

Napa County Agreement No. 4102
NCFPWIA Agreement No. 8
NCFC&WCD Agreement No. 34(FC)
American Canyon Agreement No. _____
City of Napa Agreement No. _____
St. Helena Agreement No. _____
Calistoga Agreement No. _____
Yountville Agreement No. _____

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

THIS JOINT POWERS AGREEMENT (the "Agreement") is made and entered into as of this 1st day of November, 1998, 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 (the "Municipalities").

The parties hereby agree as follows:

SECTION 1. Purpose

On March 3, 1998, the electorate of the County approved the Authority's Ordinance No. 1 (the "Ordinance") which, among other things, imposed a one-half of one percent transactions and use tax in the County (the "Flood Protection Sales Tax") and established a Flood Protection and Watershed Improvement Expenditure Plan which describes the projects authorized to be funded with the proceeds of the Flood Protection Sales Tax (the "Plan").

In anticipation of the approval of the Ordinance by the electorate, the parties, in early 1998, entered into a Memorandum of Understanding regarding the use and equitable distribution of sales tax revenues generated by the enactment of the Napa County Flood Protection Sales Tax Ordinance (the "MOU").

The MOU contained operating policies and criteria regarding the equitable distribution of Flood Protection Sales Tax revenues by the Authority to the County, the District and the Municipalities, debt financing for projects contained in the Plan, project substitution, fund

accounting, contract relationships and administrative support to the Financial Oversight Committee established by the Ordinance.

The parties now intend to update and replace the MOU with this formal joint powers agreement as contemplated by Sections 3(g) and 5 of the Ordinance.

This Agreement is intended to be a joint powers agreement authorized by section 6500 *et seq.* of the California Government Code and is entered into for the purpose of implementing the flood protection, watershed improvement and related projects sanctioned by the Ordinance.

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.

SECTION 3: Equitable Distribution of Sales Tax Revenues to Finance the Projects Contained in the Ordinance

(a) The Ordinance contains the following provisions which provide for the distribution of Flood Protection Sales Tax revenues:

(1) Section 2 (J): *"The allocation of the Flood Protection Sales Tax revenues that will be generated as a result of the passage of this 1/2% transaction and use tax by the Authority and the subsequent approval by the People with a 2/3rds vote, shall be based on the amount of Flood Protection Sales Tax revenue generated by the various geographic areas within the County, subject to Section 20 of this Ordinance."*

(2) Section 5: *"The distribution of the Flood Protection Sales Tax revenues to fund the projects described in this Ordinance, over the life of the tax, shall occur in a manner*

which is proportional to the Flood Protection Sales Tax revenues generated by each of the incorporated and unincorporated areas in Napa County. The portion of the distributions representing the share of the revenues allocated to the unincorporated area may be used to assist in paying for the flood protection projects involving incorporated areas that are described in this Ordinance."

"Specific allocations and methods of distribution based on the amount of Flood Protection Sales Tax revenues generated by each of the incorporated and unincorporated areas in Napa County shall be specified in a Joint Powers Agreement which shall be developed following the enactment of the Flood Protection Sales Tax."

(b) The sales tax generated during the 1995-96 year shall be used as the base year for Flood Protection Sales Tax allocation purposes (the "Base Tax"). The sales tax generated in the County by jurisdiction during the base year was as follows:

TABLE 1

	<u>Amount</u>	<u>Percentage</u>
(1) City of Napa:	\$3,124,000	52.0%
(2) Napa Vicinity:	\$ 876,000	14.6%
(3) City of American Canyon:	\$ 400,000	6.7%
(4) City of Calistoga:	\$ 198,000	3.3%
(5) City of St. Helena:	\$ 691,000	11.5%
(6) Town of Yountville:	\$ 137,000	2.3%
(7) County Unincorporated (excluding Napa Vicinity):	<u>\$ 574,000</u>	<u>9.6%</u>
Total 1995-96 Actual Receipts	\$6,000,000	100%

(c) The County, the District, the Authority and the Municipalities agree that for the life of the Flood Protection Sales Tax the entire share of the Tax generated within the City of Napa will be allocated to the Napa Project sub-fund account. Additionally, the entire share of the Flood Protection Tax generated in the unincorporated areas surrounding the City of Napa (the Napa Vicinity)¹ will also be allocated to the Napa Project sub-fund account. Therefore, each Tax Year \$4 million or 66.6% of the revenues generated by the Flood Protection Sales Tax in Napa County, whichever is greater, will be appropriated for this purpose. Notwithstanding the previous two sentences, the revenues from the Flood Protection Sales

¹ For purposes of this agreement, the "Napa Vicinity" is intended to include the areas of unincorporated County lands adjacent to the City of Napa including but not limited to the Silverado Country Club and Resort, the Coombsville area, all property included within Airport Industrial Area Specific Plan, Browns Valley, and the Carneros area.

Tax generated in the Napa Vicinity during the period July 1, 2005, until the termination or expiration of the Tax, that have been allocated to the Napa Project sub-fund account shall be reallocated to the County Unincorporated sub-fund account if it is determined by the Auditor of the Authority that payments received from the State pursuant to section 12748 of the California Water Code are in excess of the amount needed to complete the Napa Project, including but not limited to Napa Project financing and Cost Overruns (as defined in Section 6); provided further, however, that the amount of the reallocation shall not exceed the total Flood Protection Sales Tax the Napa Vicinity has contributed to the Napa Project sub-fund account for the period July 1, 2005 through the expiration or early termination of the Flood Protection Sales Tax.

(d) The remaining annual Flood Protection Sales Tax revenues generated throughout the County, in the proportions listed below, will be appropriated into sub-fund accounts maintained for projects in each of the below listed Municipalities and the County (the "County-wide Projects"), but not to exceed the Base Tax amounts set forth below:

TABLE 2

	<u>Base Tax</u>	<u>1st Seven year Sharing %</u>
(1) City of American Canyon: ²	\$ 400,000	6.7%
(2) City of Calistoga:	\$ 198,000	3.3%
(3) City of St. Helena:	\$ 691,000	11.5%
(4) Town of Yountville:	\$ 137,000	2.3%
(5) County Unincorporated (excluding Napa vicinity): ³	<u>\$ 574,000</u>	<u>9.6%</u>
Total 1995-96 actual receipts	<u>\$ 2,000,000</u>	<u>33.4%</u>

(e) Adjustment to County-wide Annual Allocations during Construction of the Napa Project:

² Flood Protection Sales Tax revenues from enactment of the Ordinance within the City of American Canyon city limits are difficult to predict due to State Board of Equalization regulations regarding local transactions and use taxes like the Flood Protection Sales Tax. Approximately 50% of American Canyon's sales tax revenues are from businesses with sales contract exports out of the County which are subject to the State Sales Tax, but will not be subject to the Flood Protection Sales Tax. Therefore, it is agreed that the projected distribution to American Canyon will be set at the historical level for purposes of this Agreement but will be reviewed and adjusted after the first year of actual collections (1998-99) are analyzed. Any adjustment to the American Canyon share will analyze and take into account one-time anomalies in the year used for the adjustment. Actual 1/2 cent 1995-96 State Sales Tax revenues collected in the City of American Canyon were \$400,000. Actual shares for American Canyon may equal 50% or \$200,000 or less. Each jurisdiction shall be debited or credited, as the case may be, in year 2 of the Flood Protection Sales Tax for any over- or underpayment in year 1 based on any adjustments in their percentage allocation required as a result of the American Canyon analysis.

³ The County Unincorporated (excluding Napa Vicinity) allocation will be placed in sub-accounts for the following geographic areas within the County:

Angwin/Deer Park:	\$ 100,000	17.0%
Berryessa Watershed:	\$ 40,000	7.0%
Balance of County:	\$ 434,000	76.0%

The Napa Project requires a front end cash flow from Flood Protection Sales Tax revenues greater than its equitable share during the first seven (7) years of the Flood Protection Sales Tax term. While the equitable share for County-wide Projects should be \$2.0 million per year, or 33% of the total sales tax received during any given tax year, whichever is greater (see Table 2), only \$1 million per year will be committed in the first seven (7) years of the Flood Protection Sales Tax term because of the financing needs of the Napa Project. These adjustments are reflected in Table 3⁴

(f) Except for the percentage adjustments resulting from the City of American Canyon review (see footnote No. 2), the above percentage equitable allocations will be fixed until June 30, 2005. The Authority's Auditor on or about October 1, 2005, will conduct a review of the percentage allocations and issue a report and one or more recommendations (the "Report and Recommendation") regarding adjustments to those allocations for the Tax Year commencing July 1, 2006, in a manner that will ensure that at the time the Flood Protection Sales Tax expires, or is terminated prior to its scheduled expiration, each jurisdiction's allocation will approximate the Flood Protection Sales Tax revenues generated within that jurisdiction due to the existence of said Tax. On or about October 1st of each subsequent year, and for the remaining life of the Flood Protection Sales Tax, the Auditor shall issue additional Reports and Recommendations regarding adjustments of the Flood Protection Sales Tax revenues to take effect the July 1st following the issuance of said Report and Recommendation based upon a review of the cumulative actual Flood Protection Sales Tax receipts collected in each jurisdiction up to that point in time. Each such Report and Recommendation must recommend adjustments ensuring that at the time the Flood Protection Sales Tax expires, or is terminated prior to its scheduled expiration, each jurisdiction's allocation will approximate the additional Flood Protection Sales Tax revenues generated within that jurisdiction due to the existence of said Tax. The aforementioned Reports and Recommendations, which must set forth the revised allocations and the basis for same, shall be submitted to each affected jurisdiction not later than January 15th of each calendar year. Unless an objection is received from the jurisdiction within 30 days of the mailing of the Report and Recommendation by the Auditor, any objections to the proposed allocation shall be deemed waived and the proposed revised allocation shall be implemented on the July 1st next following the issuance of the Report and Recommendation. Objections shall be resolved in the manner set forth in subparagraph (f)(3) of section 9 of this Agreement.

g) Project Maintenance Contribution:

⁴ If the Flood Protection Sales Tax revenues during the term of the Flood Protection Sales Tax exceeds \$6 million annually (hereafter "Growth Tax Revenues"), it shall be allocated as set forth in Section 5 so that when the Flood Protection Sales Tax expires, or is terminated prior to its scheduled expiration, each jurisdiction's allocation will approximate the additional sales tax revenues generated within that jurisdiction due to the existence of the Flood Protection Sales Tax.

(1) Napa Project: The equitable distribution of Flood Protection Sales Tax revenues to County-wide projects will be adjusted to reflect a contribution by the upper Napa River watershed communities and the County unincorporated area (excluding the Napa vicinity) to the long term maintenance cost of the Napa Project which must be periodically cleared of sedimentation which occurs due to erosion in the upper Napa River watershed. No adjustment shall be required during the first seven years of the existence of the Flood Protection Sales Tax. During the remainder of the life of the Flood Protection Sales Tax the adjustment shall total \$1,900,000. This adjustment applies only to the upper Napa River watershed and therefore will not be applied to the City of American Canyon share of the Flood Protection Sales Tax. This adjustment is reflected in Table 3 entitled "The Base Year Allocation of Flood Protection Sales Tax Revenues" and will be reflected in the allocations required by subparagraphs (d), (e) and (f) above. A cost component of the Napa Project shall be the creation of a \$10,000,000 Maintenance Trust Fund which will be dedicated to providing Napa Project maintenance in perpetuity. Neither the upper Napa River communities nor American Canyon shall be required to contribute any portion of its Flood Protection Sales Tax revenues to this fund.

(2) County-wide Projects Maintenance. To the extent that Growth Tax Revenues allow it, maintenance trust funds will be established for County-wide Projects as set forth in Section 5 with contributions on a pro-rata basis among the County, the District and the Municipalities (but not including the City of Napa). Such maintenance trust funds will not exceed the lesser of (1) actual maintenance needs, (2) 10% of the actual project cost for which the trust fund is being established, or (3) 30% of the County-wide projects share of the Growth Tax Revenues over the term of the Tax.

These limits on maintenance funding are intended to maximize the possibility that a portion of the Flood Protection Sales Tax revenues, and particularly the Growth Tax Revenue component of the Flood Protection Sales Tax revenues, will be available for the purpose of reducing the term of the Flood Protection Sales Tax.

(next page is page 8)

(h)

TABLE 3:**BASE YEAR ALLOCATION OF FLOOD PROTECTION SALES TAX REVENUES**

	Total-20 yrs	Annual Revenue Year 1-7	Annual Revenue Year 8-20	Napa Project Yearly Maintenance Debit: Year 8-20 ⁵	Annual Revenue After Maintenance Year 8-20
City of Napa (and Napa vicinity)	\$80,000,000	\$5,000,000	\$3,461,539	\$205,000	\$3,461,539
St. Helena	\$ 13,820,000	\$ 345,500	\$ 877,038	\$ 64,308	\$ 812,730
Yountville	\$ 2,740,000	\$ 68,500	\$ 173,885	\$ 13,154	\$ 160,731
American Canyon	\$ 8,000,000	\$ 200,000	\$ 507,692	0	\$ 507,692
Calistoga	\$ 3,960,000	\$ 99,000	\$ 251,308	\$ 19,000	\$ 232,308
County-Balance	\$ 8,480,000	\$ 217,000	\$ 535,461	\$ 49,692	\$ 485,769
County-Angwin	\$ 2,000,000	\$ 50,000	\$ 126,923	0	\$ 126,923
County-Berryessa	\$ 1,000,000	\$ 20,000	\$ 66,154	0	\$ 66,154
TOTAL	\$120,000,000	\$6,000,000	\$6,000,000	\$351,154	\$5,853,846

SECTION 4: Project Substitution

(a) Section 8 of the Ordinance contains provisions for substitution of Plan projects. It states:

In the event any project described in this Section is not economically or environmentally feasible, the legislative body having jurisdiction over the lands involved shall recommend to the Napa County Flood Control and Water Conservation District a replacement project. Only replacement projects that meet the criteria set forth in the first two paragraphs of this Section shall qualify and may be approved provided, however, that facilities for, or purchase of, North Bay Aqueduct or other water imported from outside Napa County shall not qualify as replacement projects. The Napa County Flood Control and Water Conservation District shall consider recommending approval of a

⁵ Napa City share of maintenance is \$205,000 per year plus the capitalization of a Maintenance Trust Fund of \$10 million, which will pay for project maintenance in perpetuity. These costs are included in the overall financing plan for the Napa Project (see Leifer Report).

replacement project to the Authority only after obtaining the recommendation of the Financial Oversight Committee and the Technical Review Committee. Approval by the Authority shall be in the form of an amendment to this Ordinance. Changes meeting the above criteria, to the extent permitted by law, shall not need a vote of the People ratifying the amendment.

(b) In carrying out and administering this provision, the County, the Municipalities, the Authority and the District agree that the following criteria will guide the approval of replacement projects:

(1) All projects funded by Flood Protection Sales Tax revenues will be permanent public improvements meeting the Government/Streets & Highways Code definitions of capital projects. Operation and maintenance costs for the capital projects will be allowable.

(2) All Municipalities will address their primary flood protection needs as the highest priority, before water supply reliability and wastewater projects are undertaken.

(3) Project substitutions will be allowed only if projects identified in the Plan are determined to be not economically or environmentally feasible or if a CEQA analysis of alternatives determines that a different project is superior in addressing the objectives of flood protection, improved water quality or stabilization of water supply reliability for existing residents.

(4) The Ordinance, in its entirety, will guide the approval of replacement projects. The Ordinance specifies project design criteria, oversight by the Financial Oversight Committee and provides policy and intent statements of the people of the County regarding the Plan projects, including replacement projects. Additional projects, rather than substitute projects, are not authorized by the Ordinance and therefore cannot be permitted.

SECTION 5: Use of Additional Revenues

(a) Additional revenues can be expected to accrue to 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 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, will not be used for additional projects beyond those projects, or duly authorized substitute projects, identified in the Ordinance. The funds will be disbursed in the manner described in subparagraphs (b) and (c) immediately below.

(b) 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 County-wide 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) Notwithstanding any other provision of this Agreement, 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.

SECTION 6: Napa Project Cost Overruns

It is the responsibility of the Authority to ensure the Flood Protection Sales Tax revenues are properly expended in the manner contemplated by Sections 3, 5 and 7 of this Agreement and the Ordinance. The Authority intends to satisfy its responsibility by entering into a contract for administrative services with the the District. For purposes of this Agreement, Napa Project cost overruns shall be defined as all expenses creditable to the Napa Project by the Army Corps of Engineers (the "Corps") in excess of the estimates contained in the Final General Design Memorandum certified by the District with respect to the Napa Project and any non-Corps creditable expenses of the Napa Project necessary to ensure the Napa Project's compliance with the project plan of the Community Coalition for Napa Flood Management. Napa Project cost overruns will be funded in the following order of priority:

(a) State Flood Control Subventions program reimbursements received by the District as a result of the implementation of the Napa Project.

(b) Growth Tax Revenues available to the District pursuant to Section 5(a) or (d) provided such revenues will not exceed the probable total additional sales tax generated by the City of Napa and the Napa County vicinity.

(c) City of Napa funding from other than Flood Protection Sales Tax sources.

If the above funding is not sufficient reductions in Napa Project's scope will be required.

SECTION 7: Reductions in Flood Protection Sales Tax Revenues

(a) It is understood that Flood Protection Sales Tax revenues are influenced by cycles in the overall economy, changes in State laws governing what is and is not taxable and other factors of external influence. In the event that Flood Protection Sales Tax revenues drop below the 1995-96 base year levels used for the financial forecasting for this Agreement, funding of the Napa Project shall have first priority and all other projects shall be subordinated on a pro-rata basis to the financing needs of the Napa Project.

(b) The Napa Project will maintain the minimum annual funding base specified in Table 1, if possible, and all other allocations will be proportionately reduced in any year that Flood Protection Sales Tax revenues are below \$6.0 million per year County-wide. Shortfalls that might occur to the Napa Project or other County-wide Projects due to this reduction in revenues shall be recovered in other years when Flood Protection Sales Tax revenues exceed the Base Tax levels in the manner set forth in Section 5(b)(2)(B), with funding for the Napa Project having first priority during the first seven years of the life of the tax; thereafter adjustments shall occur on a proportionate basis

SECTION 8: Debt Financing Policies

(a) The Napa Project will require debt financing not to exceed 20 years for approximately one half of the construction cost, as detailed in the Leifer Report. The County, the Authority, the District and the Municipalities understand and agree that the debt for the Napa Project will require the maintenance of a debt service coverage ratio and other covenants which will affect the ability to borrow for other Plan projects and may at times restrict the ability of other jurisdictions to access their allocated funds.⁶ As required by Section 20⁷ of the

⁶ If bonds or other indebtedness are issued by the Authority, it is likely that the financing documents will require that all of the Flood Protection Sales Tax revenues be transferred by the State Board of Equalization directly to a trustee who will be appointed in connection with the issuance of the bonds or other indebtedness. The financing documents will also require the trustee to transfer to the Auditor of the Authority in a timely manner such revenue as are not needed for the servicing of the bonds or other indebtedness. The financing documents will further require the trustee to provide such reports as the Auditor may require to enable the Auditor to allocate (for accounting purposes only) all of the Flood Protection Sales Tax revenues (including but not limited to those funds retained by the trustee) so that when the Tax expires, or is terminated prior to its scheduled expiration, each jurisdiction will be able to verify through an examination of the Auditor's records that its cumulative allocation approximates the additional Flood Protection Sales Tax revenues generated within that jurisdiction due to the existence of the Tax. Financing documents shall not be approved by the Authority unless they require the trustee to take such action.

⁷ SECTION 20. Bonds and Other Obligations. Upon voter approval of this Ordinance, the Authority shall have the authority to issue bonds or other obligations (including, without limitation, lease or installment sales agreements) to finance any of the projects included in the Plan as it may be amended from time to time (including reserves and other financing costs), which bonds or other obligations shall be payable from the

Ordinance, the rights of all parties hereunder to Flood Protection Sales Tax revenues shall be subordinate to the debt service coverage ratio needs of the above-described Napa Project debt. County-wide projects may be debt financed either through the Authority or by the Municipalities or the County. Any such financing must first be approved in writing by the governing board of the Authority. Any such financing must expressly state that it is subordinate to the Napa Project financing.

(b) The Authority will enter into project specific agreements with the County, the District and the Municipalities as described in Section 9(c). These agreements will detail project and financial terms and conditions consistent with this Agreement and the Ordinance. All such agreements must expressly state that the funding of the projects identified in the agreement(s) shall be subordinate to the Napa Project financing.

(c) Each project specific agreement described in Section 9(c) shall contain guarantees to protect the County General Fund. Such protections will include but not be limited to the following:

(1) Any debt incurred must indicate that the County General Fund is not obligated for its repayment; amounts pledged for the repayment of debt shall be limited to Flood Protection Sales Tax revenues contained in the Flood Tax Fund and any sub-accounts of such Fund.

(2) No County owned assets will be pledged as security for bond holders (unless the County chooses to use such assets as security when financing one of its approved projects). Rather, the projects themselves must provide the necessary security or the Municipalities or the District must identify additional security.

(d) The County, the District and the Municipalities understand and agree that Section 20 of the Ordinance anticipates that the Authority will issue bonds or other obligations (including, without limitation, lease or installment sales agreements) (including reserves and other financing costs), that these bonds or other obligations, if issued, will be payable from the revenues of the Flood Protection Sales Tax on a priority basis, and therefore in allocating Flood Protection Sales Tax revenues all debt service requirements and other financing costs of the Napa Project bonds and other obligations must be met, in accordance with the terms of the financing documents prior to allocating funds for any other purposes or projects. Therefore the County, the District and the Municipalities agree that each project specific agreement described in Section 9(c) of this Agreement shall contain guarantees ensuring that the funding of all projects (and substitute projects) identified in Section 8 of the Ordinance and referenced in Section 9(c) of this Agreement shall be subordinate to the Napa Project bonds and other obligations.

revenues of the Flood Protection Sales Tax. In allocating Flood Protection Sales Tax revenues all debt service requirements and other financing costs of such bonds and other obligations shall be met prior to allocating funds for any other purposes or projects.

(e) In connection with any of the debt financing described herein, the County, the District, the Authority and/or the Municipalities may be requested to provide certain information regarding their organization, operations, financial status and/or use of Flood Protection Sales Tax revenues (the "Information") in connection with the issuance of debt and annuities thereafter. Each party hereby covenants and warrants that any Information it provides to the Authority, the District, the County, or their respective officers, employees, consultants or agents, shall, to the best of its knowledge be true, complete and correct. Each party hereby agrees to indemnify and hold harmless the other parties with respect to any inaccuracies in the Information provided by it.

SECTION 9: Fund Accounting, Contract Relationships, and Oversight

(a) The Authority's Auditor will maintain a Tax Fund to receive and disburse Flood Protection Sales Tax revenues in accordance with the Ordinance and the terms of this Agreement and subject to the Agreement for State Administration of District Transactions and Use Taxes, dated May 7, 1998, and any resolution or indenture or similar document providing for issuance of bonds or other obligations of the Authority under Section 20 of the Ordinance.

(b) The Authority's Auditor will prepare an annual budget for the Authority, including the status of the Tax Fund, which will be formally adopted each year by the governing board of the Authority. The Authority may consult with the Financial Oversight Committee established by the Ordinance in the preparation of this budget. Each year the County's Auditor-Controller will also conduct an audit of the Flood Tax Fund as required by section 23 of the Ordinance. This audit shall be in addition to the audit required by the Ordinance to be conducted by the Financial Oversight Committee.

(c) All disbursements of Flood Protection Sales Tax revenues will be accomplished through contracts between the Authority and individual Municipalities, the County or the District. Jurisdictions wishing to access such funds shall submit to the Authority a request for disbursement in a form acceptable to the Authority, which, at a minimum, shall state the amount of funds requested, describe the project for which the funds are sought and specify how the proposed project is a permissible use of Flood Protection Sales Tax revenues.

(d) The Authority's Auditor will establish a financial system technical advisory committee (the "Technical Advisory Committee") to include the Authority's Auditor, the County Auditor-Controller and the appropriate administrator from each Municipality, the County, and the District. The Technical Advisory Committee will determine and recommend necessary controls for tracking of equitable distribution of revenues from the Flood Tax Fund and other financial aspects of this Agreement. The Technical Advisory Committee will also serve as the Debt Advisory Committee.

(e) The Technical Advisory Committee will provide assistance and support to the

Financial Oversight Committee established by the Ordinance to carry out its oversight mission.

(f) General Administrative expenses of the Authority shall be provided for as follows:

(1) Notwithstanding any other provision of this Agreement, and prior to the allocation of Flood Protection Sales Tax funds in accordance with Sections 3, 5 and 7, the Authority's Auditor shall annually allocate up to three percent (3%) of gross Flood Protection Sales Tax revenues to be used for the payment of the Authority's general administrative expenses incurred in connection with the administration of the Flood Protection Sales Tax, including costs associated with the operation of the Financial Oversight Committee and Technical Advisory Panel described in the Ordinance as well as the Technical Advisory Committee described in (d); provided, however, that the Authority shall be entitled to retain funds allocated hereunder only to the extent expenses are actually incurred as set forth in (4) below.

(2) The annual budget adopted by the Authority pursuant to (b) shall take into account these general administrative funds. The Authority shall keep records of all expenditures charged to general administration, which records shall be made reasonably available to the County, the District and the Municipalities upon request.

(3) Any administrative expenses of the Authority which are clearly and directly related to a particular project as determined by the Authority's Auditor (such as debt financing expenses as described in Section 8) shall not be deemed general administrative expenses hereunder but shall instead be charged to the Flood Account of the jurisdiction responsible for the project. Such charges shall be clearly shown on the quarterly financial report of general administrative expenses described in Section 9 (f) (6). Within 30 days of receiving this report a jurisdiction may appeal the decision of the Authority's Auditor by filing a formal request for review with the Secretary of the Authority. If such a request is filed, it shall be considered at the next regularly scheduled meeting of the Authority's governing body for which the appeal can be properly agendaized. The determination of the issue by the Authority's governing body shall be final and conclusive.

(4) Any funds allocated for payment of the Authority's general administrative expenses in a particular fiscal year that are not expended during that year (or encumbered for payment of expenses arising in that fiscal year) shall be re-allocated to the County, the District and the Municipalities in accordance with Sections 3, 5 and 7. The Authority shall not be entitled to "carryover" any such excess funds from year to year, but shall instead, in each fiscal year, be subject to the 3% cap set forth in (1) above. To the extent the Authority's general administrative expenses exceed in any fiscal year the amount allocated for their payment hereunder, such expenses shall not be defrayed using Flood Protection Sales Tax revenues.

(5) Any Department of the County or the Flood Control and Water Conservation District which does not track time and activity in 1 hour or less increments who intends to bill the Authority for general administrative expenses shall conduct a time study in 1 hour increments

for one month of each calendar quarter in order to justify such charges. Such time studies and activity reports shall be available for review by any party to this Agreement. In Departments where some but not all employees track time and activity in 1 hour or less increments, only those employees who do not track time and activity in 1 hour or less increments shall be subject to this requirement.

(6) Not less than sixty (60) days following the end of each calendar quarter the Auditor shall issue a report regarding the administrative expenses incurred during the preceeding quarter. The report shall allocate the total costs of the quarter to the various projects that qualify for sales tax reimbursement, the operation of the Financial Oversight Committee, the Technical Advisory Committee, and the Authority itself. Copies of this report shall be mailed to each party to this Agreement by certified mail. A party that objects to the allocations contained in that report must file written objections with the Auditor within 30 calendar days of receipt of the report. After that point all objections to the allocation(s) of the Auditor are deemed waived. Objections that are received will be resolved in the manner set forth in subparagraph (f)(3) of this section.

SECTION 10: Mutual Indemnification

Notwithstanding section 895.2 of the Government Code, each party hereunder hereby agrees to defend, indemnify and hold harmless the other parties, their officers, agents and employees, from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected to its performance under this Agreement, including activities of that party funded in whole or in part by Flood Protection Sales Tax revenues.

SECTION 11: Miscellaneous Provisions

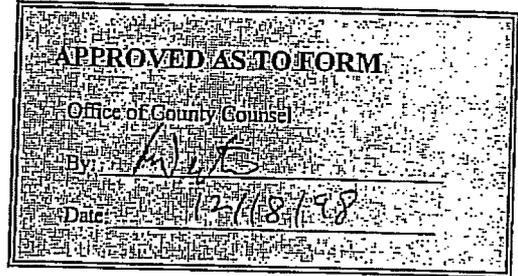
- (a) This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof, including the MOU.
- (b) If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.
- (c) The headings used herein are for reference. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California. To the extent any conflict exists between the terms of this Agreement and the terms of the Ordinance, the terms of the Ordinance shall control.

COUNTY OF NAPA

By Vince Ferraro

ATTEST:
MARY JEAN MCLAUGHLIN
Clerk of the Board

By Teri Sisson, Deputy

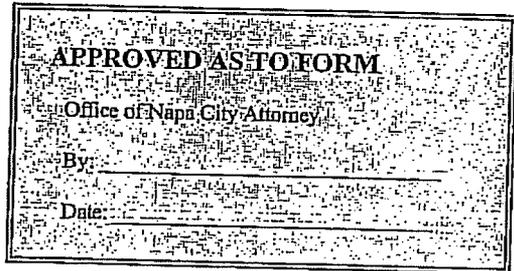


CITY OF NAPA

By _____

ATTEST:

By _____

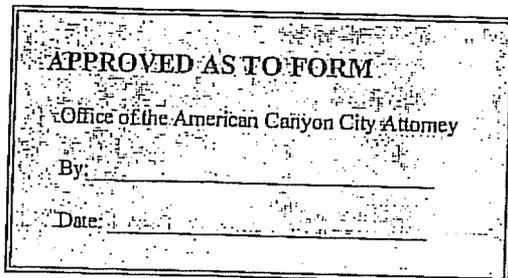


CITY OF AMERICAN CANYON

By _____

ATTEST:

By _____



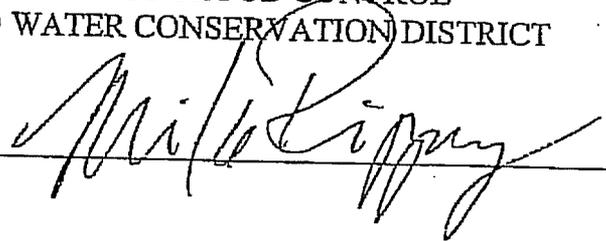
(d) Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of all parties.

(e) This Agreement 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 CONTROL
AND WATER CONSERVATION DISTRICT

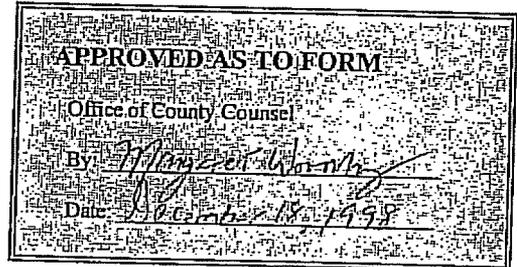
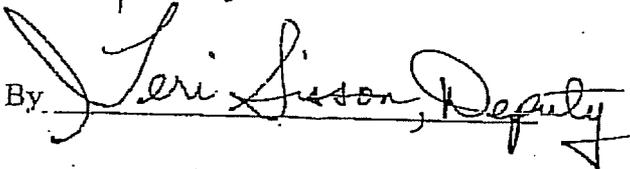
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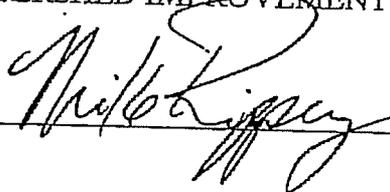
MARY JEAN MCLAUGHLIN,
District Secretary

By



NAPA COUNTY FLOOD PROTECTION AND
WATERSHED IMPROVEMENT AUTHORITY

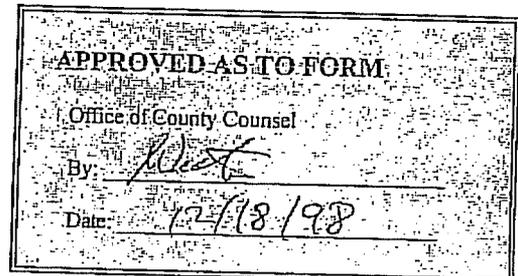
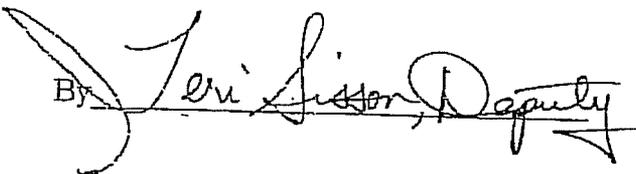
By



ATTEST:

MARY JEAN MCLAUGHLIN
Secretary of NCFPWIA

By



CITY OF NAPA

By _____

ATTEST:

APPROVED AS TO FORM:

By _____

By _____

CITY OF AMERICAN CANYON

By Benny Andersson

ATTEST:

APPROVED AS TO FORM:

By [Signature]

By William D. [Signature]

CITY OF ST. HELENA

By _____

ATTEST:

APPROVED AS TO FORM:

By _____

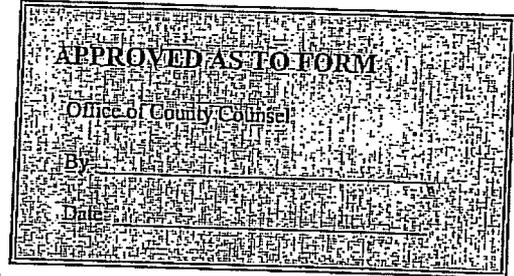
By _____

COUNTY OF NAPA

By _____

ATTEST:
MARY JEAN MCLAUGHLIN
Clerk of the Board

By _____



COUNTERSIGNED:

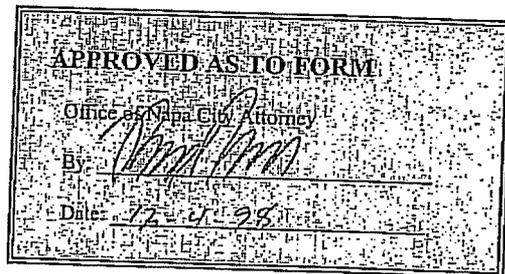
CITY OF NAPA

By *Ma Elna J. Harte*
FINANCE DIRECTOR

By *Ed Henderson*

ATTEST:

By *Douglas D. Diguano*

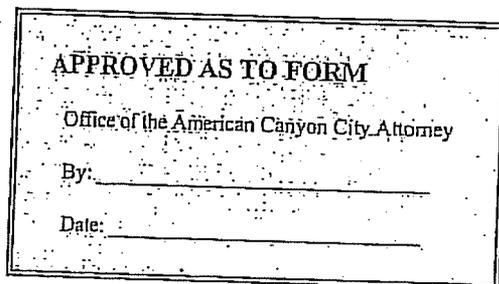


CITY OF AMERICAN CANYON

By _____

ATTEST:

By _____

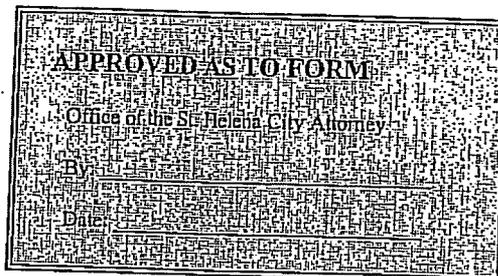


CITY OF ST. HELENA

By _____

ATTEST:

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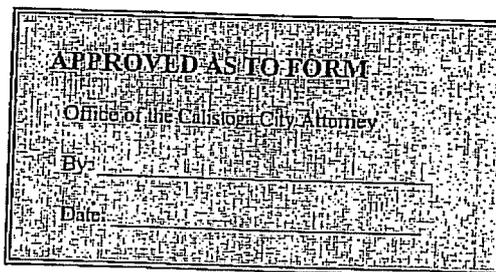


CITY OF CALISTOGA

By _____

ATTEST:

By _____



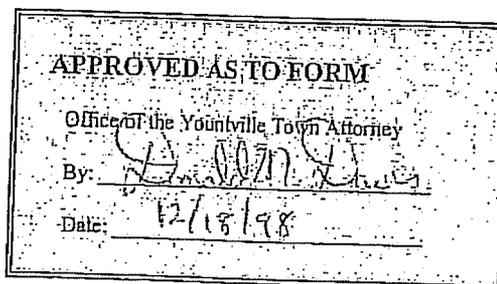
TOWN OF YOUNTVILLE

By Mary Lou Holt
Mary Lou Holt, Mayor



ATTEST:

By K. Joyce Houghton
K. Joyce Houghton
Deputy Town Clerk



TOWN OF YOUNTVILLE
RESOLUTION NUMBER 1561-98

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF YOUNTVILLE AUTHORIZING THE MAYOR TO SIGN A JOINT POWERS AGREEMENT REGARDING THE USE AND EQUITABLE DISTRIBUTION OF SALES TAX REVENUES GENERATED BY THE ENACTMENT OF THE NAPA COUNTY FLOOD PROTECTION SALES TAX ORDINANCE.

WHEREAS, on March 3, 1998, the electorate of the County approved the Authority's Ordinance Number 1 which, among other things, imposed a one-half of one percent transactions and use tax in the County and established a Flood Protection and Watershed Improvement Expenditure Plan which describes the projects authorized to be funded with the proceeds of the Flood Protection Sales Tax; and

WHEREAS, in anticipation of the approval of the Ordinance by the electorate, on January 13, 1998, Yountville adopted Resolution Number 1409-98 approving a Memorandum of Understanding, regarding the use and equitable distribution of the sales tax revenues generated by the enactment of the proposed Napa County Flood Protection Sales Tax Ordinance; and

WHEREAS, the Memorandum of Understanding contained operating policies and criteria regarding the equitable distribution of Flood Protection Sales Tax revenues by the Authority to the County, the District, and the municipalities, debt financing for projects contained in the Plan, project substitution, fund accounting, contract relationships, and administrative support to the Financial Oversight Committee established by the Ordinance; and

WHEREAS, the parties now intend to update and replace the Memorandum of Understanding with this formal joint powers agreement.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Yountville hereby authorize the Mayor to sign the Joint Powers Agreement regarding the use and equitable distribution of sales tax revenue generated by the enactment of the Napa County Flood Protection Sales Tax Ordinance as revised, on behalf of the Town of Yountville.

Mary Lou Holt
Mary Lou Holt, Mayor

STATE OF CALIFORNIA)
COUNTY OF NAPA)§
TOWN OF YOUNTVILLE)

I, Deputy Town Clerk of the Town of Yountville, do hereby certify the foregoing Resolution was duly and regularly adopted by the Town Council of the Town of Yountville at a regular meeting thereof held on the 24th day of November, 1998 by the following vote:

AYES: Jefferson, Knight, Miner, Borrelli-Caldwell, Holt;
NOES: None;
ABSENT: None;
ABSTAIN: None.



(s) K. Joyce Houghton
K. Joyce Houghton, Deputy Town Clerk

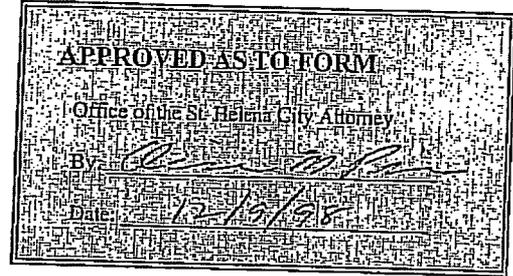


CITY OF ST. HELENA

By Bonnie Long
Bonnie Long, City Administrator

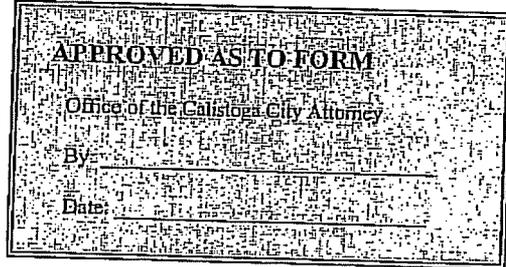
ATTEST:

By Delia Gujosa
City Clerk
Delia Gujosa



CITY OF CALISTOGA

By _____



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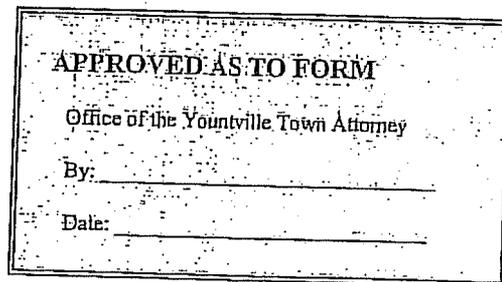
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TOWN OF YOUNTVILLE

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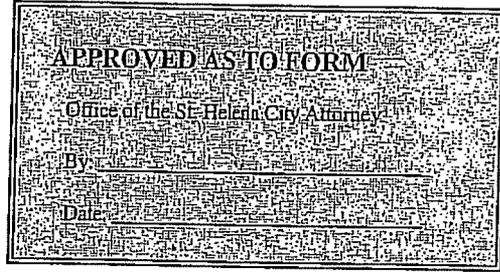
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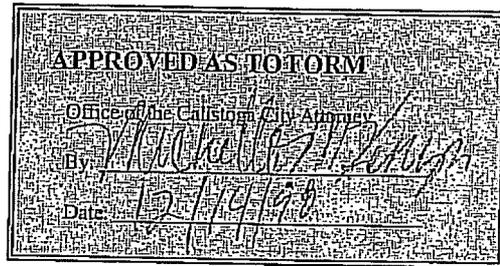
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CITY OF CALISTOGA

By [Signature]

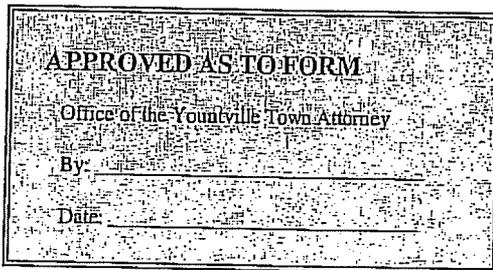


ATTEST:

By [Signature]

TOWN OF YOUNTVILLE

By _____



ATTEST:

By _____

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: _____