



Staff Reports

File #: 38-2022, **Version:** 1

To: Honorable Mayor and Members of City Council

From: Phil Brun, Utilities Director

Prepared By: Joy Eldredge, Deputy Utilities Director

TITLE:

Amendment No. 18 of Napa County Flood Control and Water Conservation District Agreement No. 1573 (City Agreement No. 1482)

RECOMMENDED ACTION:

Authorize the Utilities Director to execute Amendment No. 18 of Napa County Flood Control and Water Conservation District Agreement No. 1573 (City Agreement No. 1482) authorizing the District to pursue determination of the District's rights under the Area of Origin Settlement Agreement and Article 45 of the State Water Supply Agreement and determining the actions authorized by this action are exempt from CEQA.

DISCUSSION:

The City of Napa is a sub-contractor to Napa County Flood Control and Water Conservation District (District) for the contract with the State of California for the water received via the State Water Project (SWP) and the North Bay Aqueduct. The terms of the agreement with the District are specified in City Agreement No. 1482 (District Agreement No. 1573), entered into on April 5, 1966, and subsequent amendments Nos. 1 - 17. The District is a member of the State Water Contractors Association, which is comprised of the 29 contractors for State Water Project water.

In November 2007, the District filed a claim with the Department of Water Resources related to the amount of State Water Project water delivered each year pursuant to Article 18 of the State Water Supply Agreement. The District settled the matter with the Department of Water Resources and established Napa as a contractor in the Area of Origin therefore entitled to water rights allocation based on north of delta and typically 5-25% higher than south of delta allocations. Since the Settlement Agreement, Amendment No. 15 executed in October 2013, there is need to seek agreement with DWR, or judicial relief to restore carryover water storage lost in water year 2020 due to DWR's interpretation of the parties' North of Delta Allocation or obtain monetary compensation for the loss.

Amendment No. 18 is necessary to authorize the District to continue efforts on the City's behalf related to the claim. The firm of Somach, Simmons and Dunn is representing the District, on behalf of the City of Napa and other municipal subcontractors in Napa County. In addition to the District, two other North of Delta SWP Contractors the Solano County Water Agency and the City of Yuba City make up the Area of Origin parties (AOO) parties. The Memorandum of Understanding between the

District and the AOO parties governs the allocation of attorney's fees and costs arising from this important litigation. This joint effort is important to clarify the rights as previously agreed to under the 2013 AOO Settlement Agreement. As this litigation relates to clarification of the negotiated settlement, the terms of the Confidentiality Agreement for the original AOO litigation entered into on November 18, 2008 remain in effect.

FINANCIAL IMPACTS:

Pursuant to Agreement No. 1482 and Amendment No. 18 with the District, costs associated with the District's efforts on our behalf will be billed monthly as part of the invoice for State Water Project supply. Estimated costs to the City of Napa associated with Amendment No. 18 are \$16,300. These costs may go up or down depending on the complexity and timeframe of the litigation.

Funds are available for FY2022 in the Water Fund's North Bay Aqueduct Supply budget (Account No. 53005-56502). Funds required in future fiscal years will be appropriated as part of the budget process.

CEQA:

City staff recommends that the City Council determine that the Recommended Action is exempt from CEQA pursuant to CEQA Guidelines Section 15060(c).

DOCUMENTS ATTACHED:

ATCH 1 - Amendment No. 18 of Napa County Flood Control and Water Conservation District Agreement No. 1573 (City Agreement No. 1482)

ATCH 2- MOU Between District and AOO Parties dated 12-07-2021

ATCH 3 - Confidentiality Agreement dated 11-18-2008

NOTIFICATION:

None