in a separate account. Periodically the proceeds so collected and deposited shall be released to an entity as directed in writing by District.

Any connection fees, special assessment fees, or mitigation fees designated by the District shall not be collected by City. It shall be the responsibility of the District to collect such fees.

Any work done by City, such as to install new services or to make modifications as requested by District shall be on a fixed fee basis or time and materials basis, as is appropriate. City requires a deposit for such work in accordance with its codes, and the City will collect and retain same.

8. MEASUREMENTS AND CONTROL OF WATER DELIVERED. The water delivered pursuant to this Agreement shall be measured by meters at the points of delivery hereinafter referred to as the customers meter connection. On any new customer meter connection, the city shall install the necessary meters, valves, and appurtenances appropriate to operate and maintain such connection. Said meters, valves, and appurtenances shall be maintained in good repair and replaced when

ATTACHMENT 1

necessary by the City. Each party shall have the right to test any meter at its own expense, or the parties may share the cost as mutually agreed. City reserves the right to replace any meter at any time.

9. CONSERVATION MEASURES. District agrees to enact and enforce water conservation programs substantially equivalent in effect to such water conservation programs adopted by the City or which may be adopted by the City.

10. QUALITY OF WATER. The quality of water at the point of delivery furnished to the District will be the same as that furnished to other City customers under the permit from the State of California Department of Health Services or its successor agency.

11a. NON-RESPONSIBILITY OF THE CITY. Neither the City nor any of its officers, agents or employees, shall be liable for any loss or damage direct or indirect, arising from shortages in the amount of water to be made available for delivery, interruption of delivery or failure of any kind caused by drought or any other cause beyond the control of the City.

11b. RESPONSIBILITY OF THE CITY. The City shall be responsible, during the term of this Contract, for the complete operation, maintenance (and later replacement) of the District's water system.

City agrees to make the District whole for additional costs incurred in installing the twelve inch (12") waterline stipulate in the section of this Agreement entitled "Responsibility of District".

ATTACHMENT 1

The amount of the make whole cost is to be determined by multiplying the number of feet of waterline so oversized by the difference in cost obtained by subtracting the contract cost of a twelve inch (12") waterline in this area from a theoretical contract cost for an eight inch (8") waterline in the same work area. The theoretical contract cost is assumed to be the contract cost for eight inch (8") waterline installed elsewhere in the District during the replacement project.

City shall reimburse District within thirty (30) days of submission of each of the successive contract progress payments submitted by District's Contractor during the replacement project, showing the number of feet of the oversized line installed.

City agrees to install, at its cost, a twelve-inch (12") main from the City limits on Old Sonoma Road to the point of connection with the transmission line in Foothill Boulevard when the need for such installation is established.

12a. NON-RESPONSIBILITY OF THE DISTRICT. Neither the District nor any of its officers, agents or employees shall be liable for the control, carriage, handling, use, disposal or distribution of water, nor for any damage of any nature whatsoever, including but not limited to property damages, personal injury or death, arising out of or connected with the same.

12b. RESPONSIBILITY OF THE DISTRICT. It shall be the responsibility of the District to, during year 30, pass title for all improvements and assets of

ATTACHMENT 1

the District to the City for the sum of one dollar (\$1.00). The Board of Directors of District shall during year 30, initiate proceedings to dissolve the District pursuant to the District Reorganization Act or as it may be amended.

Additionally, District agrees to cause the size of the waterline to be installed in Thompson Avenue, in Congress Valley Road, from Thompson Avenue to Old Sonoma Road, and in Old Sonoma Road, from Congress Valley Road easterly to City's corporate boundary (to the extent that the waterline will be replaced) to be installed as 12-inch waterline. This is herein referred to as the oversized waterline.

Additionally, District will allow City to "wheel" water through said waterline at no additional compensation.

13. BACKFLOW PREVENTION: District agrees to require its water service customers to comply with City's backflow prevention device program.

14. ASSIGNMENTS. No assignment of this Agreement or of any right or obligation of any part hereunder, in whole or in part, can be made without the express written consent of all parties hereto, which consent shall not be unreasonably withheld.

15. MODIFICATIONS. Modification to this Agreement shall be specific amendment, executed by all parties hereto.

16. APPLICABLE LAW. The law of California then existing shall govern the interpretation of this Contract.

17. NOTICES. All notices required under this Contract shall be sent to:

City of Napa

P.O. Box 660

Napa, CA 94559

Congress County Water District

P.O. Box 3023

Napa, CA 94558

ATTACHMENT 1

CITY OF NAPA,
a municipal corporation

CONGRESS COUNTY WATER DISTRICT,
a County Water District

By: Bruce Wayne
MAYOR

By: Robert A. Oskala
PRESIDENT

ATTEST:

ATTEST:

Pamela Means
CITY CLERK

Dorothy L. Strick
SECRETARY

APPROVED AS TO FORM:

Joe Davis
CITY ATTORNEY

Robert H. Roach
CONGRESS COUNTY
WATER DISTRICT ATTORNEY

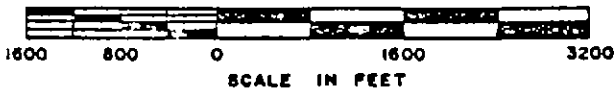
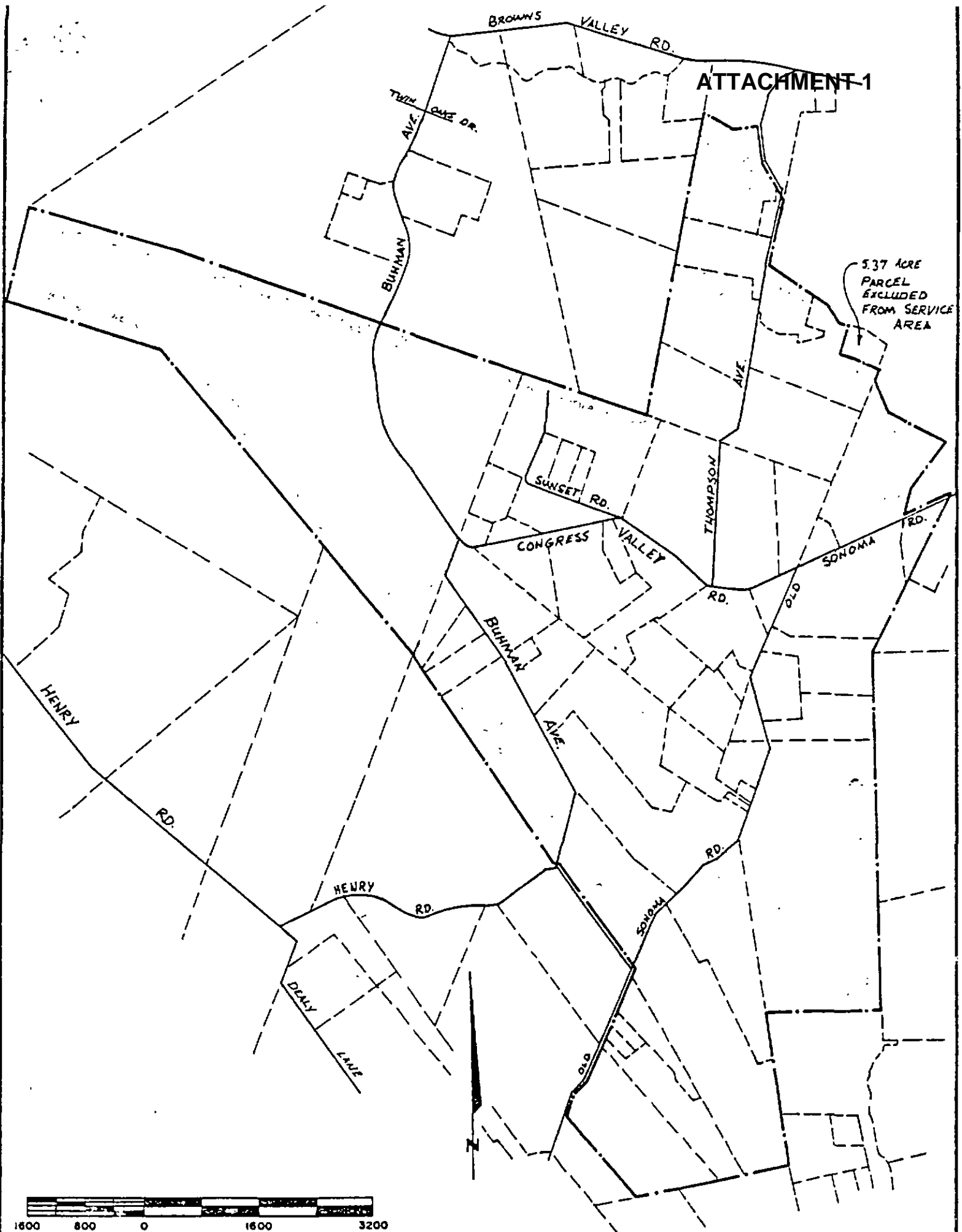
COUNTERSIGNED:

[Signature]
CITY AUDITOR

Paul D. King
DISTRICT AUDITOR

ATTACHMENT-1

5.37 ACRE
PARCEL
EXCLUDED
FROM SERVICE
AREA



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

THIS FIRST AMENDMENT to the Water Supply Contract (hereinafter "First 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 entered into as of the 22nd day of May, 2017.

RECITALS

- A. On or about July 1987, the City and District entered into the Water Supply Contract (City Agreement No. 5387, hereinafter referred to as "Agreement"), which describes the terms by which the City supplies water to the District.
- B. Pursuant to the Agreement, the District is responsible to initiate proceedings to dissolve the District during the final year of the Agreement, prior to expiration on July 1, 2017.
- C. The District has requested to extend the term of the Agreement in order to allow for the ongoing provision of water service to properties within the District.
- D. Accordingly, the parties now desire to amend the terms of the Agreement to extend the term for a period of five years, and to modify other terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained in this First Amendment, and for other good and valuable consideration, the parties agree as follows:

ARTICLE 1. TERM

Section 1 of the Agreement is hereby deleted and replaced with the following:

"This Agreement shall become effective upon its execution by both parties. The term of this Agreement shall end on July 1, 2022, unless terminated earlier in accordance with the terms of this Agreement."

ARTICLE 2. ANNEXATION TO CITY

Section 5 of the Agreement is hereby deleted in its entirety. The City and the District hereby agree that the City is not required to make any payment to the District under the terms of former Section 5 of the Agreement.

ARTICLE 3. PRICE AND PAYMENT

Section 6 of the Agreement is hereby deleted and replaced with the following:

“6. PRICE AND PAYMENT.

6a. In return for all water provided by the City to the District, and customers within the District, in accordance with the terms of this Agreement, effective January 1, 2018, the District shall pay the City at the rates and fees in effect for “Outside City” customers, including the fees to cover the City’s costs to install or modify water services. The City shall establish the amount of the “Outside City” rates and fees in accordance with all requirements of State law, including Proposition 218. Each rate and fee identified in this Section 6 (6a through 6d) shall be as defined by resolution adopted by the City Council.

6b. In lieu of the City collecting rates and fees from the District (pursuant to Section 6a), the District hereby authorizes the City to directly bill and collect from each customer within the District the rates and fees that would otherwise be owed by the District, under the terms set forth in Sections 6c through 6e.

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 Outside City water rates and fees from each customer.

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 has paid the City a water capacity fee (formerly called “connection fee”).

6e. Any 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 Outside City water fees and rates described above, to be imposed on customers and collected by the District.”

ARTICLE 4. COLLECTION AND DISBURSEMENT OF FUNDS

Section 7 of the Agreement is hereby deleted in its entirety.

ARTICLE 5. RESPONSIBILITY OF THE CITY

Section 11b of the Agreement is hereby deleted and replaced with the text set forth below. The City and the District hereby agree that the City is not required to make any payment to the District under the terms of former Section 11b of the Agreement.

“The City shall be responsible for the complete operation, maintenance and later replacement of the distribution system serving the properties within the District. The City’s responsibility ends at the meter connection to each property.”

ARTICLE 6. RESPONSIBILITY OF THE DISTRICT

Section 12b of the Agreement is hereby deleted and replaced with the following:

“No later than two (2) years prior to the termination of this agreement, the District shall initiate and facilitate discussions with the City, LAFCO, Napa County and others as appropriate to establish a transition plan for the ongoing provision of water service to the properties within the District. The plan may include some combination of the District’s initiation of dissolution proceedings, the City otherwise taking over the District’s responsibilities to provide water service, a longer term commitment by the District to continue to provide water service, or another option mutually agreeable by the District and the City.

In consideration of the services provided by the City under the terms of this Agreement, the District shall: (i) convey to the City title to all physical system assets of the District, and (ii) pay to the City any “connection fees, special assessment fees, or mitigation fees” collected by the District under the terms of former section 7 of City Agreement No. 5387, to the extent those fees were not spent by the District on physical system assets. The District shall satisfy its obligation under the preceding sentence no later than thirty (30) days prior to the earlier to occur of: (x) termination of this Agreement, or (y) dissolution of the District. The District’s physical system assets estimated to be in place at the end of this Agreement are as described on Exhibit “C,” attached hereto and incorporated herein by reference.

The District hereby authorizes the City to “wheel” water through District pipelines at no additional compensation.

The District shall be responsible for giving notice to property owners within the District of the increase in rates and fees under Proposition 218.”

ARTICLE 7. TERMINATION

Section 18 of the Agreement is hereby added as follows:

Upon thirty (30) days prior written notice to the City, the District may terminate this Agreement. If this Agreement is terminated, the District acknowledges that the City shall have no obligation to provide water service to any property within the District without a subsequent application to the City, and approval by the City Council in accordance with City Charter Section 180(B).

ARTICLE 8. FULL FORCE AND EFFECT

Except as expressly modified by this First Amendment, all terms and conditions contained in the original Agreement (City Agreement No. 5387) shall remain in full force and effect.


ATTACHMENT 1

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

CITY OF NAPA:

By: 

(Signature)

 Jacques R. LaRochelle, Public Works Director

(Type Name and Title)

Eric B. Whan, Deputy Public Works Director

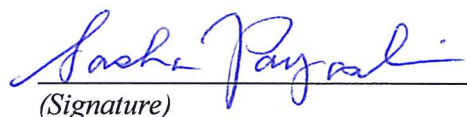
ATTEST:



(Signature)

Dorothy Roberts, City Clerk

(Type Name and Title)

COUNTERSIGNED:


(Signature)

 Desiree Brun, City Auditor

(Type Name and Title)

SASHA DAYASHIAN, Deputy City Auditor

APPROVED AS TO FORM:


(Signature)

Michael Barrett, City Attorney

(Type Name and Title)

CONGRESS VALLEY WATER DISTRICT, A COUNTY WATER DISTRICT:

By: 

(Signature)

Timothy Josten, President

(Type Name and Title)

ATTEST:


(Signature)

Kiersten Bjorkman, Board Secretary

(Type Name and Title)

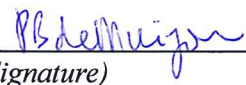
COUNTERSIGNED:


(Signature)

Janine Layland, Vice President

(Type Name and Title)

APPROVED AS TO FORM:


(Signature)

Priscillia de Muizon, Attorney

(Type Name and Title)

EXHIBIT C
to First Amendment to the Water Supply Contract Between
The City of Napa and the Congress Valley Water District
(City Agreement No. 5387)

Description of District's Physical System Assets

The Congress Valley Water District's physical system assets estimated to be in place at the end of this Agreement are described as all water pipelines, service lines, valves, fire hydrants, meters and other appurtenances within the District's boundaries that are associated with the conveyance, operation, maintenance, monitoring and/or control of the of water supply from the City of Napa.

**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 15th day of May, 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

ATTACHMENT 1

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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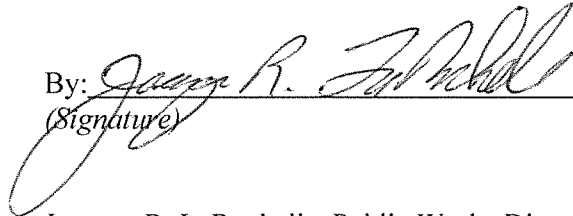
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ATTACHMENT 1

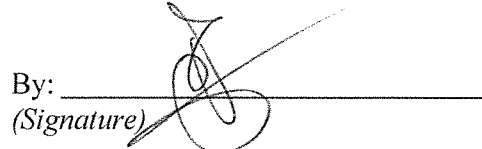
IN WITNESS WHEREOF, City and District have executed this Second Amendment as of the day and year first above written.

CITY OF NAPA:

By: 
(Signature)

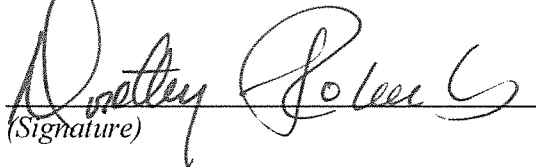
Jacques R. LaRochelle, Public Works Director
(Type Name and Title)

CONGRESS VALLEY WATER DISTRICT, A COUNTY WATER DISTRICT:

By: 
(Signature)

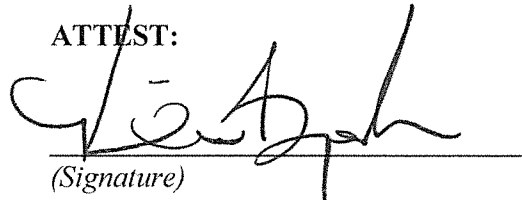
Peter Edridge, Vice President
(Type Name and Title)

ATTEST:


(Signature)

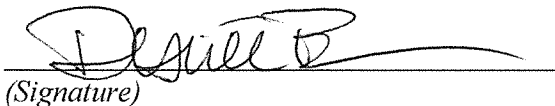
Dorothy Roberts, City Clerk
(Type Name and Title)

ATTEST:


(Signature)

Kiersten Bjorkman, Board Secretary
(Type Name and Title)

COUNTERSIGNED:


(Signature)

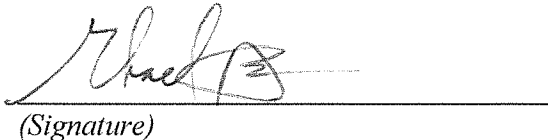
Desiree Brun, City Auditor
(Type Name and Title)

COUNTERSIGNED:


(Signature)

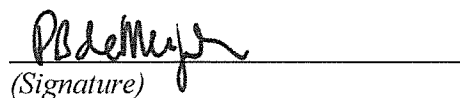
Richard Nominni, Director
(Type Name and Title)

APPROVED AS TO FORM:


(Signature)

Michael Barrett, City Attorney
(Type Name and Title)

APPROVED AS TO FORM:


(Signature)

Priscillia de Muizon, Attorney
(Type Name and Title)