

**WHOLESALE WATER SUPPLY AGREEMENT
BETWEEN THE CITY OF NAPA AND
THE CONGRESS VALLEY WATER DISTRICT**

City Agreement No. CA2023-013

This Wholesale Water Supply Agreement (“**Agreement**”) is made by and between the City of Napa, a California Charter city (“**City**”) and the Congress Valley Water District, a County Water District (“**District**”) (referred to herein individually as a “**Party**” and collectively as the “**Parties**”), is effective on the date last signed by the City, which is identified on the signature page as the “**Effective Date**”.

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 was formed in 1949 to provide water service to the unincorporated area of Congress Valley. The District has no developed water supply resources or storage facilities. Instead, the District requested that the City furnish a specified volume of wholesale water to the District to enable the District to provide retail potable water to customers connected to the District’s water system. The terms and conditions for the City to supply wholesale water to the District were initially memorialized in an agreement between the Parties dated October 30, 1951.
- D. On or about July 1987, the City and District entered into a new Water Supply Contract (City Agreement No. 5387) which superseded the 1951 agreement and had a term of 30 years.
- E. On or about May 22, 2017, the Parties entered into the First Amendment to the Water Supply Contract to extend the term for five years to July 1, 2022 and to modify other conditions related to the rates for wholesale water.
- F. On or about May 1st, 2018, the Parties entered into the Second Amendment to address the Parties’ respective roles of the City as wholesaler and District as retailer and to clarify billing practices.
- G. On or about July 29, 2022, the Parties entered into the Third Amendment to extend the term of the Water Supply Contract to December 31, 2022 in order to negotiate a new, long-term wholesale water supply agreement.
- H. On or about December 31, 2022, the Parties entered into the Fourth Amendment to provide for a short-term extension of the Water Supply Contract to January 31, 2023 to provide for an ending date that coincides with the end of a full year of water supply.
- I. The District currently provides retail potable water service to approximately 102 active

connections through pipelines owned by the District and has requested that the City continue to furnish a supply of water to the District.

- J. The City currently utilizes the District's pipelines to wheel 43 acre feet of water annually to the Carneros Mutual Water Company and for operational purposes to support both City and District operations.
- K. The City is willing to furnish a supply of water to the District and to memorialize the City's role as wholesaler and user of the District's pipelines, and the District's role as retailer of water and owner of pipelines, subject to certain terms and conditions as specified herein.
- L. City Charter Section 180 requires approval by a four-fifths (4/5) vote of the City Council to authorize the City to continue providing water service to the District under the terms of this Agreement.
- M. City and District have negotiated the terms of a new long-term wholesale water agreement to begin on February 1, 2023 to coincide with the start of a full year of water supply. At that time, the City and District wish to supersede and replace all prior agreements and term sheets with this new long-term wholesale water supply agreement.

NOW THEREFORE, the City and District, for mutual consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree as follows:

1. Definitions.

- a. **"Administrative Amendment"** means an amendment of this Agreement that may be made by the City Manager and the District's Board President or their designee.
- b. **"Annual Water Supply"** means a supply of potable water in an amount not to exceed a total of 100 acre-feet of water per year, which shall begin on February 1 and end on January 31.
- c. **"Authorized Representative"** means the Utilities Director for the City and the Board President for the District, or designee by either Party. The Authorized Representative shall be an individual who has the right, power, legal capacity, and authority to act on behalf of the respective legal entities of the District and City.
- d. **"Capital Improvement"** means the construction, reconstruction, renewal, replacement, erection, alteration, renovation, improvement, addition, extension, expansion, demolition, or major repair of District Infrastructure. Capital Improvement involves nonroutine and/or nonrepetitive activities including, but not limited to, activities required to continue the functionality of the components of District Infrastructure as a result of damage, destruction, regulatory requirements, or reaching the end of the useful life. Capital Improvement projects may not be split into smaller projects for the purpose of being treated as Maintenance activities. A non-exclusive list of Capital Improvement activities is shown on Exhibit A.
- e. **"Contractual Service Area"** means the boundaries within which the District may provide water supply under this Agreement to its customers as depicted on the attached Exhibit B. Expansion of the Contractual Service Area shall require a formal amendment of this Agreement.
- f. **"Customer Meter Connection"** means the meters located at each District customer's connection to the District Infrastructure.

- g. **“Delivery Points”** means the intersections of the City’s water infrastructure with District’s Infrastructure, as is more particularly identified on Exhibit C.
- h. **“District Infrastructure”** means all pipelines, valves, hydrants, meters, service laterals, water system improvements, blow-offs, air-vacs and other appurtenances located within District’s Contractual Service Area. A map and inventory of District Infrastructure is as attached hereto as Exhibit C and shall be timely updated as needed by an Administrative Amendment to this Agreement.
- i. **“Interruptible Surplus Agricultural Water Supply”** means a supply of water in an amount not to exceed a total of 100 acre-feet per year (which shall begin on February 1 and end on January 31) for agricultural irrigation purposes that is furnished on an interruptible basis in the manner provided for in Section 3. Notwithstanding the foregoing, the Parties expressly acknowledge and agree that this supply of water is uncertain and unpredictable and that circumstances may arise in which this supply of water must be immediately terminated by the City or the District.
- j. **“Maintenance”** means the maintenance, cleaning, inspection, testing, flushing, calibration, and routine repair of District Infrastructure to keep it in proper working condition and to maintain its useful life, as well as the general administrative efforts attributable to such activities. Maintenance activities occur on a periodic schedule and/or repetitive basis to keep the components of District Infrastructure operating in accordance with manufacturer’s recommendations and/or generally accepted industry standards of care. Maintenance activities do not include Capital Improvements. A non-exclusive list of maintenance activities is shown on Exhibit A.

2. Term.

- a. **Term.** The term of this Agreement begins on the Effective Date and shall end on January 31, 2043, unless terminated earlier in accordance with the terms of the Agreement or as a result of the dissolution of the District.
- b. **Transition Plan.** No later than five (5) years prior to the expiration of this Agreement, the District and City shall initiate and facilitate discussions with each other, 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. Nothing provided for herein shall preclude either Party from initiating and facilitating such discussions at an earlier date.
- c. **Transfer of Assets.** Concurrent with any dissolution of the District or assumption of the District’s responsibilities to provide water service by the City or another third party, District shall surrender and convey to that successor entity all of its right, title and interest in all physical infrastructure systems. To the extent that the dissolving District holds any remaining monetary assets, those assets will be transferred to the successor entity, to be used in the continued provision of water service to District landowners.

3. Water Supply.

- a. **Annual Water Supply.**
 - i. **Volume.** City shall furnish up to 100 acre-feet per year in Annual Water Supply pursuant to this Agreement, subject to supply availability. City shall have no obligation to furnish Annual Water Supply quantities in excess of 100 acre-feet per year to the

District under this Agreement. District shall forfeit any portion of the Annual Water Supply that is not used during a given year and have no right to roll over unused water to the next year.

- ii. **Permissible Users and Use.** The Annual Water Supply may be provided to Customer Meter Connections within the Contractual Service Area and no other location. Such water delivered shall be used for domestic, agricultural, and winery purposes only. Neither District nor its customers may use themselves, provide to third parties, or transfer water received under this Agreement for use outside of the Contractual Service Area.
 - iii. **Hydrants.** District may authorize the issuance of hydrant meters to its customers for use within the Contractual Service Area. Water delivered via hydrant meters shall be counted as part of the District's Annual Water Supply and as a Customer Meter Connection. Water used from hydrants within the Contractual Service Area for fire protection services is not metered and shall not be counted as part of the District's Annual Water Supply.
- b. **Interruptible Surplus Agricultural Water Supply.**
- i. **Volume.** In addition to the Annual Water Supply, City shall provide up to 100-acre feet per year of Interruptible Surplus Agricultural Water Supply, subject to supply availability. City shall have no obligation to furnish Interruptible Surplus Agricultural Water Supply in excess of 100 acre-feet per year to the District under this Agreement. District shall forfeit any portion that is not used during a given year and have no right to roll over unused water to the next year.
 - ii. **Permissible Users and Use.** Interruptible Surplus Agricultural Water Supply may be provided within the Contractual Service Area and no other location. Such water delivered shall be used for agricultural irrigation purposes only. Neither District nor its customers may use themselves, provide to third parties, or transfer water received under this Agreement for use outside of the Contractual Service Area.
 - iii. **Customer Agreements.** To provide Interruptible Surplus Agricultural Water to District customers, District shall first enter into agreements with each such District customer in the manner provided for herein. With the exception of price, which shall be per Section 6(a), such agreements shall contain substantially the same terms and conditions as the City's interruptible agreements, a copy of which is attached as Exhibit D and may be updated from time to time. District shall deliver a copy of such interruptible agreement(s) to City and timely update the City in order to receive the Interruptible Surplus Agricultural Water Supply.
 - iv. **Availability.** City shall notify District on or before February 15 each year regarding the availability of Interruptible Surplus Agricultural Water and such notice shall be substantially the same as City provides to its own customers receiving surplus water.
 - v. **Interruption.** District and City acknowledge the interruptible and surplus nature of Interruptible Surplus Agricultural Water Supply. Interruptible Surplus Agricultural Water service under this Agreement may be interrupted or discontinued in case of an actual or anticipated shortage of water supply, storage, or delivery capacity; or upon a request by the District. The City shall be the sole judge of whether there is an actual or anticipated shortage of supply or delivery capacity. The City's decision regarding

the availability of supply or delivery capacity shall be in its sole discretion and shall not be subject to review. However, the customers using District Interruptible Surplus Agricultural Water Supply shall receive an equal priority for deliveries as City provides its own customers receiving interruptible water. City agrees to provide the same notices to District as City provides to its own customers receiving interruptible water. Upon receipt of such notice, District shall immediately notify District customers. District authorizes City to shut off and lock or limit usage of District customers at the same time and in the same manner as City performs the same limitations on its own customers receiving interruptible water. District may also interrupt and/or discontinue service under such agreements at other times, at its discretion.

- c. **Location.** City shall furnish the Annual Water Supply and Interruptible Surplus Agricultural Water Supply to District at the Delivery Points.
- d. **Serving District Customers.** In response to District's request to do so, City shall deliver water from the Delivery Points to the Customer Meter Connection within the District's Contractual Service Area on behalf of the District.
- e. **Water Measurement.** The water delivered pursuant to this Agreement shall be measured by meters at the Customer Meter Connection. On any new Customer Meter Connection, upon receipt of payment of applicable fees, the City shall install the necessary meters, valves, and appurtenances appropriate to operate and maintain such connection. City reserves the right to replace any meter at any time due to malfunction or mis-operation. Each party shall have the right to test any meter at its own expense.
- f. **New Service.** As a condition of the City providing any new or modified water service within the Contract Service Area: (1) the District, via its Authorized Representative, shall provide written approval to the City, (2) the customer shall pay to the City a water capacity fee (formerly called "connection fee") and all applicable fees and charges associated with installing or modifying water service, and (3) the customer shall install a City-approved cross connection control device (backflow preventer).
- g. **Customer Requirements.** The District and 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, City of Napa administrative regulations, and adopted City fees and charges. The District authorizes the City to implement and enforce the aforementioned regulations on District customers.
- h. **Excess Water Use.** District shall actively monitor and manage its customers' use to avoid exceeding the Annual Water Supply or Interruptible Surplus Agricultural Water allotment. District hereby acknowledges and agrees that: (1) it has no right to receive any water in excess of its annual allocations, and (2) to the extent excess water is used, it shall be subject to a surcharge. Said surcharge shall be calculated in the following manner: cost per acre-foot equals City's total cost for State Water Project water under its SWP Contract and any SWP Dry Year Purchase Program in the last full fiscal year divided by the total acre-feet of the City's State Water Project water treated and delivered in the last full fiscal year plus an administrative fee of 5% of this total. City shall calculate the surcharge and shall include it on the District's next available invoice, which District shall promptly pay as provided for in Section 6 of this Agreement.

- i. **Water Conservation.** Fourteen (14) days prior to the City considering adoption of a water conservation regulation, City shall provide District written notification. If adopted, City shall provide written notice to District and provide District with the details of the water conservation regulation. Within twenty-one (21) days of receipt of such notice, District shall implement a water conservation regulation that is no less restrictive on District customers than the water conservation regulation adopted by the City on City customers. Notwithstanding the foregoing, Interruptible Surplus Agricultural Water service shall be subject to discontinuation or conservation as provided for in Section 3(b).
- j. **Water Quality.** The quality of the water at the Delivery Points furnished to the District shall be the same as that furnished to other City customers.
- k. **City Operation.** District recognizes and agrees that City shall have the right, in its sole and exclusive discretion, to operate the City water system including but not limited to treatment plants, transmission facilities, storage tanks, and pump stations. District recognizes and agrees that pressure fluctuates based upon customer demands and there is no guarantee of consistent pressure at the meter and that fluctuations may occur based on City's operation of various treatment plants and pump stations.
- l. **Interruption.** City may temporarily discontinue or reduce water deliveries provided for under this Agreement for the purposes of investigation, inspection, maintenance, repair or replacement of either the City's water system or District Infrastructure necessary for delivery of water to District, as well as due to outages in, or reduction in capabilities of such facilities beyond City's control, or in the event of an emergency or disaster, including, but not limited to force majeure, earthquakes, droughts, floods, storms, explosions, fires, labor troubles, strikes, insurrection, riots, acts of the public enemy, or federal or state order, rule or regulation preventing the City, in whole or in part, from delivering water as provided herein. City shall provide District notice as far in advance as practicable of any such interruption, except in the case of emergency or disaster in which case no advance notice will be required, but notice shall be given as promptly as feasible. City shall use its best efforts to avoid and minimize any such temporary interruption of deliveries, and shall resume deliveries as soon as City determines, in its sole and exclusive discretion, that it is practicably feasible to do so. Interruption in deliveries shall not affect District's payment obligation for water delivered as set forth herein.

4. **District Infrastructure Ownership and Maintenance.**

- a. **District Infrastructure.** District shall own all District Infrastructure during the term of this Agreement.
- b. **Maintenance.** City shall be responsible, during the term of the Agreement, at City's expense, for the operation and Maintenance of District Infrastructure during the term of the Agreement. City's Maintenance responsibility ends at the Customer Meter Connection. District and/or its customers shall be responsible for all other water infrastructure.
- c. **Wheeling.** District shall allow and City shall have a right to wheel water through District Infrastructure at no expense to the City, provided that doing so shall not interfere with the needs of District customers.

5. Capital Improvements and Costs.

- a. City shall be responsible, during the term of the Agreement, for the Capital Improvement of District Infrastructure.
- b. District shall establish a restricted Capital Improvement Reserve Fund earmarked exclusively for expenditures related to the Capital Improvement of District Infrastructure. District shall initially contribute three hundred thousand dollars (\$300,000) to the Reserve Fund by March 1, 2023. Prior to July 1, District shall annually contribute eighteen thousand dollars (\$18,000) beginning in 2023 and each year thereafter for the term of this Agreement. District shall prudently invest the funds in the Reserve Fund with the goal of achieving at least a three and a half percent (3.5%) annual average rate of return. District shall provide City an annual report on the financial status of Reserve Fund.
- c. City shall replace all District water meters on or about 2025 at District expense. District shall pay all actual costs associated with such meter replacement. City shall invoice the District and District shall pay City invoices for such work within thirty (30) days and may withdraw funds from its Capital Improvement Reserve Fund to do so.
- d. Except as provided for the meter replacements in 2025, the Parties shall share all costs of Capital Improvements of District Infrastructure. District shall pay sixty percent (60%) of such Capital Improvement costs and City shall pay forty percent (40%) of such Capital Improvement costs that may be incurred during the term of this Agreement. This proportional share was negotiated by taking many factors into consideration, including the District's 100 acre-feet of Annual Water Supply, the District's 100 acre-feet of Interruptible Surplus Agricultural Water Supply, the City's water supply agreement with Carneros Mutual Water Company for 43 acre-feet per year, and the City's use of approximately 100 acre-feet per year for operational flow for a total of 343 acre-feet of capacity. The District's 200 acre-feet a year out of the total 343 acre-feet of capacity is 58.3% and was rounded to 60%. If either Party's use of capacity changes, the proportional share shall be renegotiated and changed accordingly by Administrative Amendment.
- e. District shall pay City invoices for Capital Improvements within thirty (30) days and may withdraw funds from its Capital Improvement Reserve fund to do so. The lack of sufficient funds in the District's Capital Improvement Reserve shall not relieve District from its obligation to pay its share of Capital Improvements for District Infrastructure under this Agreement.

6. Price and Payment.

- a. **Wholesale Rate.** In return for all water provided by the City to the District, and customers within the District, the District shall pay City the wholesale water rate for water, which shall be equal to the rates, service charges, and fees formally adopted by City Council resolution and then in effect for "Outside" customers based on the type of water service being provided (residential, commercial, irrigation, fire, etc.).
- b. **Direct Billing.** In lieu of City directly charging District, District hereby authorizes the City to directly bill and collect payment from District customers for deliveries of water to Customer Meter Connections, under the terms set forth as follows:
 - i. District shall provide City written notice of rate structure, up to the "Outside" rate, to charge District customers.

- ii. The City shall bill the District directly for the differential between the rate specified by the District and the “Outside” rate owed to the City pursuant to Section 6(c) of this Agreement.
- iii. District shall provide ninety (90) days advance written notice to the City for proposed changes to rate structure. To the extent the City’s billing system needs re-programming or re-configuration to accommodate a rate structure proposed by the District, the District shall be responsible for all costs.
- iv. All funds received shall be retained by the City.
- c. **Differential Billing.** The City shall bill 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” customers. The City shall provide to District detailed records of the charges to District customers and District under this Agreement. District shall remit such payment to City within thirty (30) days of receipt of the invoice.
- d. **Other Fees.** 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.
- e. **Water Rates.** District shall be responsible for establishing water rates for its customers and giving notice to property owners within the District of applicable rates and fees as may be required by applicable law, including, but not limited to Proposition 218. District shall provide notice to City of any adjustments in applicable rates and fees at least ninety (90) days prior to such rates and fees taking effect.
- f. **Unpaid or Delinquent Accounts.** District shall be responsible for unpaid balances on closed customer accounts. City shall notify District and submit an invoice to the District. District shall be solely responsible for remitting such payment to City within thirty (30) days of receipt of the invoice. District may collect unpaid or delinquent customer accounts from customers, at District’s sole expense.

7. Default and Dispute Resolution.

a. Default.

- i. District shall be deemed in default of this Agreement if District is not complying with the terms and/or conditions of this Agreement or fails to provide City with reasonable assurances of District’s ability to perform its obligations under this Agreement within thirty (30) days of City’s written request. If either of these circumstances exist, City may give written notice of default to District and demand that the default be cured or corrected within ten (10) days of the notice, unless the City determines that: (1) additional time is reasonably necessary to cure the default, or (2) that less time is reasonably necessary due to urgency of the circumstances that threatens public health and safety and/or damage or destruction of property.
- ii. City shall be deemed in default of this Agreement if City is not complying with the terms and/or conditions of this Agreement or fails to provide District with reasonable assurances of City’s ability to perform its obligations under this Agreement within thirty (30) days of District’s written request. If either of

these circumstances exist, District may give written notice of default to City and demand that the default be cured or corrected within ten (10) days of the notice, unless the District determines that: (1) additional time is reasonably necessary to cure the default, or (2) that less time is reasonably necessary due to urgency of the circumstances that threatens public health and safety and/or damage or destruction of property.

b. Failure to Cure.

- i. If District fails to cure the default within the time specified in the notice, and District fails to give adequate written assurance of due performance within the specified time, then City may, at its option, avail itself of any of the following remedies, which are non-exclusive and cumulative with any remedies now or later allowed by law or provided for elsewhere in this Agreement: (1) City may elect to cure the default at District's cost and District shall promptly reimburse City for its costs; (2) the City may pursue dispute resolution in accordance with Section 7(d); or (3) City may request that LAFCO review the District's provision of municipal services and consider reorganization.
- ii. If City fails to cure the default within the time specified in the notice, and City fails to give adequate written assurance of due performance within the specified time, then District may, at its option, avail itself of any of the following remedies, which are non-exclusive and cumulative with any remedies now or later allowed by law or provided for elsewhere in this Agreement: (1) District may elect to cure the default at City's cost and City shall promptly reimburse District for its costs; (2) the District may pursue dispute resolution in accordance with Section 7(d); or (3) District may request that LAFCO review the City's provision of municipal services to the District under this Agreement and consider reorganization.

c. Expenses in Default. If either Party, at any time, by reason of the other Party's default, pays any sum or does any act that requires the payment of any sum, the sum paid by the non-defaulting Party shall be due immediately from the defaulting Party to the non-defaulting Party at the time the sum is paid, and if not paid within 15 days of notice, will bear interest at the maximum rate permitted by law from the date the sum is paid by the non-defaulting Party until the non-defaulting Party is reimbursed by the defaulting Party.

d. Dispute Resolution. If any dispute arises between the Parties in relation to this Agreement, the Authorized Representatives for each Party will meet, in person, as soon as practicable, to engage in a good faith effort to resolve the dispute informally. If the Parties are unable to resolve the dispute, in whole or in part, through informal discussions, the Parties agree to participate in mediation.

- i. Either Party may give written notice to the other Party of a request to submit a dispute to mediation, and a mediation session must take place within sixty (60) days of the date that such notice is given, or sooner if reasonably practicable. The Parties will jointly appoint a mutually acceptable mediator. The Parties will share equally the costs of the mediator; however, each Party will pay its own costs of preparing for and participating in the mediation, including any legal costs.

- ii. Good faith participation in mediation pursuant to this Section is a condition precedent to either Party commencing litigation in relation to the dispute. In addition, any claims by District arising from or related to this Agreement are subject to the claim presentment requirements in the Government Claims Act (Government Code section 900 *et seq.*).

8. Roles and Responsibilities.

- a. **Customer Service.** City's customer service obligations include issuing detailed billing statements to all customers for services provided; regularly reading customer meters and providing a consumption data report to the District at no greater than bi-monthly intervals within ten (10) days of the reading; payment processing; responding to customer inquiries on water service, bills, leaks, or other concerns; collecting payments; processing applications for new or transfer of service; collection of customer deposits for new service; collection of construction meter deposits; and investigation of customer complaints.
- b. **Drought Education.** District shall provide ongoing drought education to customers and will enforce drought-related restrictions on water use as required by this Agreement.
- c. **Web Presence.** District shall maintain a website that provides the following information, at a minimum, to District customers: District contacts, how to connect to District water system, water rates, and a copy of this Agreement.
- d. **Authorized Representative.** The Parties' Authorized Representatives shall be available to each other for timely discussion and resolution of matters related to the Agreement. Designees shall be identified as applicable. Any change in Authorized Representative or designee shall be communicated in a timely fashion to the other Party.
- e. **District Contact.** District shall maintain dedicated District contact(s) available to discuss matters with City representatives or for City representatives to refer District customers to for service. District shall notify City's Authorized Representative of any changes to District contact(s) within 15 days of any change being made.
- f. **Records.** Each Party shall make records associated with the business conducted by each Party under the terms of this Agreement available to the other Party in a timely and reasonable manner.
- g. **Annual Meeting.** Each year, prior to February 1, the Parties' Authorized Representatives, and any other staff and/or consultants as may be deemed appropriate, shall meet and confer about the status of this Agreement. This meeting shall be an opportunity to discuss any and all matters, including but not limited to: Interruptible Surplus Agricultural Water allocations, rate-setting and projected rate adjustments, ongoing service needs and alternatives, operational issues, capital improvement requirements, and other aspects of future service.
- h. **Meter Reading.** In order to assist the District in its efforts to manage water supply and use by District customers, the City will periodically provide the District with instructions and training to manually read meters.

9. Settlement.

- a. District shall reimburse City for its actual costs incurred due to District's overuse of water

in 2021, in the amount of thirty-five thousand fifty-five dollars (\$35,055.00). The District shall make full payment of this amount immediately upon execution of this Agreement.

10. Liability and Indemnity.

- a. **Roles of Parties.** The City is responsible for the delivery of water up to the Customer Meter Connection. Beyond the Customer Meter Connection, the City makes no assurances as to the condition of customer-owned delivery systems; failures of water pressure, leaks or other delivery issues associated with infrastructure which is not maintained or operated by the City. The City is not liable for shortages in the amount of water to be made available for delivery or interruption of delivery, as described in Section 3(f). The District is responsible for setting water rates, administering Interruptible Surplus Agriculture Contracts, communicating with District users, and otherwise administering the District's water delivery programs under this Agreement and the California County Water District Act. The District is not liable for errors and omissions of the City in its administration of this Contract, including over- or under- deliveries, inaccuracies in meter readings, or damages to property caused by the willful or negligent actions of the City or its agents.
- b. **Limitations on Liability.** Neither the City, 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 Customer Meter Connection 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.
- c. **Indemnification of City.** To the full extent permitted by law, District shall indemnify, hold harmless, release and defend the City, 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 third party, including but not limited to District customers, arising out of this Agreement, excepting only liabilities due to the active negligence or willful misconduct of City. This provision shall survive the termination or expiration of the Agreement. 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 District under Worker's Compensation, disability or other employee benefit acts or the terms, applicability of limitations or any insurance held or provided by District and shall continue to bind the parties after termination/completion of this Agreement.
- d. **Indemnification of District.** To the full extent permitted by law, City shall indemnify, hold harmless, release and defend the District, 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 third party, including but not limited to District customers, arising out of this Agreement, excepting only liabilities due to the active negligence or willful misconduct of District. This provision shall survive the termination or expiration of the Agreement. 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 City under Worker's Compensation, disability or other employee benefit acts or the terms, applicability of

limitations or any insurance held or provided by City and shall continue to bind the parties after termination/completion of this Agreement.

- e. **Third Party Claims.** Promptly following notice of any third-party claims, the indemnified party shall notify the indemnifying party of such claim in writing. Within 30 days of such notice, the indemnifying party shall inform the indemnified party whether it intends to assume the defense of the claim, or else fund the indemnified party's defense of that claim. In either case, the indemnifying party shall not consent to entry of a judgment or enter into any settlement agreement without the consent of the party named in the claim, which consent shall not be unreasonably withheld.
- f. **No Third-Party Beneficiaries.** City's obligations under this Agreement are solely with District and no customer of District nor other third party shall have the right to enforce the terms of this Agreement as a third-party beneficiary. City shall not sell water to other parties or persons within District's boundaries, without first receiving written approval of District.
- g. **Notice of Claims.** The parties shall promptly notify each other within ten (10) days of City or District becoming aware of: (1) any claims or suits brought against City or District, (2) any third-party claims, and/or (3) any force majeure event, which involve this Agreement or water supplied to District pursuant to this Agreement.
- h. **No Damages.** City and District have entered into this Agreement solely as an act of interjurisdictional cooperation. In the event it is claimed that either Party has in any manner failed to satisfy any obligation under this Agreement, or otherwise breached this Agreement, the sole and exclusive remedy shall be injunctive relief, specific performance, declaratory relief, writ of mandate or similar remedy. Under no circumstances shall either Party be liable for any indirect, special, incidental, punitive, or consequential damages of any kind under this Agreement even if the other Party has been advised of the possibility of such damages.

11. General Provisions.

- a. **Recitals.** The recitals in this Agreement are true and correct and a material part of this Agreement.
- b. **Headings.** The heading titles for each section of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- c. **Attorney's 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.
- d. **Governing Law, Jurisdiction and Venue.** The interpretation, validity, and enforcement of this Agreement shall be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Napa.
- e. **Notices.** All notices required or contemplated by this Agreement shall be in writing and delivered to the other party's authorized representative by personal delivery, U.S. Mail, nationwide overnight delivery service, email or as otherwise specified herein. Delivery is

deemed effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, (b) actual receipt at the address identified below, or (c) three (3) business days following deposit in the U.S. Mail of registered or certified mail sent to the address identified below. A party's contact information, below, may be changed by providing written notice of any change to the other party.

To City: Phil Brun
Utilities Director
City of Napa
P.O. Box 660
Napa, CA 94559-0660
pbrun@cityofnapa.org

To District: Kiersten Bjorkman, Secretary
Congress Valley Water District
PO Box 3023
Napa, CA 94558
k.bjorkman@congressvalleywd.org

with copy to: Valerie E. Clemen
Coombs & Dunlap, LLP
1211 Division Street
Napa, CA 94559
vclemen@coombslaw.com

- f. **Successors and Assigns.** This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.
- g. **Assignment and Delegation.** This Agreement shall not be assigned or transferred in whole or in part, nor shall any of District's duties be delegated unless and until it is approved in writing by City and made subject to such reasonable terms and conditions as City may impose. Any attempt to assign, transfer, or delegate this Agreement, in whole or in part, without the City's prior written consent shall be void and of no force or effect. Any consent by City to one assignment, transfer, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, or delegation.
- h. **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.
- i. **Waiver.** No waiver of a breach, default, or duty under this Agreement shall be effective unless it is in writing, and signed by the party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach, default, or duty under this Agreement.
- j. **Modifications.** This Agreement may not be amended or modified orally. No amendment or modification of this Agreement is binding unless it is in writing signed by both Parties. Except as provided for herein, formal amendment of this Agreement must be approved

by the legislative bodies of both Parties. Notwithstanding the foregoing, the Parties may modify the following terms and conditions of this Agreement pursuant to an Administrative Amendment executed in writing by both Parties' Authorized Representatives: (1) use of pipeline capacity as specified under 5(d); (2) billing rates and practices as specified under Section 6(b) and 6(c); (3) Exhibits C and D.

- k. **Provisions Deemed Inserted.** Every provision of law required to be inserted or referenced in this Agreement shall be deemed to be inserted or referenced.
- l. **Interpretation.** Each party to this Agreement has had an opportunity to review the Agreement, consult with its respective legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, Civil Code Section 1654 shall not apply to interpret any uncertainty in the meaning of this Agreement.
- m. **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 and replaces all prior negotiations, agreements, and understandings regarding this matter, whether written or oral, including, but not limited to those prior agreements between the parties referenced in the recitals hereto. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all. If any provision in any document attached or incorporated into this Agreement conflicts or is inconsistent with a provision of the body of this Agreement, the provision of the body of this Agreement shall control over any such conflicting or inconsistent provisions.
- n. **Severability.** If any term of this Agreement (including any phrase, provisions, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this section shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
- o. **Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this Agreement on behalf of the respective legal entities of the District and City.
- p. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the Effective Date set forth below.

[signatures start on next page]

EXHIBIT A

Maintenance and Capital Improvement Activities

Item	Maintenance	Capital Improvement
Pipeline	Repair leak	Replace pipe
Valve	Tighten bonnet bolts, re pack, replace operating nut	Replace valve
Fire Hydrant	Flush and exercise, repair or replace operating components	Replace entire hydrant
Service Lateral	Repair leak	Replace pipe
Meter	Replace electronic read device batteries, replace dial, test and calibrate meter, replace/repair leaking fitting, replace broken lid on meter box	Replace entire meter, replace electronic read device

EXHIBIT B

Map of District's Jurisdictional Boundaries, Contractual Service Area, and Sphere of Influence

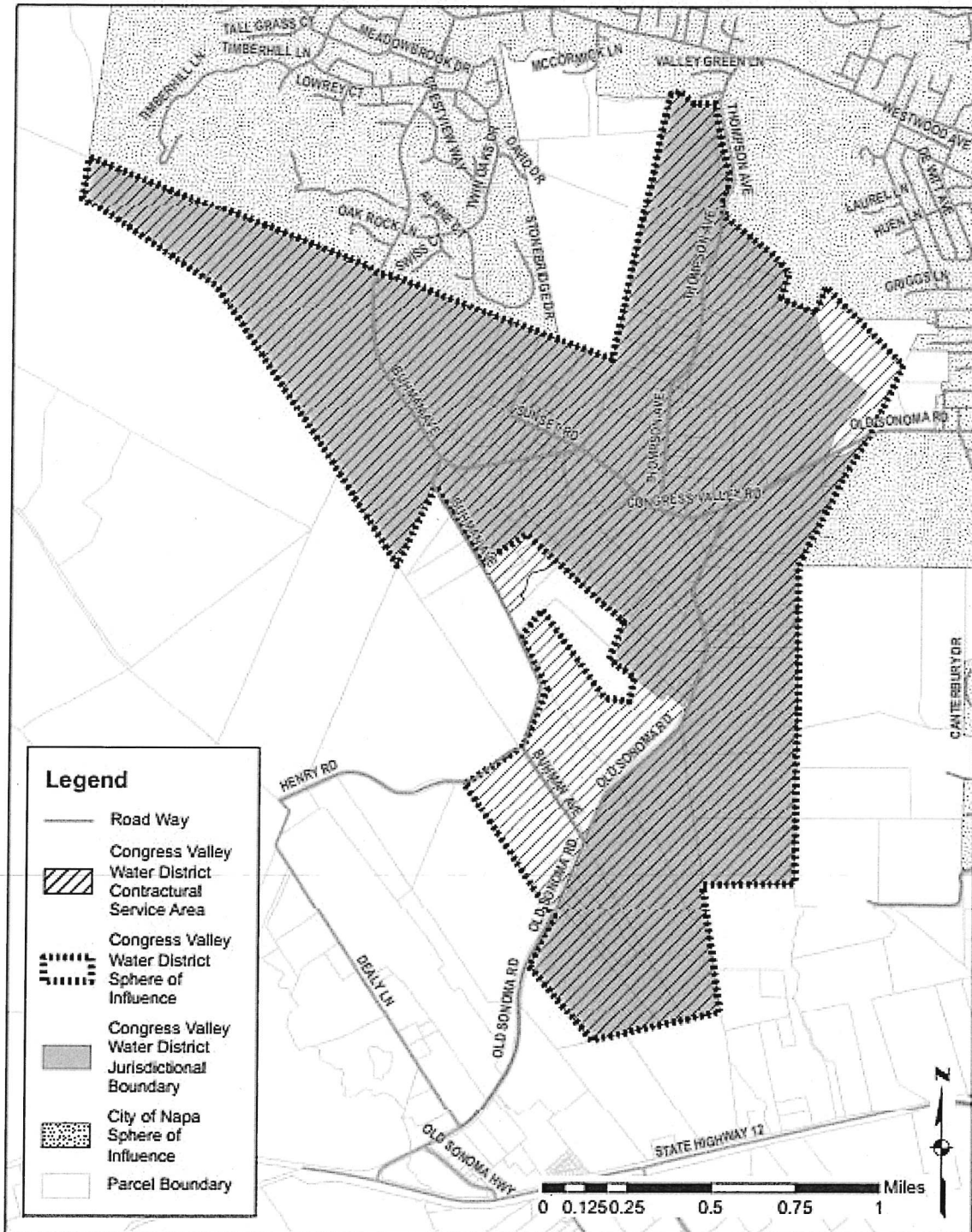
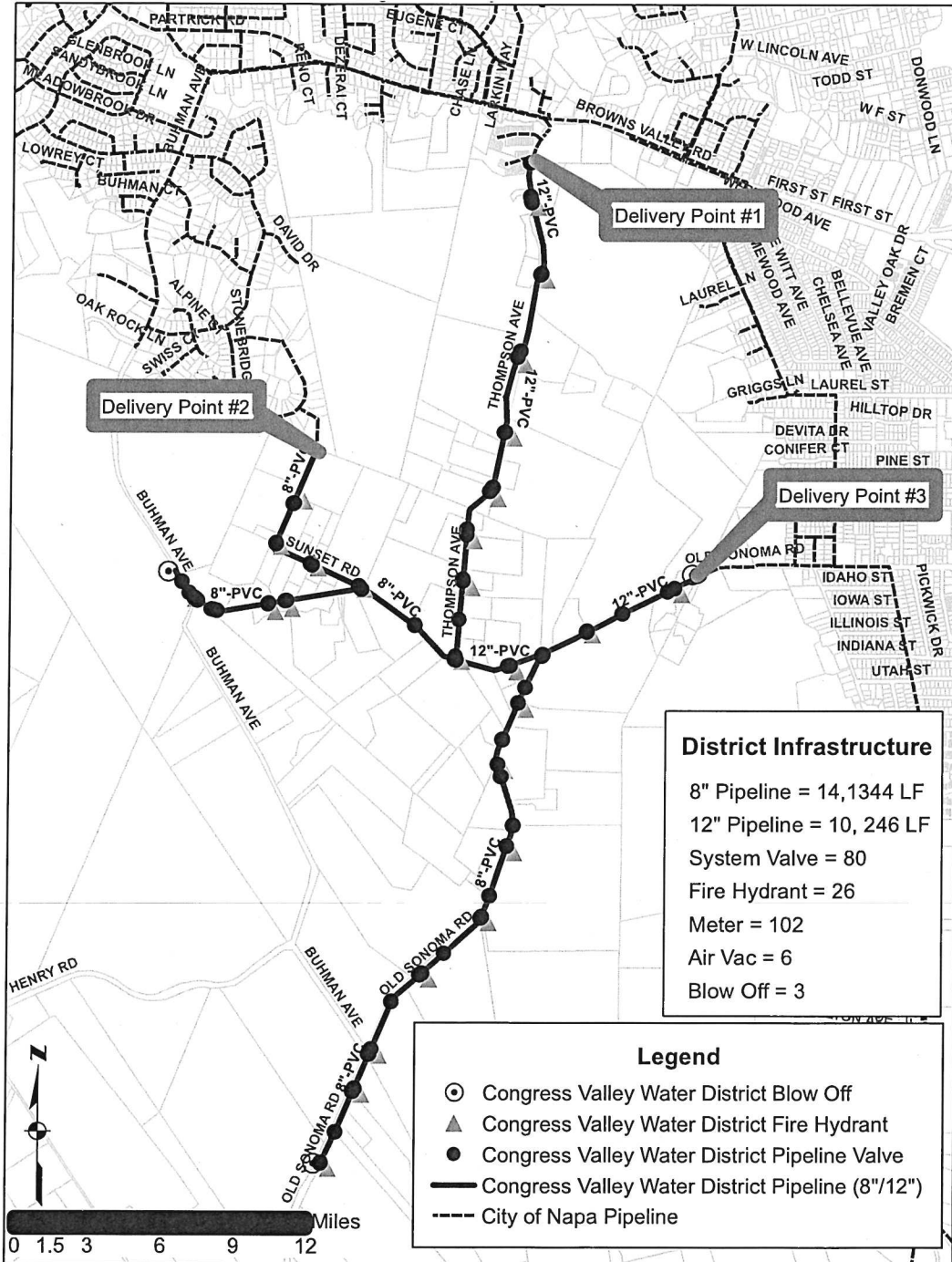


EXHIBIT C

Map and Inventory of District Infrastructure and Delivery Points



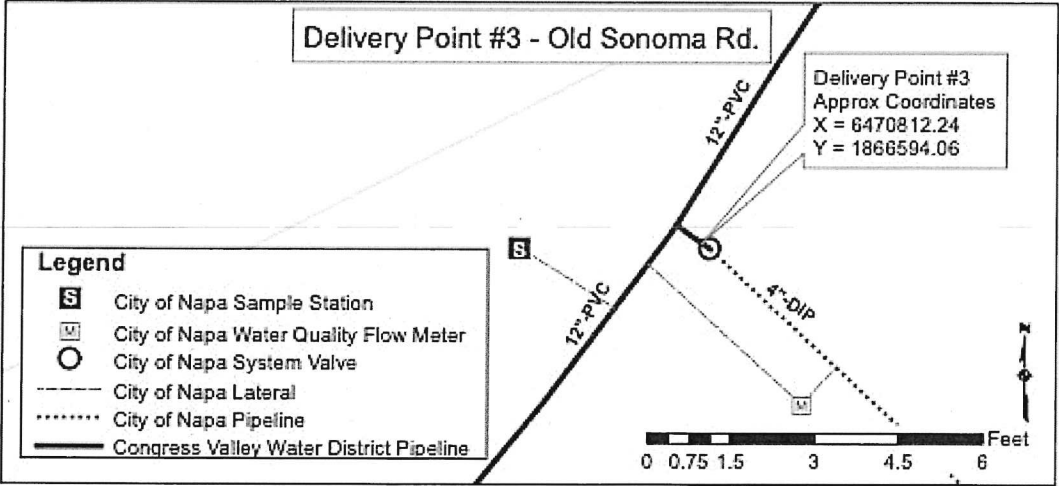
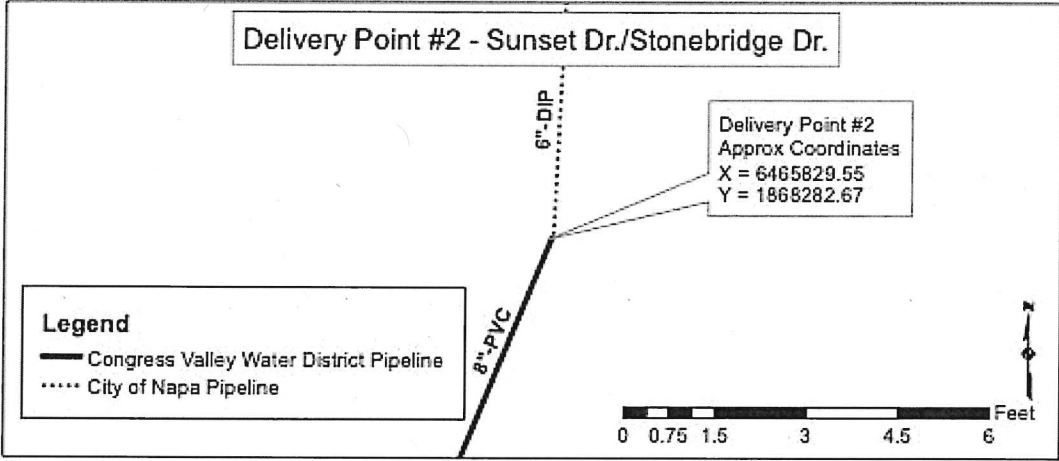
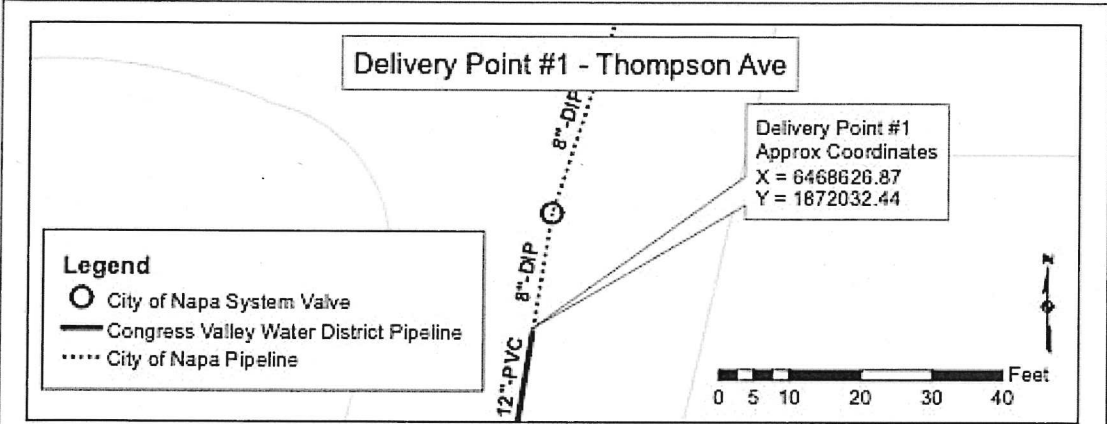


EXHIBIT D

Form of Interruptible Surplus Agricultural Service Agreement

AGREEMENT FOR PROVISION OF INTERRUPTIBLE-SURPLUS AGRICULTURAL WATER SERVICE OUTSIDE THE CITY LIMITS

THIS AGREEMENT made by and between the CITY OF NAPA, a municipal corporation, hereinafter called "City" and _____, hereinafter called "Customer".

Customer agrees to purchase and City agrees to sell and deliver to Customer water on an interruptible basis pursuant to the terms in Napa Municipal Code (NMC) Section 13.04.050 as amended from time to time, the terms of which are incorporated herein, and

(1) Said water shall be used only for agricultural irrigation and frost protection purposes on the real property described in Exhibit "A" attached hereto and made a part hereof. The area of the property actually served is ___ acres.

(2) There shall be a completely separate water connection for the water provided under this Agreement. Said service connection shall be installed by the City. Customer shall pay the connection fee and the entire cost of said service connection. The service connection installation shall include the service pipe, meter, and valves, and may include rate of flow controller, time clock, electrical service, and other appurtenant facilities in accordance with City standards, all of which shall remain the property of the City. In the event a water main extension along public roads is required, the City shall provide for such extension in accordance with City standards at Customer's expense. Customer installation and certification of a State-approved above-ground reduced pressure backflow prevention device is required prior to the initiation of water service.

(3) The time clock, electrical service, and appurtenances are not now required. The City may need, at some time in the future, to allocate water use time blocks, as specified in paragraph 11 herein. The Customer agrees that upon thirty (30) days notice the Customer will pay the City for the full cost of installing such devices and appurtenances and will restrict water usage to the time blocks specified by the City.

(4) This Agreement shall be for an initial term of one (1) year commencing Xxxxxx X, XXXX and shall continue thereafter from year to year until cancelled by either party. Either party wishing to thus terminate this Agreement must give the other party written notice at least ninety (90) days in advance of the end of the year.

(5) Customer must sign this Agreement within sixty (60) days of the date it is mailed to them by City for signature. Otherwise, this application is null and void and

Customer loses their priority in relation to other applications that may have been submitted subsequent to theirs.

(6) Water service under this Agreement shall be available during the period of March 1 to October 31 of each year (On-Season).

(7) The maximum annual quantity of water available for combined irrigation and frost protection service shall be four hundred fifty thousand (450,000) gallons per acre served.

(8) Water service under this Agreement may be interrupted or discontinued in whole or in part without notice in case of an actual or anticipated shortage of water supply, storage, or delivery capacity for municipal purposes. The City shall be the sole judge of whether there is an actual or anticipated shortage of water for municipal purposes. The City's decision shall be in its sole discretion and shall not be subject to review. The City shall not be liable to Customer for any damages arising out of its discontinuation or interruption of service under this Agreement.

(9) In the event of an interruption or discontinuation of water service ordered by the City, the service shall be turned off by a City representative and shall not be resumed until the City's needs are satisfied and the interruption period officially terminated.

(10) At the beginning of each calendar year, the City Water Division shall estimate the total City water supply and demand for that year, and will announce on or before March 1 the total quantity of available surplus water for the calendar year. Said available surplus shall be allocated on a per acre basis to all Customers contracting for interruptible-surplus agricultural water service. Customers will be notified of their maximum allocation in writing. Said allocation shall always be subject to reduction if said reduction is made necessary by the City's power to interrupt or discontinue service under this Agreement as provided in paragraph 8.

(11) Customer may be allocated time blocks during which they may use the water provided for in this Agreement for agricultural irrigation and frost protection purposes. When this occurs, they shall use said water only during the allocated time blocks. Time clocks will be set and locked by a City representative.

(12) The metered rate for all quantities of water delivered for interruptible water service for agricultural irrigation and frost protection purposes shall be at the prevailing rates for "Interruptible-Surplus Agricultural Water Service" as listed in the City of Napa

Master Fee Schedule. Any water used during the Off-Season shall be charged at the full Outside City Irrigation Rate. The Off-Season shall be from November 1 to the last day of February of the next year. Any water used during periods when interruption has been ordered, outside allocated time blocks, or in excess of the maximum allocation made by the City Water Division is unauthorized and shall be charged at 200 percent of the prevailing rate.

(13) City may terminate this Agreement at any time without advance notice if Customer uses water when the City orders water service interrupted or discontinued, uses more water than that allocated to them as provided in paragraph 10 of this Agreement, or uses water outside of the time blocks allocated to them under paragraph 11 of this Agreement, unless with City permission, or when Customer fails to pay bills delivered under this Agreement. City's right to terminate this Agreement when any of these conditions occur shall not be prejudiced or waived by any delay on City's part in terminating this Agreement.

(14) City will prepare a monthly or bimonthly bill and forward it to Customer for all water usage charges.

(15) Water provided under this Agreement is also subject to all rules and regulations contained in Napa Municipal Code Sections 13.04.070 through 13.04.410, a copy of which is attached as Exhibit "B".

IN WITNESS WHEREOF, Customer and City have hereunto caused their hands to be subscribed through their duly authorized officers:

By the Customer this ____ day of _____ 20__
and By the City this ____ day of _____ 20__

BY: _____

Applicant
XXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXX, CA 9XXXX

CITY OF NAPA, a municipal corporation|

Jacques R. LaRochelle, Public Works Director

ATTEST:

Dorothy Roberts, City Clerk

COUNTERSIGNED:

Desiree Brun, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney