

TO: NBWRA Board of Directors and TAC

FROM: MOU Work Group

DATE: July 17, 2017

SUBJECT: Summary of Recommended MOU Changes

The MOU Workgroup, Chuck Weir, Mike Savage, Kevin Booker, and Jake Spaulding, hereby submit the following documents for review and consideration by the NBWRA Member Agencies:

1. Reorganized NBWRA 3rd Amended MOU Approved by the Board March 25, 2013
2. NBWRA 4th Amended MOU dated July 17, 2017 in MS Word
3. NBWRA 4th Amended MOU dated July 17, 2017 in PDF
4. Clean version of NBWRA 4th Amended MOU dated July 17, 2017 in MS Word
5. Clean version of NBWRA 4th Amended MOU dated July 17, 2017 in PDF

**Reorganization:** In order to make it easier for the Member Agencies to review the recommended changes to the MOU, we took the current version (3rd Amended) and reorganized it prior to making the suggested changes to the 4th Amended version. There are changes to the formatting only, and include adding line numbers throughout the document and organizing the definitions alphabetically for convenience. This way the suggested changes to the new version will be easier to review.

**Suggested Changes:** The suggested changes in the 4th Amended version include recommendations from the following: the Workgroup, Napa San (twice, once from Jeff Tucker, once from their legal counsel); Leah Walker, Petaluma; Drew McIntyre, NMWD; comments received at the Board meeting; and the Water Agency's legal counsel. Comments from the Board meeting included: an exit ramp for Phase 1 agencies to drop to associate member level after completion of Phase 1 construction projects, cost reconciliation for Phase 2, and making sure an agency that has been approved for membership but has not yet signed the MOU can vote at meetings.

**Cost Reconciliation:** It should be noted that the cost reconciliation for Phase 1 and Phase 2 are quite different. Phase 2 has always been based on benefit, while Phase 1 was based on the Member Agencies O&M budgets for the first few years. Thus the cost reconciliation for Phase 1 has been more complicated and more frequent than will be expected for Phase 2.

## **SUMMARY OF RECOMMENDED CHANGES**

At the March 27, 2017 Board meeting, the Chair directed NBWRA staff to prepare draft revisions to the MOU that reflect:

- Completion of Phase 1
- Addition of New Phase 2 Members
- New structure and cost-share process to implement and complete Phase 2

## **Overview of Changes**

In general, the recommended changes distinguish between Phase 1 and Phase 2 issues and include the following:

### **Edits to Recitals**

- Better describe types of projects
- Updates specific to Phase 1
- Added items specific to Phase 2

### **Updated and Added Definitions**

- Changes to update Phase 1 status
- Added items specific to Phase 2
- Listed all definitions alphabetically

### **Updated and Added Specific Sections**

- Changes to update Phase 1 status
- Added items Specific to Phase 2

### **Modifications to Exhibits**

- Exhibit A, Revised to Include City of American Canyon
- Exhibit B, Updated Cost Sharing for Phase 1 Member Agencies
- Exhibit C, Updated Federal Funding Received by Phase 1 Member Agencies
- Exhibit D, Added Cost Sharing for Phase 2 Member Agencies
- Exhibit E, Added Federal Funding for Phase 2 Member Agencies

### **Miscellaneous Edits**

- Minor Edits
- Renumbering Sections and References
- Added continuous line numbers for ease in identifying changes
- Included comments in the edited version to explain the rationale for the changes

## **Specific Changes**

To assist in the review process, specific changes, referenced by section and line number include the following:

1. Recitals, lines 206 – 219 have been edited to note the completion of the Phase 2 Feasibility Study and additional recitals have been added specific to Phase 2.
2. The definition of Associate Member, Section 1. (a), lines 231 – 239, has been modified to be more consistent with the definition of Member Agency.
3. The definition of North Bay Region, Section 1. (i), lines 264 – 268 has been edited to reflect the proper code section.
4. Definitions specific to Phase 2, Sections 1. (m), (n), and (o), lines 286 – 306 have been modified or added to reflect the completion of the Phase 2 Feasibility Study and to be specific for Phase 2.

5. Section 5, NBWRA Membership, lines 331 – 338, had been modified to account for the \$5,000 dues for Associate Members and to avoid confusion with having that in the section for Phase 1.
6. Sections 14 and 15, lines 413 – 574 have been modified to be specific to Phase 1 cost sharing and fund distribution.
7. Sections 16 and 17, lines 575 – 652 are specific to Phase 2 and have been added to reflect Phase 2 cost sharing and fund distribution.
8. Section 18, Initiation of Membership, lines 653 – 671, has been modified to include City of American Canyon, address buy-in fee issues, and provide for voting as soon as membership has been approved by the Board of Directors.
9. Section 19, Termination of Membership, lines 672 – 695, has been modified to clarify the process for a Phase 1 or Phase 2 Member Agency to become an Associate Member.
10. Exhibits A – E, lines 759 – 812, have been modified as noted above.

### **Approval Process**

At this point, the Member Agencies are encouraged to take this to their Boards and/or Councils for review, including legal counsel review. If possible, any additional comments should be submitted to the Workgroup by August 14, 2017 such that a final version can be included in the NBWRA Board Agenda packet for the August 28, 2017 NBWRA Board meeting. Recall that we are trying to get the packets out approximately two weeks before the Board meetings.

At the August 28, 2017 NBWRA Board meeting, the Board will be asked to approve the 4th Amended MOU. At that point each member agency should be prepared to take it to their respective Board and/or Council for approval. The MOU will become effective when two thirds of the member agencies, seven of the ten, have approved and signed the MOU.