

Napa County Agreement No. _____
NCFPWIA Agreement No. _____
NCFC&WCD Agreement No. _____
American Canyon Agreement No. _____
City of Napa Agreement No. _____
St. Helena Agreement No. _____
Calistoga Agreement No. _____
Yountville Agreement No. _____

AMENDMENT NO. 1 OF

**JOINT POWERS AGREEMENT
REGARDING THE USE AND EQUITABLE DISTRIBUTION
OF FLOOD PROTECTION SALES TAX REVENUES**

THIS AMENDMENT NO. 1 of JOINT POWERS AGREEMENT REGARDING THE USE AND EQUITABLE DISTRIBUTION OF FLOOD PROTECTION SALES TAX REVENUES (the “Joint Powers Agreement”) is made and entered into as of this _____ day of June, 2018, between and among the County of Napa, a political subdivision of the State of California (the “County”); the Napa County Flood Protection and Watershed Improvement Authority, a public authority established pursuant to section 7285.5 of the Revenue and Taxation Code (the “Authority”); the Napa County Flood Control and Water Conservation District, a flood control district organized under the laws of the State of California (the “District”); and the Cities of American Canyon, Napa, St. Helena, and Calistoga, and the Town of Yountville, municipal corporations (collectively, the “Municipalities”). The County, Authority, District, and Municipalities shall collectively be referred to in this Amendment to the Joint Powers Agreement as “Parties.”

RECITALS

WHEREAS, on or about November 1, 1998, the Parties entered into the Joint Powers Agreement pursuant to section 5 of Authority Ordinance No. 1 relating to the equitable distribution of flood protection sales tax revenues to County-wide projects; and

WHEREAS, various sections of the Joint Powers Agreement specify the manner through which relevant tax revenues are distributed among the Parties and the purposes for which they may be used; and

WHEREAS, section 5 of the Joint Powers Agreement specifies the purposes for which additional revenues may be used; and

WHEREAS, additional revenues are anticipated in excess of those needed to satisfy all obligations relating to Authority Ordinance No. 1 and the Joint Powers Agreement; and

WHEREAS, the Parties desire to establish a procedure and manner of distribution of additional revenues beyond those needed to satisfy the obligations of Authority Ordinance No. 1 and the Joint Powers Agreement.

TERMS

NOW, THEREFORE, IT IS AGREED by the Parties that the Joint Powers Agreement shall be amended as follows:

1. Section 2 of the Joint Powers Agreement is hereby amended to read in full as follows:

SECTION 2. Recitals

(a) The Ordinance has imposed a Flood Protection Sales Tax in Napa County equal to one-half of one percent with the resultant revenues to be used only for projects contained in the Plan or substitute projects approved in accordance with the provisions contained in the Ordinance relating to substitute projects.

(b) County-wide, a minimum of \$6 million per year is expected to be generated by the Flood Protection Sales Tax, based upon 1995-96 actual sales tax receipts in the County (see Table 1). Tax revenues for purposes of this Agreement will be calculated on a July 1-June 30 fiscal year basis commencing July 1, 1998 (the "Tax Year").

(c) The term of the Flood Protection Sales Tax is for a maximum period of 20 years. The Flood Protection Sales Tax revenues are required to be placed in the General Fund of the Authority. The Auditor has indicated her intent to then allocate these revenues to the various subfunds that will be established for the benefit of the County, the District and the Municipalities (hereafter collectively "Tax Fund").

(d) The County, the District and the Municipalities prior to the March 3, 1998, election conducted study sessions and deliberations regarding the unmet flood protection needs throughout the County and identified critical projects which would greatly reduce and/or eliminate the destructive flood damage which regularly occurs in the County. These projects were then included in the Ordinance which was subsequently approved by the voters on March 3, 1998.

(e) The County, the District, the Authority and the Municipalities agree the funding structure for the Napa River and Napa Creek Project, as detailed and designed by the Community Coalition for Napa Flood Management and the Army Corps of Engineers (as further described in the Ordinance and hereafter referred to as the "Napa Project"), must be given special consideration because of the standing federal authorization granted to the Napa community in 1965. Despite the existence of this standing federal authorization, during 1996 and again in 1997, the Corps of Engineers and the United States Congress sent a series of messages to the Napa Community that not only project planning and design but also the local funding for the Napa Project must be in place by Spring 1998 in order for Congress to continue appropriating money for the Napa Project. As a result of

these series of messages it became clear that without action by the Napa Community the Napa Project standing federal authorization would be terminated and appropriations no longer approved on an annual basis for the reason that sufficient local funding did not exist to actually carry out the Napa Project.

(f) The County, the District, the Authority and the Municipalities have studied and understand the urgent need to commit sufficient Flood Protection Sales Tax revenues on a countywide basis to enable the local share of costs for the Napa Project to be generated, and that such contribution must be sufficient to enable the Napa Project to be completed within seven (7) years.

(g) The Authority has retained Leifer Capital as its financial advisor. The County, the District, the Authority and the Municipalities have studied the financial analysis provided by Leifer Capital (the "Leifer Report") which provides guidelines for long term debt financing structures that are feasible using Flood Protection Sales Tax revenues. The Leifer Report contains criteria for such financing assuring that the County's General Fund is not placed at risk. A copy of the Leifer Report is on file with the Clerk of the Board of Supervisors of the County of Napa and is incorporated herein by reference as though set out in full.

(h) The County, the District, the Authority and the Municipalities understand that, after completion of the projects contained in the Plan (including any substitute projects approved in accordance with section 8 of the Ordinance) and the establishment and capitalization of the long term capital improvement maintenance fund(s) authorized by the Ordinance, any remaining Flood Protection Sales Tax revenues, and any State Subventions as defined in Section 5(a) that accrue to the Tax Fund that has been established to enable the County, District and Municipalities to better track the distribution of the Flood Protection Sales Tax revenues will be used to retire the related debt early, in order to terminate or reduce the Flood Protection Sales Tax at the earliest possible time.

(i) The County, the District, the Authority and the Municipalities understand and agree that all revenues distributed pursuant to the Ordinance and this Agreement shall be used solely for purposes consistent with and authorized by the Ordinance and this Agreement. The County, the District, and each of the Municipalities agree to be solely responsible for the proper use of any and all revenues disbursed pursuant to the Ordinance and this Agreement. Neither the Authority, nor any of its successors, assigns, committees, subcommittees, officers, or members, shall be liable for the County's, the District's or a Municipality's use of any revenues once disbursed to and under the sole control of that entity.

2. Section 5 of the Joint Powers Agreement is hereby amended to read in full as follows:

SECTION 5: Use of Additional Revenues

(a) Additional revenues can be expected to accrue in the Tax Fund due to interest received, growth in Flood Protection Sales Tax revenues which exceed the \$6 million 1995-96 base year level, and funds received from the State of California pursuant to section 12748 of the California Water Code (the "State Subventions") in excess of those needed for the Napa Project Cost Overruns (as that term is defined in Section 6). Growth Tax Revenues shall be allocated in the manner set forth in this Section. Interest accruing to each jurisdiction's sub-fund account within the Tax Fund (i.e., the Napa Project Fund, the Calistoga Fund, etc.) shall be credited to that sub-fund account for use by that jurisdiction in the implementation of that jurisdiction's qualifying projects. These additional funds, if any, shall not be used except as provided for in this section or in support of those projects, or duly authorized substitute projects, identified in the Ordinance or in the Summary of Projects, attached as Exhibit "B" and incorporated herein by reference. The funds will be disbursed in the manner described in Section 5(b), 5(c), and 5(d).

(b) Except as provided for in Section 5(d), Growth Tax Revenues will be used only for the following purposes:

(1) For the first seven (7) years of the Flood Protection Sales Tax term ending June 30, 2005, Growth Tax Revenues shall be allocated to all jurisdictions based on the Base Tax percentages set forth in subparagraphs (c) and (d) of Section 3 for use by each jurisdiction in the implementation of that jurisdiction's approved projects; provided, however, that all such growth revenues shall be temporarily re-allocated for the purpose of financing the Napa Project.

(2) Growth Tax Revenues received or after July 1, 2005, shall be allocated in the following order of priority on a quarterly basis. Reallocations called for by subparagraphs (B) through (E) shall be on a pro-rata basis.

(A) To satisfy any debt financing payment incurred for the Napa Project not satisfied by the Napa Project's share of tax revenues set forth in Table 3 (see section 3(h)) as that percentage may be adjusted annually following July 1, 2005, pursuant to Section 3(f);

(B) To make up for any shortfalls in previous years to the Napa Project or Countywide Projects due to the drop in Flood Protection Sales Tax revenues below \$6 million as set forth in Section 7(b);

(C) To return to the Countywide Projects Flood Protection Sales Tax revenues that were temporarily reallocated for use on the Napa Project during the period July 1, 1998 through June 30, 2005 pursuant to Sections 3(e) and 5(b)(1);

(D) To return to the Countywide Project sub-fund accounts an amount equal to the interest that would have been earned on the Flood Protection Sales Tax revenues that were diverted for use on the Napa Project as set forth in Section 3(e) and 5(b)(1) had the diversion not occurred;

- (E) To all jurisdictions in the amounts set forth in Section 3(g) of this Agreement.
- (F) To retire project-related outstanding debt as early as possible so that the Flood Protection Sales Tax will be terminated at the earliest possible time.
- (c) State Subventions shall be utilized in the following order of priority:
 - (A) To satisfy any debt financing payment incurred for the Napa Project not satisfied by the Napa Project's share of tax revenues set forth in Table 3 (see section 3(h)) as that percentage may be adjusted annually following July 1, 2005, pursuant to Section 3(f);
 - (B) To fund Napa Project Cost overruns in their entirety;
 - (C) To return to the County Unincorporated sub-fund account an amount equal to the Flood Protection Sales Tax revenues generated in the Napa Vicinity from July 1, 2005 to the expiration or early termination of the Flood Protection Sales Tax;
 - (D) To make up for any shortfalls in previous years to the Napa Project or Countywide Projects due to a drop in Flood Protection Sales Tax revenues below \$6 million as set forth in Section 7(b);
 - (E) To return to the Countywide Projects Flood Protection Sales Tax revenues that were temporarily reallocated for use on the Napa Project during the period July 1, 1998 through June 30, 2005 pursuant to Sections 3(e) and 5(b)(1);
 - (F) To return to the Countywide Project subfund accounts an amount equal to the interest that would have been earned on the Flood Protection Sales Tax revenues that were diverted for use on the Napa Project as set forth in Section 3(e) and 5(b)(1)) had the diversion not occurred;
 - (G) To retire project-related outstanding debt as early as possible so that the Flood Protection Sales Tax will be terminated at the earliest possible time.
- (d) In the event that Growth Tax Revenues exceed the amounts necessary to carry out all priorities contained within Section 5(b), any remaining amount of additional revenues shall be disbursed and accounted for in accordance with the Measure A Sunset Procedures, attached as Exhibit "A" and incorporated herein by reference. Any additional revenues disbursed to or among the Parties shall be expended as follows:
 - (1) For final administration costs, in an amount not to exceed \$150,000.00, incurred or paid in Fiscal Year 2018-2019 in accordance with the estimates provided in Exhibit "A". Any excess funds reserved for administration costs but not needed to fulfill the estimates provided in Exhibit "A" shall be transferred to the City Project Maintenance Special Revenue Fund.

(2) In accordance with the Jurisdiction Accounting and Reporting procedures provided in Exhibit "A" in support of any project approved in an agreement among or between the County, the Authority, the District, and/or any one of the Municipalities, as summarized on Exhibit "B."

3. Except as provided above, the terms and conditions of the Joint Powers Agreement shall remain in full force and effect as originally approved.

4. This Amendment may be executed in counterparts with the same force and effect as if each of the signatories had executed the same instrument.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

**NAPA COUNTY FLOOD PROTECTION AND
WATERSHED IMPROVEMENT AUTHORITY**

By_____

ATTEST:
Secretary of NCFPWIA

APPROVED AS TO FORM

Office of County Counsel

By: _____

Date: _____

By_____

**NAPA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By_____

ATTEST:
District Secretary

APPROVED AS TO FORM

Office of County Counsel

By: _____

Date: _____

By_____

COUNTY OF NAPA

By_____

ATTEST:
Clerk of the Board

By_____

APPROVED AS TO FORM

Office of County Counsel

By: _____

Date: _____

CITY OF NAPA

By_____

ATTEST:

By_____

APPROVED AS TO FORM

Office of Napa City Attorney

By: _____

Date: _____

CITY OF AMERICAN CANYON

By_____

ATTEST:

By_____

APPROVED AS TO FORM

Office of the American Canyon City Attorney

By: _____

Date: _____

CITY OF ST. HELENA

By_____

ATTEST:

By_____

APPROVED AS TO FORM

Office of the St. Helena City Attorney

By: _____

Date: _____

CITY OF CALISTOGA

By_____

ATTEST:

By_____

APPROVED AS TO FORM

Office of the Calistoga City Attorney

By: _____

Date: _____

TOWN OF YOUNTVILLE

By_____

ATTEST:

By_____

APPROVED AS TO FORM

Office of the Yountville Town Attorney

By: _____

Date: _____

Close out Process for the Flood Authority:

- 6/30/18 record accounts receivable for all remaining sales tax revenues to be remitted by the State, earned through June 30, 2018. Should be realized by September 30, 2018.
- 6/30/18 record accounts payable for all remaining balances to be transferred to Jurisdictions for all earnings through June 30, 2018. Will be transferred as soon as final tax receipts are received.
- Audit as of 6/30/18 - Trial Balance will consist of Cash + Accounts Receivable, with an offsetting Accounts Payable, resulting in a Fund Balance of \$0
- Audit as of 9/30/18 or 10/31/18 (After all checks are cut) - Final Trial Balance will be \$0 – Authority Financials are closed indefinitely

Jurisdiction Accounting and Reporting, including City Project Maintenance Fund:

- Prior to 6/30/18 establish an interest bearing Special Revenue Fund for segregation of Measure A receipts restricted to Measure A eligible reimbursements.
- 6/30/18 finalize and recognize all eligible reimbursements for costs incurred through 6/30/18, recognize a receivable for outstanding approved invoices.
- 6/30/18 recognize revenue and a receivable in the newly created special revenue fund for the balance of funds earned through 6/30/18, net receivable booked above.
- Audit as of 6/30/18 should show :
 1. Measure A receivable to offset all costs (to the extent Measure A funding is available through the end of the tax – to be known in late September when County receives final payments).
 2. The net receivable remaining in a Separate Special Revenue fund.
- Activity beginning 7/1/18:
 1. Costs for projects continue to be incurred and captured in operating budgets.
 2. Jurisdiction makes drawdowns from their Special Revenue fund to reimburse the costs.
 3. All documentation to substantiate the drawdown as well as a full accounting of the Special Revenue fund shall be submitted to the District Engineer and County Auditor-Controller for approval prior to close of books.
- Jurisdictions are responsible for segregation of monies and compliance with Measure A funds, providing at a minimum annual report to the Auditor-Controller.
- For fiscal year 2017-18, Flood District Engineer continues to approve drawdowns prior to payment.
- For fiscal year 2018-19 and future, jurisdictional Public Works Engineers and City/Town Managers are to be responsible for approval of eligible expenditures to ensure proper use of Measure A drawdowns.
- Auditor-Controller continues to be responsible for the audit and receipt of annual reporting from jurisdictions with remaining funds pertaining to Measure A compliance and accounting.

Final Administration Costs for Measure A (fiscal year 2018-19):

- Costs will continue for the following:
 - Final audit covering 6/30/18 and close of Authority (Est \$15,000)
 - Final FOC annual publication (Est \$95,000)
 - Final Authority Meetings (Clerk of the Board/ACO expenses Est \$5,000)
 - Celebration ceremony (Est \$20,000)
 - CoCo and ACO staffing costs for close out (Est \$5,000)
 - Miscellaneous (Est \$10,000)
 - Total estimated costs \$150,000
- All costs will be incurred and paid in Fiscal Year 2018-19, approved by ACO
- Recommend using District Flood Authority Administration sub-division to track these costs
- Any remaining funds will be transferred to City Project Maintenance Special Revenue Fund

Exhibit B

The final Measure A Agreements for each jurisdiction is the official project record of the use of Measure A funds. This Exhibit contains a summary of projects approved pursuant to those Agreements. All use of funds for these projects must be consistent with the corresponding Agreement

City of American Canyon

Projects approved by the Authority for the use of all remaining Measure A funds:

1. Continue the implementation of the adopted Flood Control and Storm Drain Master Plan to protect existing development.
2. Annual debt service payments for the Cal-Fed loan used to pay for the replacement of the wastewater treatment plant.

City of Napa and Vicinity

Project approved by the Authority for the use of all remaining Measure A funds:

1. Continue the Napa River/Napa Creek Flood Protection Project - planning, design, construction, and land acquisitions.

City of Napa and Vicinity Maintenance Project

Project approved by the Authority for the use of all remaining Measure A funds:

1. To provide long term maintenance of the Napa Project, including periodic clearing of sediment which occurs due to erosion in the upper Napa River watershed.

Town of Yountville

Projects approved by the Authority for the use of all remaining Measure A funds:

1. On-going maintenance of the completed Measure A projects, to include Flood protection work completed within mobile home parks and surrounding areas, and restoration work completed in Hopper Creek, Beard Ditch and Villagio Channel.
2. Annual debt service payments on the Flood Barrier Project.

City of St. Helena

Project approved by the Authority for the use of all remaining Measure A funds:

1. Annual debt service payments on the State Revolving Loan received for Flood Project Improvements.

City of Calistoga

Projects approved by the Authority for the use of all remaining Measure A funds:

1. Continue project on Kimball Dam Intake Tower, Drain Valve, Bypass Structure, and Water Rights Protection - involves the design and construction of the intake tower replacement, drain valve and piping improvements, telemetry and SCADA improvements, as well as hydrology studies and fishery biologist studies.
2. Grant Street flood improvement Project to replace the existing 36" storm drain with two 48" pipes that run through the Napa County Fairgrounds - includes installation of box culverts, concrete piping, channel modifications, erosion control, concrete junction boxes and connection to existing outfall piping. Also includes obtaining and complying with regulatory permits, project close-out and project compliance reporting by consultants.

County Unincorporated Projects

Projects approved by the Authority for the use of all remaining Measure A funds:

1. Angwin/Deer Park Water Supply Reliability Program - for stabilization and enhancement of existing water system components for flood protection and water reliability as well as water quality improvements.
2. Oakville to Oak Knoll Reach Project - the downstream continuation of restoration of the Napa River from the Rutherford reach. The OVOK project includes 4 construction phases encompassing 9.5 miles of the Napa River.
3. Lake Berryessa Watershed Improvement Program to support the Lake Berryessa Resort Improvement District for Storm Damage and Erosion Control, continued participation in the West Sacramento Valley IRWMP, and to fund additional subprojects in the Lake Berryessa Watershed Improvement Grant Program.
4. Milliken Creek Flood Reduction and Fish Passage Improvement Project - improvements that will result in a lowering of water surface elevations and therefore flood damage reduction to homes in the Kaanapali Drive subdivision, including:
 - ✓ Removal of summer impoundment dam to eliminate hydraulic jump in creek
 - ✓ Establish a storm water bypass for golf course detention area
 - ✓ Improve drainage on Kaanapali Drive.
5. Airport Flood Reduction Project - to fund a flood reduction improvement project at the Napa County Airport per FAA Guidelines.
6. MST Project – Continue to fund the County's participation in the North Bay Water Reuse Authority.
7. Countywide Water Conservation – Continue to fund the Countywide Water Conservation Program.