



**WATER SUPPLY AGREEMENT BETWEEN
THE CITY OF NAPA AND THE CITY OF ST. HELENA**

THIS WATER SUPPLY AGREEMENT (hereinafter referred to as "Agreement") is made and entered into this 12th day of September 2006, by and between the City of Napa, a municipal corporation (hereinafter referred to as "Napa") and the City of St. Helena, a municipal corporation (hereinafter referred to as "St. Helena").

RECITALS

A. St. Helena acquired 1,000 acre-feet of State Water Project water entitlements from the Kern County Water Agency under a contract with the Napa County Flood Control and Water Conservation District, hereinafter referred to as "NCFCWCD", on September 19, 2000; and

B. St. Helena does not have entitlement to capacity in the North Bay Aqueduct system nor sufficient treatment or transmission facilities to convey said water entitlements to the point of use of its water customers for domestic purposes; and

C. St. Helena desires to put the water entitlements to beneficial use for its intended purpose; and

D. The 2050 Napa Valley Water Resources Study (2050 Study) completed in 2005, predicts St. Helena to experience a water supply deficit of nearly 400 acre-feet annually (afa) in multiple dry-years (6 years of below normal rainfall) currently and through the year 2020 and over 500 afa in multiple dry-years by 2050. The 2050 Study also predicts St. Helena to experience a water supply deficit of over 600 afa in a single dry-year currently through 2050; and

E. St. Helena would face significant capital costs for capacity in the North Bay Aqueduct system and in treatment and transmission infrastructure to make beneficial use of their State Water Project entitlements; and

F. St. Helena incurs a significant yearly cost to maintain State Water Project entitlements without receiving any benefit from use of said entitlements and has determined that it is in their best interest to sell said entitlements; and

G. St. Helena has determined that a long term agreement with Napa for water supply of up to 400 afa is the preferred solution to meet the majority of dry-year water demand deficits as specified in the 2050 Study; and

H. Napa entered into a contract with the Napa County Flood Control and Water Conservation District, hereinafter referred to as "NCFCWCD", on April 5, 1966 in order to receive State Water Project water entitlements and has entitlement to conveyance capacity in the North Bay Aqueduct system, and

I. Napa owns and operates treatment and transmission facilities sufficient to deliver potable water to St. Helena in the quantities specified in this Agreement; and

J. Napa is willing to purchase the 1,000 acre-feet of State Water Project water entitlements from St. Helena for the purpose of acquiring sufficient supply to provide a long term water supply of up to 400 afa to St. Helena to enhance the reliability of water supplies for St. Helena's water customers; and

K. Napa's purchase of the 1,000 acre-feet of State Water Project water entitlements from St. Helena may also enhance the reliability of water supplies for Napa's water customers in those years when State Water Project entitlements exceed the amount Napa has allocated to St. Helena; and

L. Napa's ability to provide the treated water will require a capital investment of \$1,700,000 and on-going yearly carrying costs to maintain the entitlements, which will be recovered through the water rates charged by Napa to St. Helena over the term of this agreement; and

M. Napa is willing to invest in the capital and carrying costs needed to supply water to St. Helena in accordance with this Agreement (up to 400 afa), and St. Helena is willing to guarantee minimum purchases of said water supply on a yearly basis (through the payment of water rates in accordance with this Agreement) to provide a guaranteed long-term revenue source for Napa to recover costs of supplying said water to St. Helena (including proportionate costs for anticipated infrastructure upgrades, such as the Jamieson Canyon Water Treatment Plant Improvements which is anticipated to rely in part on debt financing).

NOW THEREFORE, the parties mutually agree as follows:

1) Term and Option of Agreement:

- a) The Initial Term of this Agreement shall be from the date of its execution until December 31, 2035 unless terminated earlier as provided herein.
- b) This Agreement, and any successor agreement hereto, may be renewed upon written request of St. Helena submitted no earlier than three (3) years, and no later than two (2) years prior to the date this agreement expires, *provided that* St. Helena is in compliance with the terms and conditions of this Agreement. Unless St. Helena is not in compliance with the terms and

conditions of this Agreement, it is the intent of the parties to renew this Agreement, upon terms and conditions that are agreeable to both parties, and which shall take into consideration the then-existing and projected needs of both parties for water supply at the time of renewal. The term of any renewal shall coincide with any extended term of the Water Supply Agreement between the City of Napa and the NCFCWCD for North Bay Aqueduct water.

- 2) Release of Water Entitlement: St. Helena hereby releases to Napa its entitlement to 1000 acre-feet of State Water Project water pursuant to the contract between St. Helena and NCFCWCD. Said release shall be complete, permanent and irrevocable upon payment by Napa to St. Helena made in accordance with Paragraph 6a hereof.
- 3) Delivery of Water to St. Helena: On the terms and conditions set forth herein, Napa shall deliver to St. Helena annually the amount and quality of water described herein for the term of this agreement. The term "annually" or "fiscal year" as used herein shall refer to the period from July 1 of any year through June 30 of the following year.
- 4) Quantity of Water Deliveries: The quantity of water to be made available and delivered each fiscal year to St. Helena under this Agreement is dependent on the allocation of water from the State Water Project to NCFCWCD, as announced by the California Department of Water Resources in its Notice to State Water Project Contractors (hereinafter "DWR Notice"). The DWR Notice identifies the percentage of State Water Project Allocations available to SWP Contractors under "Table A." For the purpose of this Agreement, the latest DWR Notice issued on or before April 15 of each year shall be the "Effective DWR Notice" used to determine the quantity of water to be made available and delivered for each subsequent fiscal year, as follows:
 - i) Tier A Water – Napa shall deliver and St. Helena shall accept 200 Acre-feet of water annually regardless of the State Water Project allocation of water to NCFCWCD.
 - ii) Tier B Water – Napa shall deliver and St. Helena shall accept an additional 100 Acre-feet of water for each fiscal year when the Effective DWR Notice identifies a State Water Project Allocation of 30% or greater of the SWP Contractors' Table A amounts. If the State Water Project Allocation on the Effective DWR Notice is less than 30%, Tier B water will be unavailable for the subsequent fiscal year.
 - iii) Tier C Water – St. Helena may request, and Napa shall deliver, subject to St. Helena's written request for a specified quantity of "Tier C Water" received by May 1st, up to an additional 100 Acre-feet of water for each fiscal year when the Effective DWR Notice identifies a State Water Project Allocation of 50% or greater of the SWP Contractors' Table A

amounts. If the State Water Project Allocation on the Effective DWR Notice is less than 50%, Tier C water will be unavailable for the subsequent fiscal year.

5) Water Quality:

- a) The water delivered to St. Helena by Napa shall be of suitable quality for human consumption. No later than 24 hours after either party becomes aware of any significant impairment of water quality (delivered under this Agreement) that affects its suitability for human consumption, that party shall notify the other party.
- b) St. Helena shall install and maintain a double check valve cross connection control device as close as practical to the point of delivery as described in paragraph 7 hereof. The double check valve shall be approved by Napa prior to installation. St. Helena shall provide yearly testing reports to Napa to certify that the device is operational. St. Helena shall repair or replace a malfunctioning or failing device within fifteen (15) days of notification.

6) Price and Payment:

- a) Napa Napa shall pay St. Helena a lump sum of \$1,700,000 for St. Helena's release of its 1,000 acre-feet of State Water Project water entitlement. Payment is contingent upon execution of an amendment to the contract between Napa and NCFCWCD to add said 1,000 acre-feet to Napa's entitlement as reflected in "Table A" of that contract, and will be made within 60 days after execution of said amendment.
- b) St. Helena:
 - i) St. Helena shall pay Napa for the water delivered by Napa at Napa's outside-city rates at the time of delivery. Napa's outside-city rate is tied to CPI adjustments after October 1, 2007 and will be subject to other adjustments by Napa from time to time when various water rates are revised. Napa shall bill St. Helena monthly for water supplied during the previous month, and St. Helena shall pay the bill within thirty (30) days of the date of the bill. Delinquent bills shall bear interest at the rate of ten percent (10%) per annum.
 - ii) In the event that St. Helena contests the accuracy of any bill submitted to it pursuant to this paragraph, it shall give Napa notice thereof at least ten (10) days prior to the day upon which payment of the stated amounts is due. To the extent that Napa finds St. Helena's contentions regarding the bill to be correct, it shall revise the bill accordingly, and St. Helena shall make payment of the revised amounts on or before the due date. To the extent that Napa does not find St. Helena's

contentions to be correct, or where time is not available for a review of such contentions prior to the due date, St. Helena shall make payment of the stated amounts on or before the due date, but may make the contested part of such payment under protest and seek to recover the amount thereof from Napa.

- iii) St. Helena shall be obligated to pay Napa for all water delivered by Napa to the point of delivery (which amount shall be no less than the combined Tier A, Tier B, and Tier C quantities described herein) whether or not St. Helena is able to make beneficial use of the total quantity of such water.
 - iv) In the event of any default by St. Helena in the payment of any money required to be paid to Napa hereunder, Napa may, upon not less than one month's written notice to St. Helena, suspend deliveries of water under this Agreement for so long as such default continues: *Provided*, That during such period St. Helena shall remain obligated to make all payments required under this Agreement. Action taken pursuant to this paragraph shall not deprive Napa of or limit the applicability of any remedy provided by this Agreement or by law for the recovery of money due or which may become due under this Agreement.
 - v) St. Helena's failure or refusal to accept delivery of water to which it is entitled under paragraph 4 shall in no way relieve St. Helena of its obligation to make payments to Napa as provided for in this Agreement. In June of each year, Napa shall bill St. Helena for the difference between metered usage and the amount of water entitled or requested pursuant to the provision in paragraph 4.
- 7) Point of Delivery: Water will be delivered by Napa to the existing meter connecting Napa's water system with the St. Helena water system near the intersection of State Highway 29 and State Highway 128 in Rutherford, Napa County, California. St. Helena has the physical ability to control the rate, time and amount of delivery, and shall not take delivery of more water than it is entitled to receive under this agreement, take water outside the periods set forth in Paragraph 8 except during emergency conditions, nor at rates greater than that set forth in Paragraph 9.
- 8) Time of Delivery:
 - a) Water shall be made available to St. Helena at the point of delivery during the following time periods:
 - i) Tier A Water –Tier A water shall be made available during the period from October 1st through April 30th.

- ii) Tier B Water – Tier B water shall be made available during the period from October 1st through April 30th.
 - iii) Tier C Water – Tier C water shall be made available during the period from September 1 through May 31st.
 - b) Entitlement to water not used within the first allowable period of delivery may not be carried over into ensuing delivery periods.
 - c) No water shall be taken by St. Helena outside the periods set forth in this paragraph, except as separately authorized in writing by Napa (i) for temporary emergencies as provided for in paragraph 13 hereof or (ii) for replacement supplies to make up for interruptions in deliveries as provided for in paragraph 10 hereof.
- 9) Rate of Delivery: Absent *force majeure* or other exigent circumstances beyond St. Helena's control, the rate of delivery shall not exceed 700 gallons per minute at any time.
- 10) Interruption of Delivery: Napa may temporarily discontinue or reduce water deliveries as herein provided for the purposes of investigation, inspection, maintenance, repair or replacement of its water system facilities necessary for the delivery of water to St. Helena, as well as due to outages in, or reduction in capabilities of such facilities beyond Napa's control, or in the event of an emergency. Napa shall provide notice as far in advance as practicable of any such interruption, except in the case of emergency in which case no advance notice will be required, but notice will be given as promptly as feasible. Napa will use its best efforts to avoid and minimize any such temporary interruption of deliveries, and shall resume deliveries as soon as Napa determines, in its sole and exclusive discretion, that it is practicably feasible to do so. In the event of a delivery interruption, Napa may, in its sole and absolute discretion, make water available to St. Helena outside the delivery period set forth in Paragraph 8 above to make up for the loss of water deliveries during the interruption, but is not required to do so. Interruption in deliveries shall not affect St. Helena's payment obligation set forth herein.
- 11) Measurement of Water Delivered: The water delivered under this Agreement shall be measured by a meter at the point of delivery. The meter shall be owned, operated, maintained, replaced and read by Napa, subject to St. Helena's right to annual testing and calibration of the flow meter to verify accuracy. Each party shall have the right to test the meter at its own expense.
- 12) Operations: St. Helena hereto recognizes and agrees that Napa shall have the right, in its sole and exclusive discretion, to operate the Napa water system including but not limited to treatment plants, transmission facilities,

storage tanks, and pump stations. St. Helena acknowledges that there is no guarantee of consistent pressure at the meter and that fluctuations will occur based on Napa's operation of various treatment plants. St. Helena bears full responsibility for providing adequate conveyance facilities to accept and make beneficial use of the water once it passes through the meter.

- 13) Emergency Water Supply:** Upon request from St. Helena, Napa will provide water supplies to St. Helena during temporary emergency situations, not including drought, in the time period not covered by Tier A, B and C deliveries herein so long as delivery of emergency water supply does not adversely affect other customers on the Napa system. Napa shall have the right, in its sole and exclusive discretion, to determine what constitutes a temporary emergency situation and to determine the adverse effect of emergency deliveries on Napa customers, and to determine the reasonable period such emergency deliveries may continue. Water delivered for emergency purposes outside the delivery period in this Agreement shall be in addition to quantities specified in this Agreement and shall be paid for in the same manner and at the same rate as other water deliveries hereunder.
- 14) Water Conservation Requirements:** In the event of a water supply shortage, as determined by Napa in its sole discretion, St. Helena shall apply water conservation requirements and restrictions to its customers that are no less restrictive than those placed on Napa customers. Napa shall not determine that there is a water supply shortage unless it is imposing water conservation requirements and restrictions on its customers.
- 15) Participation in Dwyer Road Pump Station:** St. Helena agrees to participate in discussions related to the construction of a pump station at Dwyer Road, at such time that either Napa or Calistoga requests, and to consider a funding contribution based on the project's benefit to St. Helena.
- 16) Agreement Subject to Amendment with NCFCWCD:** St. Helena and Napa acknowledge and agree that separate amendments to the water supply contracts with NCFCWCD for St. Helena and for Napa are necessary to transfer 1000 acre-feet per year of State Water Project water entitlements from St. Helena to Napa. Since this transfer of water entitlements is an essential consideration for this Agreement, failure to execute amendments to transfer said water entitlements by no later than one (1) year after the date of execution of this Agreement shall render all terms of this Agreement null and void.
- 17) Liability and Indemnity:**
- a) Neither Napa nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal or distribution of water after it has passed the delivery point hereunder, nor for any damage or

claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death arising out of or connected with the same.

- b) St. Helena shall indemnify, hold harmless, release and defend Napa, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature that may be asserted by any person or entity including, but not limited to, St. Helena or any other third person arising out of this Agreement excepting only liabilities due to the sole negligence or willful misconduct of Napa. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for St. Helena under Worker's Compensation, disability or other employee benefit acts or the terms, applicability of limitations or any insurance held or provided by St. Helena and shall continue to bind the parties after termination/completion of this Agreement.

18) No Damages Allowable Against the City of Napa: Napa has entered into this Agreement solely as an act of inter-jurisdictional co-operation. In the event it is claimed that Napa has in any manner failed to satisfy any obligation under this Agreement, or otherwise has breached this Agreement, the sole and exclusive remedy against Napa shall be injunctive relief, specific performance, declaratory relief, writ of mandate or similar remedy. Under no circumstances shall Napa be liable for any damages of any kind arising from any asserted failure to satisfy an obligation under, or breach of, this Agreement. It is understood that this provision constitutes material consideration under which Napa agreed to enter into this Agreement, and that Napa would not have entered into this Agreement had it known it would have been subject to damages of any kind arising from its failure to satisfy any provision of, or breach of, this Agreement.

19) Responsibility of St. Helena: St. Helena shall be solely responsible for the control, carriage, handling, use, disposal and distribution of water supplied to St. Helena hereunder after it has passed the delivery point.

20) No Third Party Beneficiary Intended: Nothing in this Agreement shall be construed or deemed as intending to create or confer any third party beneficiaries or rights in any third parties.

21) Termination:

In addition to any other rights of termination and suspension set forth under this Agreement or at law, Napa shall have the right, at its sole option, to terminate this Agreement upon 30 days' written notice for the following causes:

a) St. Helena takes water at a rate greater than that specified or at times not authorized in this agreement.

b) St. Helena defaults in payment of monthly bill for greater than 90 days.

22) Dispute Resolution: Should any dispute arise concerning any provisions of this agreement, or the parties' rights and obligations hereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to commencing any legal action, the complaining party shall provide to the other party 30 days' written notice of the intent to take such action; Provided, That such notice shall not be required where a delay in commencing an action would prejudice the interests of the party that intends to file suit. During the 30 day notice period, the parties shall meet and confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy that either party may have.

23) Remedies: The sole and exclusive remedy against Napa for claims arising under this agreement shall be injunctive relief, specific performance, declaratory relief, writ of mandate or similar remedy. Under no circumstances shall Napa be liable for any damages of any kind arising from any asserted failure to satisfy an obligation under, or breach of, this Agreement. The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

24) Attorneys' Fees. In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

25) Notices: All notices that are required either expressly or by implication to be given by one party to the other under this Agreement shall be signed for Napa by its Public Works Director, and for St. Helena by its City Manager, or, for either party, by such officer as it may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been given if delivered personally or if enclosed in a properly addressed envelope and deposited in a United State Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown on the signature page of this Agreement.

a) St. Helena shall address notices to:

City of Napa
Director of Public Works
Post Office Box 660
Napa, California 94559-0660

b) Napa shall address notices to:

City of St. Helena
City Manager
1480 Main St
Saint Helena, California 94574

- 26) Books and Records:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records, or reports of the other party pertaining to this Agreement or matters related hereto. Each of the parties hereto shall maintain and make available for such inspection accurate records of all of its costs, disbursements and receipts with respect to its activities under this Agreement.
- 27) Successors and Assigns:** This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.
- 28) Assignment:** No assignment or transfer of this Agreement or any part hereof, rights hereunder, or interest herein by St. Helena shall be valid unless and until it is approved in writing by Napa and made subject to such reasonable terms and conditions as Napa may impose.
- 29) Privileges and Immunities:** The parties hereby agree that the activities of each parties' officers, agents, and employees shall be subject to the privileges, immunities, and protections of Government Code section 6513.
- 30) Waiver:** Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other default or matter.
- 31) Modifications:** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 32) Agreement Interpretation:** Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code section 1654 in order to interpret any uncertainty in the meaning of the Agreement.
- 33) Entire Agreement:** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the subject matter described herein. This Agreement

supersedes all prior negotiations, agreements, and understandings regarding the matter, whether written or oral, including but not limited to Agreement 7148 for emergency water deliveries. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

34) Signatures: The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of St. Helena and Napa.

IN WITNESS WHEREOF, St. Helena and Napa do hereby agree to the full performance of the terms set forth herein.

By St. Helena this 12 day of September, 2006

and By Napa this 25 day of October, 2006

CITY OF NAPA, a municipal corporation

CITY OF ST. HELENA, a municipal corporation

BY: Jill Techel
Jill Techel, Mayor

BY: Delford Britton
Delford Britton, Mayor

ATTEST: Patt Osborne
for Sara Cox, City Clerk

ATTEST: Delia Guijosa
Delia Guijosa, City Clerk

APPROVED AS TO FORM:

Michael Barrett
Michael Barrett, City Attorney

APPROVED AS TO FORM:

Amy L. Lyman
Amy L. Lyman, City Attorney

COUNTERSIGNED:

Scott Nielsen
Scott Nielsen, City Auditor

COUNTERSIGNED:

Karen Scalabrini
Karen Scalabrini, Finance Director

**AMENDMENT NO. 1 TO
WATER SUPPLY AGREEMENT BETWEEN
THE CITY OF NAPA AND THE CITY OF ST. HELENA
(City of Napa Agreement No. 9381)
(City of St. Helena Agreement No. 2006-131)**

THIS AMENDMENT NO. 1 TO WATER SUPPLY AGREEMENT BETWEEN THE CITY OF NAPA AND THE CITY OF ST. HELENA (City of Napa Agreement No. 9381 and City of St. Helena Agreement No. 2006-131), hereinafter referred to as "Water Supply Agreement", is made and entered into this 17th day of April, 2009, by and between the City of Napa, a municipal corporation (hereinafter referred to as "Napa") and the City of St. Helena, a municipal corporation (hereinafter referred to as "St. Helena").

RECITALS

- A. Napa and St. Helena entered into Water Supply Agreement on September 12, 2006 ("2006 Agreement") to provide St. Helena with a minimum delivery of 200 acre-feet annually (afa) of water from Napa; and
- B. The 2050 Napa Valley Water Resources Study (2050 Study) completed in 2005, predicts St. Helena to experience a water supply deficit of nearly 400 acre-feet annually (afa) in multiple dry-years (6 years of below normal rainfall) currently and through the year 2020 and over 500 afa in multiple dry-years by 2050. The 2050 Study also predicts St. Helena to experience a water supply deficit of over 600 afa in a single dry-year currently through 2050; and
- C. St. Helena has determined that an additional minimum delivery of 200 afa, for a total minimum delivery of 400 afa, of water from Napa is the preferred solution to meet the majority of dry-year water demand deficits as specified in the 2050 Study; and
- D. Napa purchased 1,100 AF of State Water Project water entitlements from the Town of Yountville, and Napa's purchase of an additional 1,000 AF of State Water Project water entitlements from St. Helena referenced in Recitals J and K, and paragraphs 2, 6a, and 16 of the 2006 Agreement has been completed; and Napa is willing to use this additional water supply to support an additional minimum delivery of 200 afa to St. Helena; and
- E. Napa entered into an agreement with the Napa County Flood Control and Water Conservation District, hereinafter referred to as "NCFCWCD", on April 5, 1966 in order to receive State Water Project water entitlements and has entitlement to conveyance capacity in the North Bay Aqueduct system; and

F. Napa owns and operates treatment and transmission facilities sufficient to deliver potable water to St. Helena in the quantities specified in the Water Supply Agreement and this Amendment; and

NOW THEREFORE, the parties mutually agree that the Water Supply Agreement (City of Napa Agreement No. 9381 and City of St. Helena Agreement No. 2006-131) shall be amended as follows:

1) Paragraph 4 is replaced in its entirety by the following:

4) Quantity of Water Deliveries: The quantity of water to be made available and delivered each fiscal year to St. Helena under this Agreement is in part dependent on the allocation of water from the State Water Project to NCFCWCD, as announced by the California Department of Water Resources in its Notice to State Water Project Contractors (hereinafter "DWR Notice"). The DWR Notice identifies the percentage of State Water Project Allocations available to SWP Contractors under "Table A." For the purpose of this Agreement, the latest DWR Notice issued on or before April 15 of each year shall be the "Effective DWR Notice" used to determine the quantity of water to be made available and delivered for each subsequent fiscal year, as follows:

- i) Tier A Water – Napa shall deliver and St. Helena shall accept 400 Acre-feet of water annually regardless of the State Water Project allocation of water to NCFCWCD.
- ii) Tier B Water – Napa shall deliver and St. Helena shall accept an additional 200 Acre-feet of water for each fiscal year when the Effective DWR Notice identifies a State Water Project Allocation of 30% or greater of the SWP Contractors' Table A amounts. If the State Water Project Allocation on the Effective DWR Notice is less than 30%, Tier B water will be unavailable for the subsequent fiscal year.
- iii) Tier C Water – St. Helena may request, and Napa shall deliver, subject to St. Helena's written request for a specified quantity of "Tier C Water" received by May 1st, up to an additional 200 Acre-feet of water for each fiscal year when the Effective DWR Notice identifies a State Water Project Allocation of 50% or greater of the SWP Contractors' Table A amounts. If the State Water Project Allocation on the Effective DWR Notice is less than 50%, Tier C water will be unavailable for the subsequent fiscal year.

2) Paragraph 8 is replaced in its entirety by the following:

8) Time of Delivery:

- a) Water shall be made available to St. Helena at the point of delivery during the following time periods:
 - i) Tier A Water – Tier A water shall be made available during the period from September 1st through May 31st.
 - ii) Tier B Water – Tier B water shall be made available during the period from July 1st through June 30th.
 - iii) Tier C Water – Tier C water shall be made available during the period from July 1st through June 30th.
- b) Entitlement to water not used within the first allowable period of delivery may not be carried over into ensuing delivery periods.
- c) No water shall be taken by St. Helena except in compliance with this paragraph, except as separately authorized in writing by Napa (i) for temporary emergencies as provided for in paragraph 13 hereof or (ii) for replacement supplies to make up for interruptions in deliveries as provided for in paragraph 10 hereof.

3) Paragraph 10 is replaced in its entirety by the following:

10) Interruption of Delivery: Napa may temporarily discontinue or reduce water deliveries as herein provided for the purposes of investigation, inspection, maintenance, repair or replacement of its water system facilities necessary for the delivery of water to St. Helena, as well as due to outages in, or reduction in capabilities of such facilities beyond Napa's control, or in the event of an emergency. Napa shall provide notice as far in advance as practicable of any such interruption, except in the case of emergency in which case no advance notice will be required, but notice will be given as promptly as feasible. Napa will use its best efforts to avoid and minimize any such temporary interruption of deliveries, and shall resume deliveries as soon as Napa determines, in its sole and exclusive discretion, that it is practicably feasible to do so. In the event of a delivery interruption, Napa shall make water available to St. Helena to make up for the loss of water deliveries during the interruption, on a reasonable schedule coordinated with St. Helena. Time of delivery shall be July 1st through June 30th. Interruption in deliveries shall not affect St. Helena's payment obligation set forth herein.

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

IN WITNESS WHEREOF, St. Helena and Napa do hereby agree to the full performance of the terms set forth herein.

By St. Helena this 27 day of May, 2009

and By Napa this 17 day of April, 2009

CITY OF NAPA, a municipal corporation

CITY OF ST. HELENA, a municipal corporation

BY: Jill Techel
Jill Techel, Mayor

BY: [Signature]
Mayor

ATTEST: [Signature] 4.30.9
City Clerk

ATTEST: [Signature]
City Clerk

APPROVED AS TO FORM:

[Signature]
Michael Barrett, City Attorney

APPROVED AS TO FORM:

[Signature]
City Attorney

COUNTERSIGNED:

[Signature]
Scott Nielsen, City Auditor

COUNTERSIGNED:

[Signature]
Finance Director



AMENDMENT NO. 2 TO
WATER SUPPLY AGREEMENT BETWEEN
CITY OF NAPA AND CITY OF ST HELENA
(City of Napa Agreement No. 9381
City of St Helena Agreement No. 2006-131)

THIS AMENDMENT NO. 2 TO WATER SUPPLY AGREEMENT BETWEEN CITY OF NAPA AND CITY OF ST HELENA (City of Napa Agreement No. 9381; and City of St Helena Agreement No. 2006-131), "Amendment No. 2", is made and entered into this 12th day of January 2011, ~~2010~~, by and between the City of Napa, a municipal corporation (hereinafter referred to as "Napa") and the City of St. Helena, a municipal corporation (hereinafter referred to as "St. Helena").

RECITALS

- A. Napa and St. Helena entered into the Water Supply Agreement (City of Napa Agreement No. 9381; and City of St. Helena Agreement No. 2006-131) on September 12, 2006 ("2006 Agreement") to provide St. Helena with a minimum delivery of 200 acre-feet annually (afa) of water from Napa; and
- B. Napa and St. Helena entered into Amendment No. 1 to 2006 Agreement on April 17, 2009 ("Amendment No. 1") to increase the minimum delivery of water (from Napa to St. Helena) from 200 acre-feet annually (afa) to 400 afa; and
- C. The State Water Project Allocation as of April 15, 2009 was 30%, therefore according to Amendment No. 1, Paragraph 4 Napa shall deliver and St. Helena shall accept Tier B water, (600 af) in fiscal year (FY) 2010.
- D. The 2006 Agreement and Amendment No. 1 states that St. Helena shall be obligated to pay Napa for all water delivered by Napa to the point of delivery (which amount shall be no less than the combined Tier A, Tier B, and Tier C quantities described therein) whether or not St. Helena is able to make beneficial use of the total quantity of such water.
- E. The 2006 Agreement and Amendment No. 1 states St. Helena's failure or refusal to accept delivery of water to which it is entitled under said Agreement shall in no way relieve St. Helena of its obligation to make payments to Napa as provided for in said Agreement. In June of each year, Napa shall bill St. Helena for the difference between metered usage and the amount of water entitled or requested pursuant to the provision in paragraph 4 of said Agreement.
- F. St. Helena performed major construction upgrades on its pipeline infrastructure during the 2010 water year, did not make temporary accommodations to receive the Amendment No. 1 water and did not take beneficial use of 511 af of the 600 af water made available by Napa.
- G. St. Helena requested Napa make available the 511 af of water that was undelivered during FY 10.

- H. Napa water operations have sufficient capacity in order to make available to St. Helena up to 250 af of undelivered water per fiscal year (under the limited terms of this Amendment No. 2), due to the status of local surface water reservoirs and available SWP supplies.

NOW THEREFORE, the parties mutually agree as follows:

The 2006 Agreement, as previously amended by Amendment No. 1, is hereby amended by this Amendment No. 2 as set forth herein. All terms and conditions of the 2006 Agreement (as previously amended by Amendment No. 1) which are not specifically modified by this Amendment No. 2 shall remain in full force and effect.

1. Napa hereby characterizes the unused 511 af of water from FY 2010 as 'Undelivered Water'. Napa will make the 'Undelivered Water' available to St. Helena under the terms of this Amendment No. 2 over the course of three years: Fiscal Years 2011, 2012, and 2013. No more than 250 af of 'Undelivered Water' shall be made available in any one fiscal year. No more than 511 af of 'Undelivered Water' shall be made available in all three years combined.
2. St Helena shall make a written request to Napa identifying the amount of 'Undelivered Water' requested for each fiscal year pursuant to the following schedule: by January 1, 2011 for FY 2011 water, by September 20, 2011 for FY 2012 water, and by September 20, 2012 for 2013 water. Compliance with these timing requirements is essential so that Napa can incorporate the request into its annual water supply planning.
3. St. Helena will pay Napa the water rate in effect at the time of receipt of 'Undelivered Water'.
4. The 'Undelivered Water' is in addition to the quantity to be delivered in accordance with paragraph 4 of Amendment No. 1.
5. At the end of FY 2013, to the extent that St. Helena has not submitted a timely request to Napa or failed to take delivery of all or any portion of the 'Undelivered Water', Napa will bill St. Helena for the remaining balance of the 511 af of 'Undelivered Water', and St. Helena will pay Napa the water rate in effect on June 30, 2013.

IN WITNESS WHEREOF, St. Helena and Napa do hereby agree to the full performance of the terms set forth herein.

By St. Helena this 23rd day of November, 2010
and by Napa this 12th day of January, 2011

CITY OF NAPA, a municipal corporation

BY: Jacques R. LaRochelle
Jacques R. LaRochelle, Public Works Director

ATTEST: Dorothy Roberts
Dorothy Roberts, City Clerk

APPROVED AS TO FORM: [Signature]
Michael Barrett, City Attorney

COUNTERSIGNED: Ann Mehta
Ann Mehta, City Auditor

CITY OF ST. HELENA, a municipal corporation

BY: Del Britton
Del Britton, Mayor

ATTEST: Delia Guijosa
Delia Guijosa, City Clerk

APPROVED AS TO FORM: [Signature]
John Truxaw, City Attorney

COUNTERSIGNED: Karen Scalabrini
Karen Scalabrini, Finance Director

**AMENDMENT NO. 3 TO
WATER SUPPLY AGREEMENT BETWEEN
THE CITY OF NAPA AND THE CITY OF ST. HELENA
(City of Napa Agreement No. 9381)
(City of St. Helena Agreement No. 2006-131)**

THIS AMENDMENT NO. 3 TO WATER SUPPLY AGREEMENT BETWEEN THE CITY OF NAPA AND THE CITY OF ST. HELENA (City of Napa Agreement No. 9381 and City of St. Helena Agreement No. 2006-131), hereinafter referred to as "Amendment #3", is made and entered into this 15th day of December, 2011, by and between the City of Napa, a municipal corporation (hereinafter referred to as "Napa") and the City of St. Helena, a municipal corporation (hereinafter referred to as "St. Helena").

RECITALS

A. Napa and St. Helena entered into Water Supply Agreement on September 12, 2006 ("the 2006 Agreement") to provide St. Helena with a minimum delivery of 200 acre-feet annually (afa) of water from Napa; and

B. Napa and St. Helena entered into Amendment No. 1 to the 2006 Agreement on May 27, 2009 to provide St. Helena with a minimum delivery of 400 acre-feet annually of water from Napa("the 2009 Agreement"); and

C. Napa and St. Helena entered into Amendment No. 2 to the 2006 Agreement on January 12, 2011 to allow St. Helena to take beneficial use of unused water from Fiscal Year 2010/2011 ("the 2011 Agreement"); and

D. St. Helena has determined that an additional minimum delivery of 200 acre-feet annually, for a total minimum delivery of 600 acre-feet annually, of water from Napa is the preferred solution to meet the majority of dry-year water demands; and

E. Napa purchased 1,100 AF of State Water Project water entitlements from the Town of Yountville, and Napa's purchase of an additional 1,000 AF of State Water Project water entitlements from St. Helena referenced in Recitals J and K, and paragraphs 2, 6a, and 16 of the 2006 Agreement has been completed; and Napa is willing to use this additional water supply to support an additional minimum delivery of 200 afa to St. Helena; and

F. Napa entered into Agreement No. 1482 with the Napa County Flood Control and Water Conservation District, hereinafter referred to as "NCFCWCD", on April 5, 1966 in order to receive State Water Project water entitlements and has entitlement to conveyance capacity in the North Bay Aqueduct system; and

G. Napa entered into Amendment No. 13 to Agreement No. 1482 with the Napa County Flood Control and Water Conservation District on October 6, 2009 in order to amend Napa's entitlement schedule for the State Water Project water to be the maximum Table A entitlement of 21,900 acre-feet in 2010 and in each subsequent year thereafter rather than incrementally increasing entitlements annually to achieve the maximum Table A entitlement of 21,900 acre-feet in 2021; and

H. On May 6, 2011, Napa completed improvements to the Edward I. Barwick Jamieson Canyon Water Treatment Plant in order to maximize the use of State Water Project entitlements and thereby maintain additional storage in Lake Hennessey for dry-year use; and

I. Napa's water supply from the State Water Project, Lake Hennessey, and Milliken Reservoir is sufficient to deliver potable water to St. Helena in the quantities specified in the Water Supply Agreement, previous Amendments and this Amendment; and

J. Napa owns and operates treatment and transmission facilities sufficient to deliver potable water to St. Helena in the quantities specified in the Water Supply Agreement, the 2009 and 2011 Amendments 1 and 2 respectively and this Amendment #3; and

NOW THEREFORE, the parties mutually agree that the 2006 Agreement as amended by Amendments 1, 2, and 3, shall be amended as follows:

1) Paragraph 4 is replaced in its entirety by the following:

4) Quantity of Water Deliveries: The quantity of water to be made available and delivered each fiscal year to St. Helena under this Agreement is as follows:

i) Base Supply – Napa shall deliver and St. Helena shall accept 600 acre-feet of water annually.

ii) Optional Supply – St. Helena may request an additional 200 acre-feet of water annually. If, in Napa's sole discretion, water supply is available to fulfill the request, Napa will deliver the requested quantity of water to St. Helena. If supplies are not available and if Napa attempts to acquire supplemental dry-year water on a single year basis from an outside source; Napa will add St. Helena's requested quantity to the total quantity requested. Napa makes no guarantees that dry-year water will be available or purchased in any given year. Napa reserves the exclusive right to determine the terms of purchase and to avoid such

purchase if the terms are unacceptable or if Napa's need for the water is alleviated. If Napa executes a supplemental dry-year water purchase on a single year basis, St. Helena agrees to purchase the requested amount or a proportional share thereof at the rate described in Paragraph 6) b) iii). See Exhibit A for example.

2) Paragraph 6, Section b) is replaced in its entirety by the following:

6) Price and Payment:

b) St. Helena:

- i) Base Supply: St. Helena shall pay Napa a rate of \$5.78 per 1,000 gallons of water. On January 1, 2012 the rate shall increase 3%. On July 1, 2012 and each July 1 thereafter, the rate shall increase 3%. See Exhibit A for example calculations.
- ii) Base Supply: On July 1, 2022 and July 1, 2032 the rate shall be adjusted to equal 8% below the rate associated with the then current Outside City single family residential customers. If the adjustment is greater than +/-3%, then +/-3% shall take effect on July 1, 2022 and the remaining amount shall be equally distributed on July 1, 2023 and July 1, 2024 in addition to the +3% annual adjustment applicable in those years pursuant to paragraph 6)b)i). See Exhibit A for example calculations.
- iii) Optional Supply: If Napa supplies water from existing sources, St. Helena shall pay the rate in effect pursuant to paragraph 6)b)i) and 6)b)ii). If Napa purchases supplies from an outside source, St. Helena shall pay Napa the actual price paid by Napa to fulfill St. Helena's requested quantity from an outside source plus a 10% administration fee. In addition, St. Helena shall pay Napa the then current treat and wheel rate in effect to American Canyon (current rate is \$2.69/1,000 gallons). See Exhibit A for example calculations.
- iv) Napa shall bill St. Helena monthly for water supplied during the previous month, and St. Helena shall pay

the bill within thirty (30) days of the date of the bill. Delinquent bills shall bear interest at the rate of ten percent (10%) per annum.

- v) In the event that St. Helena contests the accuracy of any bill submitted to it pursuant to this paragraph, it shall give Napa notice thereof at least ten (10) days prior to the day upon which payment of the stated amounts is due. To the extent that Napa finds St. Helena's contentions regarding the bill to be correct, it shall revise the bill accordingly, and St. Helena shall make payment of the revised amounts on or before the due date. To the extent that Napa does not find St. Helena's contentions to be correct or where time is not available for a review of such contentions prior to the due date, St. Helena shall make payment of the stated amounts on or before the due date, but may make the contested part of such payment under protest and seek to recover the amount thereof from Napa.
- vi) St. Helena shall be obligated to pay Napa for all water delivered by Napa to the point of delivery, which amount shall be no less than 600 acre-feet annually, whether or not St. Helena is able to make beneficial use of the total quantity of such water.
- vii) In the event of any default by St. Helena in the payment of any money required to be paid to Napa hereunder, Napa may, upon not less than one months' written notice to St. Helena, suspend deliveries of water under this Agreement for so long as such default continues: *Provided*, That during such period St. Helena shall remain obligated to make all payments required under this Agreement. Action taken pursuant to this paragraph shall not deprive Napa of or limit the applicability of any remedy provided by this Agreement or by law for the recovery of money due or which may become due under this Agreement.
- viii) St. Helena's failure or refusal to accept delivery of water to which it is entitled under paragraph 4 shall in no way relieve St. Helena of its obligation to make payments to Napa as provided for in this Agreement. In June of each year, Napa shall bill

St. Helena for the difference between metered usage and the amount of water entitled or requested pursuant to the provision in paragraph 4.

3) Paragraph 8 is replaced in its entirety by the following:

- 8) Time of Delivery: Water shall be made available to St. Helena at the point of delivery at all times except as provided for in paragraph 10.

4) Paragraph 10 is replaced in its entirety by the following:

- 10) Interruption of Delivery: Napa may temporarily discontinue or reduce water deliveries as herein provided for the purposes of investigation, inspection, maintenance, repair or replacement of its water system facilities necessary for the delivery of water to St. Helena, as well as due to outages in, or reduction in capabilities of such facilities beyond Napa's control, or in the event of an emergency. Napa shall provide notice as far in advance as practicable of any such interruption, except in the case of emergency in which case no advance notice will be required, but notice will be given as promptly as feasible. Napa will use its best efforts to avoid and minimize any such temporary interruption of deliveries, and shall resume deliveries as soon as Napa determines, in its sole and exclusive discretion, that it is practicably feasible to do so. In the event of a delivery interruption, Napa shall make water available to St. Helena to make up for the loss of water deliveries during the interruption, on a reasonable schedule coordinated with St. Helena. Interruption in deliveries shall not affect St. Helena's payment obligation set forth herein unless the interruptions exceed 20 calendar days annually. If the days of interruptions exceed 20 days, St Helena may request the 600 acre feet annual delivery be reduced by 2 acre feet per calendar day of interruption in excess of 20 days.

5) Except as provided in (1), (2), (3) and (4) above, all of the terms and provisions of the 2011 Agreement shall remain, after the effective date set forth above, in full force and effect as previously approved.

IN WITNESS WHEREOF, St. Helena and Napa do hereby agree to the full performance of the terms set forth herein.

By St. Helena this 8th day of November, 2011

and By Napa this 15th day of December, 2011

CITY OF NAPA, a municipal corporation

BY: Jill Techel
Jill Techel, Mayor

CITY OF ST. HELENA, a municipal corporation

BY: Alfred Britton
Mayor

ATTEST: Dorothy Roberts
Dorothy Roberts, City Clerk

ATTEST: Dee Huigosa
City Clerk

APPROVED AS TO FORM:

Michael Barrett
Michael Barrett, City Attorney

APPROVED AS TO FORM:

City Attorney
City Attorney

COUNTERSIGNED:

Ann Mehta
Ann Mehta, City Auditor

COUNTERSIGNED:

Finance Director
Finance Director

EXHIBIT A

**AMENDMENT NO. 3 TO
WATER SUPPLY AGREEMENT BETWEEN
THE CITY OF NAPA AND THE CITY OF ST. HELENA
(City of Napa Agreement No. 9381)
(City of St. Helena Agreement No. 2006-131)**

Price and Payment for Base Supply - Section 6)b)i) and ii)

Date	Rate Increase	Rate/1,000 gallons
Current		\$5.78
January 1, 2012	3.00%	\$5.95
July 1, 2012	3.00%	\$6.13
July 1, 2013	3.00%	\$6.32
July 1, 2014	3.00%	\$6.51
July 1, 2015	3.00%	\$6.70
July 1, 2016	3.00%	\$6.90
July 1, 2017	3.00%	\$7.11
July 1, 2018	3.00%	\$7.32
July 1, 2019	3.00%	\$7.54
July 1, 2020	3.00%	\$7.77
July 1, 2021	3.00%	\$8.00
July 1, 2022	See Examples Below	

	Example 1	Example 2	Example 3
Outside Rate on July 1, 2022	\$8.10	\$8.80	\$9.40
Effective Rate to St. Helena (8% below Outside Rate)	\$7.50	\$8.15	\$8.70
Rate to St. Helena in effect on June 30, 2022	\$8.00	\$8.00	\$8.00
Total Rate Adjustment required to equal Outside Rate	-6.67%	1.82%	8.09%
Rate Adjustment on July 1, 2022	-3.00%	1.82%	3.00%
Remaining Rate Adjustment	-3.67%	0.00%	5.09%
50% of Remaining Rate Adjustment	-1.83%	0.00%	2.54%
Difference between +3% annual adjustment and 50% of Remaining Rate Adjustment	1.17%	3.00%	5.54%

	Example 1		Example 2		Example 3	
Date	Rate Increase	Rate/1,000 gallons	Rate Increase	Rate/1,000 gallons	Rate Increase	Rate/1,000 gallons
July 1, 2022	-3.00%	\$7.76	1.82%	\$8.15	3.00%	\$8.24
July 1, 2023	1.17%	\$7.85	3.00%	\$8.39	5.54%	\$8.70
July 1, 2024	1.17%	\$7.94	3.00%	\$8.64	5.54%	\$9.18
July 1, 2025	3.00%	\$8.18	3.00%	\$8.90	3.00%	\$9.45
July 1, 2026	3.00%	\$8.43	3.00%	\$9.17	3.00%	\$9.74
July 1, 2027	3.00%	\$8.68	3.00%	\$9.44	3.00%	\$10.03
July 1, 2028	3.00%	\$8.94	3.00%	\$9.73	3.00%	\$10.33
July 1, 2029	3.00%	\$9.21	3.00%	\$10.02	3.00%	\$10.64
July 1, 2030	3.00%	\$9.48	3.00%	\$10.32	3.00%	\$10.96
July 1, 2031	3.00%	\$9.77	3.00%	\$10.63	3.00%	\$11.29
July 1, 2032	Adjust to Outside Rates Similar to 2022					

Optional Supply - Section 4)ii) and 6)b)iii)

Example: St. Helena requests 200 acre-feet (AF) of optional supply. Napa is unable to deliver from current supplies. Napa is attempting to acquire 1,000 AF of supplemental dry-year for their own use and will add St. Helena's requested 200 AF for a total of 1,200 AF. Napa is able to secure a total of 800 AF of supplemental dry-year water for \$400/AF.

Since Napa was not able to acquire the full 1,200 AF requested, St. Helena will receive a proportional share of the actual water acquired. St. Helena's request was 200 AF of the 1,200 AF requested or 16.7%. Therefore, St. Helena will receive 16.7% of the 800 AF of water actually received which equals 134 AF. The Treat and Wheel rate in effect at the time Napa delivers the optional supply is \$2.69/1,000 gallons (\$877/AF).

St. Helena will pay Napa for the Optional Supply as follows:

Water Supply: \$400/AF x 134 AF = \$53,600
 Administrative Fee: 10% of \$400/AF x 134 AF = \$5,360
 Delivery at Treat and Wheel Rate: 134 AF x \$877/AF = \$117,518

TOTAL Payment for Optional Supply: \$176,478