ORDINANCE NO. 1 (NCFPWIA)

AN ORDINANCE OF THE NAPA COUNTY FLOOD PROTECTION AND WATERSHED IMPROVEMENT AUTHORITY, IMPOSING A 1/2% NAPA COUNTY FLOOD PROTECTION TRANSACTIONS (SALES) AND USE TAX PURSUANT TO THE PROVISIONS OF REVENUE AND TAXATION CODE SECTION 7285.5, ESTABLISHING A NAPA FLOOD PROTECTION AND WATERSHED IMPROVEMENT EXPENDITURE PLAN, ESTABLISHING A FINANCIAL OVERSIGHT COMMITTEE AND TECHNICAL ADVISORY PANEL, REQUIRING ANY FUNDS GENERATED AS A RESULT OF THE IMPOSITION OF THE NAPA COUNTY FLOOD PROTECTION TRANSACTIONS (SALES) AND USE TAX TO BE SPENT ON THE PROJECTS IDENTIFIED IN THE EXPENDITURE PLAN, AUTHORIZING THE ISSUANCE OF BONDS OR OTHER OBLIGATIONS TO FINANCE THE PROJECTS IDENTIFIED IN THE EXPENDITURE PLAN PAYABLE FROM THE REVENUES GENERATED BY THE TRANSACTIONS (SALES) AND USE TAX AND ESTABLISHING AN APPROPRIATIONS LIMIT.

The Napa County Flood Protection and Watershed Improvement Authority (hereafter "Authority") does ordain as follows:

SECTION 1. Title

This Ordinance shall be known as the "Napa County Flood Protection Sales Tax Ordinance" (the "Ordinance") which establishes and implements a transactions and use tax (hereafter "Flood Protection Sales Tax") and establishes a Napa County Flood Protection and Watershed Improvement Expenditure Plan (hereafter "Plan") describing the specific projects for which the revenues received as a result of the imposition of the tax may be expended, all pursuant to Revenue and Taxation Code Section 7285.5. The transactions and use tax provisions of this Ordinance shall be applicable in the incorporated and unincorporated territory of the County of Napa. The County of Napa shall hereinafter be referred to as "District".

SECTION 2. Findings

The Authority finds that:

A. Since 1862, more than 27 major floods have plagued the Napa Valley, resulting in a significant loss of life and damage to property. Among the most damaging was the flood of 1986 which caused more than $140 million in damage and led to the evacuation of 7,000 residents. The 1995 flood damaged an estimated 227 businesses and residences at a cost of over $100 million.

B. In addition to these major and extremely serious floods, damage from the more common annual flooding—like the recent floods of January 1997—cost an annual average of $6 million in repairs and cleanup.

C. A Plan has been developed and is designed to protect the residents and businesses of Napa County from all floods up to and including a 100–year storm event.

D. The Plan is an integrated approach which applies to all the Napa County watersheds.

E. The Plan was developed by a unique and broad–based coalition of Napa County residents, including local community water experts, engineers, architects, environmentalists, business owners, government officials and other leaders.

F. The Plan relies on natural processes to protect Napa County residents and their properties, takes into account the Napa River's overall watershed, and envisions wetlands, open space, bypass channels, set–back levees, river widening by establishing flood plain terracing, elevation and relocation of homes and bridge replacements as its main weapons against flooding.

G. None of the projects in the Plan are intended or designed to encourage population growth in Napa County. All of the projects are for flood protection, preserving ground water integrity, reducing sediment in the Napa River system, and for maintaining the reliability of the water supply for the existing Napa County populationas of the effective date of this Ordinance.

H. The majority of the Plan will be paid for by federal money as well as state and existing local resources.

I. The ultimate goal of the Plan is to provide flood protection, save lives, protect property, restore the Napa River, Napa Creek, and other tributaries, maintain Napa County's economic vitality, and enhance riparian environments.

J. The allocation of the Flood Protection Sales Tax revenues that will be generated as a result of the passage of this 1/2% transactions 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.

SECTION 3. <u>Purpose and Intent</u>

The Authority declares that, in passing this Ordinance, it is its intent to fund a Plan which will:

A. Minimize the County's vulnerability to major floods that have plagued Napa County, resulting in a significant loss of life and substantial damage to property;

B. Manage flood waters throughout Napa County, thereby providing benefits to Napa, Calistoga, St. Helena, Yountville, American Canyon, Angwin/Deer Park, and the unincorporated County areas;

C. Provide flood protection from all floods up to and including the 100–year storm event while avoiding environmentally damaging channelization and excessive dredging, and utilizing environmentally beneficial methods such as wetlands and open space, as well as bypass channels, set–back levees and floodwalls, river widening by establishing flood plain terracing, elevation and/or relocation of homes, floodproofing of businesses, and bridge replacements;

D. Minimize flood damage, save lives, protect property, safeguard the environment, maintain the economic viability of Napa County and avoid to the greatest extent possible the need for flood insurance;

E. Provide for water reliability and wastewater treatment, using accepted watershed management practices, to maintain water quality in the Napa River;

F. Ensure ongoing community input in the finalization of all projects necessary for flood protection and water supply reliability for the existing Napa County population as of the effective date of this Ordinance.; and

G. Ensure ongoing involvement of all municipalities of Napa County in the implementation of the Plan by execution of a Joint Powers Agreement (JPA) between the Authority, Napa County, the Flood Control and Water Conservation District, and the incorporated Cities and Towns of Napa County. This agreement shall contain specific allocations and methods of distribution of the Flood Protection Sales Tax revenues based on the tax revenues generated by each of the incorporated and unincorporated areas in Napa County subject to section 20 of this Ordinance.

SECTION 4. Use of Flood Protection Sales Tax Revenues

A. The revenues generated by the Flood Protection Sales Tax shall be used to fund the projects included in the Plan. The revenues shall also be utilized to fund reasonable costs incurred in the administration of the Napa County Financial Oversight Committee and the Technical Advisory Panel which are established by this Ordinance.

B. The Napa County Auditor–Controller shall deposit all revenues received from the Flood Protection Sales Tax and all earnings thereon into the general fund of the Authority and the proceeds shall be used only for the projects identified in Sections 7 and 8 of this Ordinance, the administration costs identified in subparagraph (A) of this section, and the payment of bonds or other obligations issued to finance such projects and related financing costs.

SECTION 5. Equitable Distribution of the Flood Protection Sales Tax Revenues to County-Wide Projects

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.

SECTION 6. Napa County Flood Protection and Watershed Improvement Expenditure Plan

The Plan involves the following two interrelated components which are described in greater detail in Sections 7 and 8 of this Ordinance:

A. The Napa River and Napa Creek Project for the City of Napa which will provide the City of Napa with flood protection from all floods up to and including a 100 year storm event; and

B. Countywide flood protection and watershed improvement projects for the communities of Calistoga, Yountville, St. Helena, Angwin/Deer Park, American Canyon, and the unincorporated areas

of Napa County.

SECTION 7. Approved Projects; City of Napa: Napa River and Napa Creek Flood Protection Project

The following component of the Plan involves the City of Napa:

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. This project, approximately 50% of which is expected to be paid for by the Army Corps of Engineers, is designed to protect the City of Napa against all floods up to and including a 100–year storm event such as the floods of February, 1986 and January 1997. This environmentally restorative project includes the following components:

A. A dry bypass channel with a weir will be constructed to divert flood waters around the Oxbow (the extreme bend in the Napa River near First Street);
B. A tidal and floodplain terrace will be created;
C. Wetlands will be created on the east and west banks of the Napa River;
D. Toxics throughout the project area, including the Oil Company Road area, will be cleaned up and excavated to improve flood water conveyance and improve the water quality of the Napa River;
E. New bridges will be constructed so they do not act as obstructions during flooding;
F. Maintenance roads/recreation trails will be extended from Kennedy Park through downtown Napa to Trancas Street;
G. Set-back levees and floodwalls will be constructed;
H. Properties will be purchased and/or relocated if necessary to implement the Plan; and
I. Capital improvement maintenance of the project.

SECTION 8. Approved Projects; County–Wide Flood Protection and Watershed Improvement Projects Not Involving the City of Napa

The component of the Plan that involves the rest of the County must include the following projects which are designed to protect against flooding, improve water quality, preserve the integrity of ground water resources and/or stabilize water supply reliability for the existing Napa County population as of the effective date of this Ordinance. None of these projects are intended or designed to expand water capacity for growth and new development.

All of these projects shall be planned in accordance with the "Living River Guidelines" contained in the Community Coalition's Flood Management Plan and the Napa River Watershed Owners Manual of the Napa County Resource Conservation District.

The Technical Advisory Panel, which is established by Section 9(B) of this Ordinance, will be available to assist each municipality in project planning, upon request by the municipality or jurisdiction.

A. Community of Angwin/Deer Park
   1. Stabilization and enhancement of existing water reservoirs which shall be for the purpose of flood protection and water reliability; and

2. Stabilize water quality.

B. City of American Canyon

1. Implement the adopted Flood Control and Storm Drain Master Plan to protect existing development; and
2. Restore wetlands by replacing the existing wastewater treatment facility.

C. City of Calistoga

1. Stabilization and enhancement of Kimball Reservoir which shall be for the purpose of flood protection and water supply reliability; and
2. Flood protection and drainage improvements in the Grant Street area and other critical areas to protect residents and businesses from flooding.

D. City of St. Helena

1. Flood management measures for the Napa River, Sulpher Creek, York Creek, and other tributaries to prevent flooding; and
2. Construct urban stormwater run–off facilities at Fulton, McCorkle, Mills and other areas; and
3. Stabilization and enhancement of Bell Canyon Reservoir, or other existing reservoirs, which shall be for the purpose of flood protection and water supply reliability.

E. Unincorporated Areas of Napa County:

1. County unincorporated area flood damage reduction projects including elevating/relocating structures, including bridges, in the floodway and floodplain; and
2. Agricultural watershed and stormwater runoff management improvements planned jointly by the agricultural industry, the County, the Napa County Resource Conservation District and the Department of Fish and Game, including projects which will:
   - Reduce the amount of storm runoff and sediment in the Napa River System from agricultural lands; and
   - Increase flood storage of the River system by the setback of active land uses from river and tributary banks.

F. Town of Yountville

1. Flood protection for the Town's mobilehome parks and surrounding areas; and
2. Hopper Creek and Beard Ditch improvements and restoration for flood protection.

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 approvedprovided, 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 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.

SECTION 9. Napa County Financial Oversight Committee and the Technical Advisory Panel

A. Financial Oversight Committee.

1. Establishment. A Napa County Financial Oversight Committee is hereby established and shall remain in existence for as long as the Flood Protection Sales Tax is in effect. The Financial Oversight Committee's purpose and charge is to inform the public regarding the expenditure of the Flood Protection Sales Tax proceeds that will be generated as a result of the approval of this Ordinance by the Authority and the electorate.

2. Responsibilities.

The Financial Oversight Committee shall be responsible for:

a. Providing the public with information regarding the manner in which the expenditure of the Flood Protection Sales Tax proceeds that will be generated as a result of the approval of this Ordinance by the Authority and the electorate has occurred;

b. Reviewing the expenditure of the Flood Protection Sales Tax proceeds that will be generated as a result of the approval of this Ordinance by the Authority and the electorate, and the proceeds received as a result of the issuance of any bonds or other obligations payable from the Flood Protection Sales Tax proceeds, and causing to be prepared an annual audit regarding the use of these proceeds;

c. Reviewing the financial impact of all projects, planned and approved, utilizing the Flood Protection Sales Tax proceeds that will be generated as a result of the approval of this Ordinance by the Authority and the electorate, and advising the public whether such projects are consistent with the purpose, spirit, intent and language of this Ordinance;

d. Informing the public if there is an expenditure of the Flood Protection Sales Taxes that will be generated as a result of the approval of this Ordinance by the Authority and the electorate which is inconsistent with the purpose and intent of this Ordinance.

e. Meet not less than once each calendar quarter, pursuant to the Ralph M. Brown Open Meeting Act and invite public participation and comment with respect to any expenditure or the implementation of any project envisioned by this Ordinance.

3. Membership.

a. The Financial Oversight Committee shall consist of the following individuals:

i. One representative recommended by each of the five Napa County City/Town Councils, and one representative recommended by the Board of Supervisors of the County of Napa. However, the representatives shall not be officers, agents, employees, or elected officials of any City in Napa County or the County;

ii. Two representatives each of whom must be recommended by the business community;

iii. One representative who must be recommended by the local media;

iv. One representative who must be recommended by the Napa County Taxpayers Association;

v. Two representatives each of whom must be recommended by the environmental community;

vi. One representative who must be recommended by the Friends of the Napa River; and

vii. Two representatives who must be recommended by the agricultural industry; and

viii. A certified public accountant, whose practice includes auditing public agencies, but who is

not currently acting as an independent auditor in the case of any incorporated area within the County of Napa or the County of Napa, who must be recommended by the representatives and appointees identified in subparagraphs (i) through (vii).

b. All representatives shall be appointed by the Board of Supervisors. However, no appointments shall be made by the Board of Supervisors other than from the recommended list of the public agencies or organizations identified in subdivision (A)(3)(a) above.

c. In addition to the sixteen members described above, the Financial Oversight Committee may recommend to the Board of Supervisors that it appoint up to two additional members if in the opinion of the Committee additional representation of individuals and groups located in Napa County is necessary.

d. No member of the Committee shall receive any salary or compensation for serving on the Committee. However, the Committee may, in the case of the Certified Public Accountant, upon the unanimous vote of the other members of the Committee, compensate said individual in an amount not to exceed the rate of compensation commonly charged by Certified Public Accountants in the City of Napa.

e. All members of the Committee, except for the Certified Public Accountant, shall be individuals who live in the incorporated or unincorporated areas of Napa County. The panel shall have resources sufficient to carry out their duties.

B. Technical Advisory Panel

1. Establishment. A Technical Advisory Panel is established and shall remain in existence for as long as the Flood Protection Sales Tax is in effect.

2. Membership. The Napa County Flood Control and Water Conservation District Board of Directors shall appoint the Technical Advisory Panel whose purpose and charge is to provide technical expertise in reviewing the Corps of Engineers proposed project which is located within the City of Napa to ensure consistency with the Community Coalition Project Plan. The Panel shall consist of no more than nine members. Members of the Panel shall have expertise in one or more of the following disciplines: (1) architecture, (2) landscape architecture, (3) civil engineering, (4) hydrology/hydraulics, (5) urban planning or design, (6) water and wastewater engineering (7) geotechnical engineering and/or (8) environmental sciences/natural resource management. All members shall demonstrate a thorough knowledge of and commitment to the "Living River Guidelines" and the "Urban Design Criteria" of the Community Coalition Flood Management Plan and the watershed management guidelines contained in the Napa River Watershed Owner's Manual of the Napa County Resource Conservation District, as well as sound engineering flood protection principles.

3. The Panel may provide technical expertise to review and comment on the planning of other Countywide projects.

4. The Panel is advisory to the Napa County Flood Control and Water Conservation District.

5. The Napa County Flood Control and Water Conservation District Board of Directors shall appoint the Panel to ensure its ongoing input and recommendations regarding the following Army Corps of Engineers documents prior to executing same:

a. The General Design Memorandum and related Environmental Impact Statement (EIS);

b. The Project Cooperation Agreement;

c. All preliminary plans and construction contracts, final plans and specifications related to the City of Napa Corps of Engineers project.

6. All members of the Panel shall be individuals whose domicile is in Napa County.

7. The panel shall have resources sufficient to ensure continuous onsite review of Army Corps of Engineers construction activities.

SECTION 10. Expiration of Tax; Extension of Tax.

A. The transactions and use tax imposed by this Ordinance shall expire June 30, 2018; provided, that if the Authority shall not have contracted with the State Board of Equalization on or before July 1, 1998, and as a result the operative date is the beginning of a calendar quarter subsequent to July 1, 1998, the expiration date shall be extended, for a period of time equal to the delay. Notwithstanding the preceding sentence, this tax may be extended beyond the twenty–year period if the question of extending the tax is placed on the ballot and approved by the legally required percentage of qualified voters voting on the extension.

B. This transactions and use tax may be reduced or rescinded by a majority vote of the Governing Board of the Authority; provided, however that such modification or rescission shall not occur if to do so would violate any law, including but not limited to Article I, §10 of the United States Constitution and Article I, §16 of the California Constitution or if prohibited by any covenant made with the holders of any bonds or obligations payable from this transactions and use tax. The Governing Board of the Authority shall take such action only after receiving a recommendation regarding such rescission or modification from the Financial Oversight Committee and, subsequent to such receipt, conducting a noticed public hearing. Such action shall be subject to California law pertaining to the cancellation of prior contractual obligations and the rules and regulations of the State Board of Equalization.

SECTION 11. Purpose.

This Ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a one half of one percent retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.5 of Part 1.7 of Division 2 which authorizes the Authority to adopt this tax Ordinance which shall be operative only if two–thirds of the electors voting on this Ordinance approve same at an election called for that purpose.

B. To adopt a retail transactions and use tax Ordinance which incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax Ordinance which imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California Sales and Use Taxes.

D. To adopt a retail transactions and use tax Ordinance which can be administered in a manner which will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of recordkeeping upon persons subject to taxation under the provisions of this Ordinance.

E. To establish an expenditure limit for the Authority as required by Article XIIIB of the California Constitution.

F. To authorize bonds and other obligations to be issued for the purpose of financing projects in the expenditure plan with said bonds or other obligations to be payable from the transaction and use tax proceeds.

SECTION 12. Operative Date; Contract with the State.

The operative date of this Ordinance, at which time collection of the tax imposed by this Ordinance shall commence, is July 1, 1998. Prior to July 1, 1998, the Authority shall contract with the State Board of Equalization to perform all functions incident to the administration and operation of this Transactions and Use Tax Ordinance; provided, that if the Authority shall not have contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such contract.

SECTION 13 Transactions Tax Rate.

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the District at the rate of one–half of one percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this Ordinance. The tax shall be imposed for a period of twenty years.

SECTION 14. Place of Sale.

For the purposes of this Ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out–of–state destination or to a common carrier for delivery to an out–of–state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under the rules and regulations to be prescribed and adopted by the State Board of Equalization.

SECTION 15. Use Tax Rate.

An excise tax is hereby imposed on the storage, use or other consumption in the incorporated and unincorporated area of the District of tangible personal property purchased from any retailer on and after the operative date of this Ordinance for storage, use or other consumption in said territory at the rate of one–half of one percent of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made. The tax shall be imposed for a period of twenty years.

SECTION 16. Adoption of Provisions of State Law.

Except as otherwise provided in this Ordinance, and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this Ordinance as though fully set forth herein.

SECTION 17. Limitations On Adoption of State Law and Collections of Use Taxes.

In adopting this provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this Authority shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this Authority or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to, sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code; or

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "District" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

SECTION 18. Permit Not Required.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this Ordinance.

SECTION 19. Exemptions and Exclusions.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county,

or county pursuant to the Bradley–Burns Uniform Local Sales and Use Tax Law or the amount of any state–administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the District which is shipped to a point outside the District, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the district shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with section 9840) of the Vehicle Code by registration to an out–of–District address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out–of–District and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this Ordinance.

5. For the purposes of subsections (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this Ordinance, the storage, use or other consumption in this district of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state–administrered transactions and use tax Ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time

for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this Ordinance.

5. For the purposes of subsections (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the District shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the District, or participates within the District in making the sale of the property, including, but not limited to, soliciting or receiving the order either directly or indirectly, at a place of business of the retailer in the district or through any representative, agent, canvasser, solicitor, subsidiary or person in the District under the authority of the retailer.

7. "A retailer engaged in business in the District" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Chapter 2 of Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the District.

D. Any person subject to use tax under this Ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for, a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code, with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

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 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.

SECTION 21. Amendments.

All amendments subsequent to the effective date of this Ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to transactions and use taxes and which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 of Division 2 of the Revenue and Taxation Code, shall automatically become part of this Ordinance, provided, however, that no such amendment shall operate so as to increase the rate of tax imposed by this Ordinance or extend the period of time the tax will remain in effect.

SECTION 22. Enjoining Collection Forbidden.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the Authority, or against any officer of the State or the Authority, to prevent or enjoin the collection under this Ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

SECTION 23. Napa County Auditor-Controller Audit.

In addition to the audit required pursuant to Section 9(A)(2)(b), the Napa County Auditor–Controller shall annually conduct an audit of how the new transactions and use tax revenues are spent by the County of Napa. The audit shall be published in at least two County newspapers and copies of the audit shall be provided to, and must be available at, every public library located in the County.

SECTION 24. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 25. Effective Date; Approval of the Voters.

This Ordinance shall take effect on March 3, 1998, but only if 2/3rds of the electors voting on the Ordinance at an election held on March 3, 1998, vote to approve this Ordinance.

SECTION 26. Annual Appropriation Limit.

The maximum annual appropriation limit for the Authority is $20,000,000.00, subject to such adjustments or increases as are provided for by law.

SECTION 27. Implementation Subsequent to Vote.

Upon approval of this Ordinance by 2/3rds of the voters, the Authority may adopt policies and take such actions as may be necessary for the implementation of the one–half of one percent (1/2%) transactions and use tax authorized by this Ordinance. Such actions shall include, but not be limited to, the Authority amending this Ordinance without being required to secure a ratification by the electorate to provide for use of additional federal, state or local funds; to account for unexpected revenues, or to take into consideration unforeseen circumstances, or if such amendments are deemed necessary and recommended by the Authority's general counsel, bond counsel, or legal counsel for the State Board of Equalization; provided, however, that no amendments that will increase the rate of the transactions and use tax rate or extend the term beyond twenty years may be

made without securing the approval of the amendment by the legally required percentage of qualified voters voting on the amendment.

SECTION 28. Publication of Ordinance.

This Ordinance shall be published at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in the County of Napa, together with the names of the Directors voting for and against the same.

The foregoing Ordinance was introduced and read at a special meeting of the Napa County Flood Protection and Watershed Improvement Authority, held on the 28th day of October, 1997 and passed at a special meeting of the Napa County Flood Protection and Watershed Improvement Authority, held on the 4th day of November, 1997, by the following vote:

AYES:	**DIRECTORS**	VARRELMAN, LUCE, FERRIOLE, WINTER and RIPPEY
NOES:	**DIRECTORS**	NONE
ABSTAIN:	**DIRECTORS**	NONE
ABSENT:	**DIRECTORS**	NONE

MIKE RIPPEY, Chairman
Board of Directors

ATTEST:

MARY JEAN McLAUGHLIN
Clerk of the Board

By Teri Sisson
Deputy

APPROVED AS TO FORM
Office of County Counsel
By: [illegible]
Date: 10/30/97

APPROVED NOV 04 1997
BOARD OF SUPERVISORS
COUNTY OF NAPA

MARY JEAN MCLAUGHLIN
CLERK OF THE BOARD

BY Michelle Price Deputy