CITY OF ST. HELENA

RESOLUTION NO. 2011-82

APPROVING AMENDMENT NO. 3 TO RESOLUTION 2006-131
AUTHORIZING WATER SUPPLY AGREEMENT
BETWEEN THE CITY OF NAPA AND
THE CITY OF ST. HELENA

RECITALS

A. Resolution 2006-131 adopted Water Supply Agreement between the City of Napa and the City of St. Helena is September 2006 to provide a minimum annual delivery of 200 acre-feet of water to St. Helena; and

B. Resolution 2009-40 approved Amendment No. 1 to the Water Supply agreement between the City of Napa and the City St. Helena where the City requested an additional minimum annual delivery of 200 acre-feet of water in order to meet dry year demand deficits as specified in the 2050 Study; and

C. Resolution 2010-23 approved Amendment No. 2 to the Water Supply agreement between the City of Napa and the City St. Helena where the City requested that the City of Napa make available the 511 AF of water that was not delivered in water year 2010; and

D. City of St. Helena desires additional reliability and has requested a third amendment to increase the minimum annual delivery to 600 AFA with no change to the optional delivery up to a total of 800 AFA.; and

E. The unit price for water purchased by City of St. Helena requires a commitment from the City of Napa to ensure the City’s revenue assumptions in the recent cost of service analysis are achieved; and

F. The City of Napa and the City of St. Helena have mutually agreed to the terms of Amendment No. 3.

RESOLUTION

NOW, THEREFORE, The City Council for the City of St. Helena resolves as follows:

1. Amendment No. 3 to the Water Supply Agreement between the City of Napa and the City of St. Helena is approved.
Approved at a Regular Meeting of the St. Helena City Council on November 8, 2011, by the following vote:
AYES: Councilmembers Crull, White, Nevero, Mayor Britton
NOES: None
ABSENT: Councilmember Sanchez

APPROVED:

[Signature]
Delford Britton
Mayor

ATTEST:

[Signature]
Delia Gujosa
City Clerk
AMENDMENT NO. 3 TO WATERS 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 _15__ 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 form 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 practically 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

CITY OF ST. HELENA, a municipal corporation

BY: Jill Techel, Mayor

BY: Mayor

ATTEST: Dorothy Roberts, City Clerk

ATTEST: City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Michael Barrett, City Attorney

City Attorney

COUNTERSIGNED:

COUNTERSIGNED:

Ann Mehta, City Auditor

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)
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