

AMENDMENT NO. 1 TO AGREEMENT NO. 160113B-16 BETWEEN NAPA COUNTY AND THE NAPA SANITATION DISTRICT REGARDING THE DESIGN AND ENGINEERING OF AN EXPANSION OF RECYCLED WATER PIPELINE IN THE MST AREA

This AMENDMENT NO. 1 to Funding Agreement No. 160113B-16 (“AGREEMENT”) is entered into and effective as of _____ by and between Napa County, a political subdivision of the state of California (“County”) and the Napa Sanitation District, a County Sanitation District, formed pursuant to Health & Safety Code Sections 4700, et seq. (“District”).

WHEREAS, District is the sole producer and purveyor of recycled water in the City of Napa and the MST area of Napa County, and part of its operations includes the construction, operation, and management of recycled water pipelines; and

WHEREAS, the County and the District entered into an Agreement (County Agreement No. 160113B-16) in June 2016 regarding the design, engineering and construction of an expansion of the recycled water project in the Milliken-Sarco-Tulocay Groundwater Area (“MST Project”); and

WHEREAS, it had been contemplated that the County would be responsible for all expenses but the District has since obtained a \$2 million grant awarded to the MST Project from Proposition 84 funds and a grant awarded to the MST Expansion Project from the US Bureau of Reclamation; and

WHEREAS, the County has applied for a \$2,050,000 SRF loan for the MST Project which includes principal forgiveness; and

WHEREAS, the District approved plans and specifications for the MST Project on February 1, 2017 and is soliciting for bids; and

WHEREAS, updates are now required regarding funding of design and construction expenses for the expanded MST Project.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements of the parties, and other valuable consideration the sufficiency of which is hereby acknowledged, the parties hereby agree to amend the Funding Agreement as follows:

1. Sections 1 (A) and (B) of the Agreement are amended in their entirety as follows:

- A. The MST Expansion Project. The MST Recycled Water Pipeline Expansion Project (“the Project” or “MST Expansion Project”) is the design, engineering and construction of a recycled water pipeline from the existing MST recycled water distribution pipeline

according to the Project Map (“Exhibit A”). The project also includes the construction and installation of five (5) public services and water meters on the existing MST Recycled Water Distribution pipeline.

B. Project Modification. The District may modify the Project, upon prior written approval by County, during design and engineering as necessary to effectuate the least cost design for construction and operations of the Project. The modifications to any Professional Services Agreements shall be in the form of Task Orders or Task Order Amendments, and will be approved in accordance with the District’s Procurement Policies (District Code Section 2.03, et seq.). It is acknowledged that such changes may or may not increase or decrease the overall cost of the design and engineering contract and/or the final construction project. The estimated project costs, as described in Section 4 below, identify design and engineering costs of the pipeline expansion as well as the construction and implementation of public services and water meters. The District shall have full authority to authorize payment requests, Task Orders, and Construction Change Orders that result in payment requests up to the estimated project costs. The District and the County agree that all Task Orders, Task Order Amendments and Construction Change Orders will be discussed at regularly scheduled project meetings, and that any changes or Orders that increase the cost of the Project beyond the estimated project cost shall be approved by the District only after discussion with and approval of additional authority to spend beyond the Total Estimated Costs is provided by the County Director of Public Works.

2. Sections 2 (A), (B), and (C) of the Agreement are amended in their entirety as follows:

A. Procurement of Design/Engineering Professionals. The District shall conduct and be responsible for the procurement of all contracts associated with the design and engineering of the Project, including selecting the engineering consultant and all other associated consultants including but not limited to environmental consultants, at County’s discretion. Procurements shall follow federal procurement requirements (2 CFR 200.317-326), District Code Section 2.03, et seq., and any additional requirements imposed on the project by federal or state funding partners.

B. Procurement of Construction Contractor. The District shall conduct and be responsible for the procurement of all contracts associated with the construction and implementation of the Project, including selecting the lowest responsive and responsible bidder for the construction and selecting the construction management firm and all other associated consultants including but not limited to the design engineer during construction and/or environmental consultants, as deemed necessary by the District in consultation with County.

C. County Involvement in Procurement. County has the right to participate in the vendor selection process by reviewing proposals, providing timely comments to District, participating in any interviews of potential contractors, and providing input during deliberative sessions, but the final selection of contractors and consultants shall be made by the District.

3. Sections 4 (A) and (B) of the Agreement are amended in their entirety as follows:

- A. MST Project Costs Paid by County and District. County agrees to be responsible for and pay those MST Project costs not reimbursed by the United States Department of Interior Bureau of Reclamation (“USBR”) under the Title XVI WaterSMART grant program for the MST Expansion Project or fundable from the \$2 million grant obtained from Proposition 84 for the MST Project, or other grants or loans obtained for the MST Expansion Project. However, in no event shall the amount to be paid to the District by the County exceed \$2,190,000, without County Board of Supervisors approval.
- 1) Preliminary Engineering. County shall appropriate \$50,000 of Measure A Funding for preliminary engineering which shall not be exceeded.
 - 2) Planning and Design. District shall utilize that portion of the \$2,000,000 Proposition 84 grant awarded to the MST Project needed for MST Expansion Project costs related to planning and design of the MST Expansion Project.
 - 3) Construction. County shall appropriate up to \$2,050,000 from an SRF loan for MST Expansion Project costs related to construction. The County will promptly reimburse District expenses after receipt of funds from SRF loan disbursements. District shall utilize funds from the Proposition 84 grant awarded to the MST Project for any remaining MST Expansion Project costs related to construction.
 - 4) Service Connections. County shall appropriate \$90,000 of CFD Assessments for the construction and implementation of service connections, to specific properties, along the existing MST recycled water pipeline.

The District shall not be responsible for any MST Expansion Project costs except as provided herein. MST Expansion Project costs include design services, pre-construction engineering, bidding and other procurement costs, construction cost, construction management, labor compliance services associated with construction, design services during construction, environmental services associated with permit, CEQA and NEPA compliance, District staff costs, permit fees, and other direct costs related to construction and oversight of the MST Expansion Project. It is understood by both parties that the County may stop work on the MST Expansion Project at any time, and that County will only be responsible for costs incurred up to that date.

- B. MST Expansion Project Budget. This Agreement authorizes the County to pay all actual MST Expansion Project expenses as defined in Section 4(A) above. The Total Project Budget for the MST Expansion Project is \$4,100,000, with 25% of eligible costs to be reimbursed to the District under the USBR WaterSMART grant program and \$2,000,000 available from the Proposition 84 grant awarded to the MST Project and the remaining amount to be paid by the County or from other grant sources. County understands and acknowledges that if the recycled water expansion is not constructed prior to October 1, 2017, the MST Expansion Project may not be eligible for USBR grant funding. Any amounts over the Total Project Budget shall be agreed to between the parties prior to encumbrance of those costs. County agrees not to withhold its agreement for reasonable expenses related to implementation of the MST Expansion Project. County asserts and District understands that the County will not commit resources to the MST Expansion

Project beyond those available through grants, SRF Loan and the Community Facilities District. Both parties agree to proceed with the MST Expansion Project acknowledging that if MST Expansion Project costs exceed resources available to the County, the MST Expansion Project may not be completed.

4. Section 5 (B) of the Agreement is amended in its entirety as follows:

B. Operation of the Project. District will accept responsibility for operation of the Project upon completion. County shall determine, based on District's operational requirements, when District shall begin delivery of recycled water to the five new public laterals and water meters.

5. Section 8 of the Agreement is amended in its entirety as follows:

8. Additional NBWRA Cost Sharing

County and District will share NBWRA participation costs attributable to District identified for Fiscal Years 2016/17 and 2017/18 as described below. These costs include the following activities:

- Program Development
- Federal Legislative Advocacy
- Grant Applications and Management

These activities are part of the "Phase 1 Support" component of the NBWRA Third Memorandum of Understanding. In no event shall any federal grant money be used to pay for lobbying activities including Federal Legislative Advocacy.

Total estimated costs to the District under Phase 1 Support – during the fiscal years noted – are estimated to be \$86,674, although the NBWRA Memorandum of Understanding (MOU) allows for these costs to increase by as much as 15% without unanimous approval of the NBWRA Board of Directors. County agrees to reimburse District fifty per cent (50%) of the District's costs for the "Phase 1 Support" category during these fiscal years, or an estimated maximum of \$43,337. Pursuant to the above, County shall pay the District upon presentation by District to County's Public Works Director an invoice for costs of District's Phase 1 NBWRA membership expenses. County shall pay District its share of these costs within forty five (45) days of the presentation of invoices by the District to the County. These costs are over and above those described in Section 4.

6. All other provisions of the AGREEMENT shall remain in effect.
7. This AMENDMENT may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one AMENDMENT.

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IN WITNESS WHEREOF, this AMENDMENT NO. 1 to AGREEMENT NO. 160113B-16 was executed by the parties hereto as of the date first above written.

NAPA COUNTY, a political subdivision of the State of California

By: _____
BELIA RAMOS,
Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: <u>Chris R.Y. Apallas</u> County Counsel Date: <u>March 24, 2017</u>	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: _____ Processed By: _____ Deputy Clerk of the Board	ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors By: _____
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NAPA SANITATION DISTRICT

By: _____
JILL TECHEL,
Chair of the Board

ATTEST: CHERYL SCHUH
Board Secretary

APPROVED AS TO FORM:
JOHN BAKKER, District Counsel

By: _____

By: _____