

# City of Calistoga

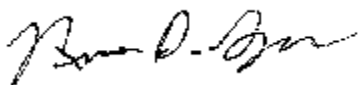
## Staff Report

**TO:** Honorable Mayor and City Council  
**FROM:** Dan Takasugi, Public Works Director/City Engineer  
**DATE:** August 21, 2012  
**SUBJECT:** Consideration of a Resolution Approving the Metropolitan Transportation Commission Cycle 1 Funding Reimbursement Agreement in the amount of \$44,691 Between the City of Napa and the City of Calistoga

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APPROVAL FOR FORWARDING:



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Richard D. Spitler, City Manager

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**ISSUE:**

Consideration of Resolution approving the Metropolitan Transportation Commission Cycle 1 Funding reimbursement agreement between the City of Napa and the City of Calistoga.

**RECOMMENDATION:**

Adopt Resolution.

**BACKGROUND/DISCUSSION:**

The Metropolitan Transportation Planning Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area. They are the designated Metropolitan Planning Organization for the nine-county San Francisco Bay Area region and in 2009, via MTC Resolution 3925, prepared and endorsed a

18 Transportation Improvement Program to allocate regional funding under the Federal  
19 Transportation Management Act known as Cycle 1.

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21 Under the Cycle 1 program, MTC allocated portions of available federal funding to  
22 Napa County jurisdictions according to a distribution formula based on population,  
23 street and lane mileage, shortfall and preventative maintenance performance.

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25 Because of the relatively small population and proportionate amount of  
26 infrastructure, Calistoga received an allocation of \$44,691, an amount that falls  
27 below the threshold of \$250,000 established by MTC as the minimum amount  
28 needed to program Cycle 1 funding directly into local project construction.

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30 Because small jurisdictions within Napa County are unable to program MTC Cycle 1  
31 funding directly, the Technical Advisory Committee of the Napa County  
32 Transportation and Planning Agency (NCTPA), comprised of representatives from all  
33 Napa County jurisdictions, agreed that funds allocated for Cycle 1 road maintenance  
34 for Yountville, St. Helena and Calistoga should be re-allocated to Napa, as Napa is  
35 able to leverage that funding for directly programmed local projects. Napa agreed to  
36 reimburse each of the three small jurisdictions with an equivalent amount of local,  
37 non-federal funding.

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39 The attached Metropolitan Transportation Commission Cycle 1 Funding  
40 Reimbursement Agreement between the City of Napa and the City of Calistoga will  
41 allow the City of Napa to reimburse the City of Calistoga the full amount of  
42 Calistoga's Cycle 1 allocation using local, non-federal funding.

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44 **FISCAL IMPACT:**

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46 These funds in the amount of \$44,691 will be deposited into the General Fund and a  
47 budget adjustment will be made to include these funds in the FY12/13 Streets  
48 Improvements Budget.

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50 **ATTACHMENTS:**

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- 52 1. Draft Resolution  
53 2. Agreement

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**RESOLUTION NO. 2012 - \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, APPROVING A METROPOLITAN TRANSPORTATION COMMISSION CYCLE 1 FUNDING REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF NAPA AND THE CITY OF CALISTOGA**

**WHEREAS**, the Metropolitan Transportation Planning Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area; and

**WHEREAS**, MTC is the designated Metropolitan Planning Organization for the nine-county San Francisco Bay Area region and in 2009, via MTC Resolution 3925, prepared and endorsed a Transportation Improvement Program to allocate regional funding under the Federal Transportation Management Act known as Cycle 1; and

**WHEREAS**, under the Cycle 1 program, MTC allocated portions of available federal funding to Napa County jurisdictions according to a distribution formula based on population, street and lane mileage, shortfall and preventative maintenance performance; and

**WHEREAS**, because of the relatively small population and proportionate amount of infrastructure, Calistoga received an allocation of \$44,691, an amount that falls below the threshold of \$250,000 established by MTC as the minimum amount needed to program Cycle 1 funding directly into local project construction; and

**WHEREAS**, because small jurisdictions within Napa County are unable to program MTC Cycle 1 funding directly, the Technical Advisory Committee of the Napa County Transportation and Planning Agency (NCTPA), comprised of representatives from all Napa County jurisdictions, agreed that funds allocated for Cycle 1 road maintenance for Yountville, St. Helena and Calistoga should be re-allocated to Napa, as Napa is able to leverage that funding for directly programmed local projects. Napa agreed to reimburse each of the three small jurisdictions with an equivalent amount of local, non-federal funding; and

**WHEREAS**, the City of Napa and the City of Calistoga wish to provide that the City of Napa shall reimburse the City of Calistoga for its share of the Cycle 1 funding by paying the full amount of Calistoga's Cycle 1 allocation using local, non-federal funding.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Calistoga hereby approves the Metropolitan Transportation Commission Cycle 1 Funding Reimbursement Agreement between the City of Napa and the City of Calistoga (attached) contingent upon approval by the City Attorney and the City of Napa.

**BE IT FURTHER RESOLVED**, that a budget adjustment in the amount of \$44,691 is approved to include these funds in the FY 12/13 Streets Improvement Budget.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Calistoga at a regular meeting held this 21<sup>st</sup> day of **August 2012**, by the following vote:

**AYES:**

**NOES:**

**ABSTAIN/ABSENT:**

\_\_\_\_\_  
**JACK GINGLES, Mayor**

**ATTEST:**

\_\_\_\_\_  
**AMANDA DAVIS, Deputy City Clerk**

**METROPOLITAN TRANSPORTATION COMMISSION CYCLE 1 FUNDING  
REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF NAPA  
AND THE CITY OF CALISTOGA**

This Metropolitan Transportation Commission Cycle 1 Funding Agreement between the City of Napa and the City of Calistoga (“Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2012 by and between the City of Napa, a California charter city and municipal corporation (“Napa”), and the City of Calistoga, California, a municipal corporation (“Calistoga”). Napa and Calistoga may be referred to collectively as “the Parties.”

**RECITALS**

- A.** The Metropolitan Transportation Commission (“MTC”) is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code Section 66500 *et seq.*
- B.** MTC is the designated Metropolitan Planning Organization for the nine-county San Francisco Bay Area region and in 2009, via MTC Resolution 3925, prepared and endorsed a Transportation Improvement Program to allocate regional funding under the Federal Transportation Management Act known as Cycle 1.
- C.** Under the Cycle 1 program, MTC allocated portions of available federal funding to Napa County jurisdictions according to a distribution formula based on population, street and lane mileage, shortfall and preventative maintenance performance.
- D.** Because of its relatively small population and proportionate amount of infrastructure, Calistoga received an allocation of \$44,691, an amount that falls below the threshold of \$250,000 established by MTC as the minimum amount needed to program Cycle 1 funding directly into local project construction.
- E.** Because smaller jurisdictions within Napa County are unable to program MTC Cycle 1 funding directly, the Technical Advisory Committee of the Napa County Transportation and Planning Agency (“NCTPA”), comprised of representatives from all Napa County jurisdictions, agreed that funds allocated for Cycle 1 road maintenance for Yountville, St. Helena and Calistoga should be re-allocated to Napa, as Napa is able to leverage that funding for directly programmed local projects. Napa agreed to reimburse each of the three smaller jurisdictions with an equivalent amount of local, non-federal funding.
- F.** The Parties wish to provide that Napa shall reimburse Calistoga for its share of the Cycle 1 funding by paying the full amount of Calistoga’s Cycle 1 allocation using local, non-federal funding.

**AGREEMENT**

Now, therefore, the Parties, for the considerations hereinafter set forth, mutually agree as follows:

**1. CONSIDERATION TO CALISTOGA**

Within thirty (30) days after the execution of this Agreement, Napa shall pay Calistoga as described in this paragraph 1.

- a. Napa will pay Calistoga a total of \$44,691, representing the amount of Cycle 1 funding allocated to Calistoga by MTC under the Cycle 1 program that was reallocated to Napa per the Technical Advisory Committee of NCTPA.

**2. GENERAL RELEASE- CALISTOGA**

In consideration of Napa's agreements and obligations as set forth in this Agreement, Calistoga releases and waives any and all claims that it might possibly have against Napa, including but not limited to those listed below, whether it is aware of them or not. Calistoga does hereby completely release and discharge Napa (including its employees, agents, officers and attorneys) from all claims (including any rights, demands, actions, obligations, liabilities, damages, and causes of action, whether statutory, common law, constitutional, or otherwise), whether known or unknown, which Calistoga may now have, or has ever had, against Napa arising from or in any way connected with Napa's reimbursement of MTC Cycle 1 funding originally allocated to Calistoga. This release, waiver, and discharge covers all claims including but not limited to each of the following:

- a. Any and all claims for additional payment or reimbursement from Napa for its allocation of MTC Cycle 1 funding.
- b. Any and all claims relating to any breach of the covenant of good faith and fair dealing, express or implied.
- c. Any and all tort claims of any nature, including but not limited to claims for negligence, defamation, invasion of privacy, misrepresentation, fraud or negligent or intentional infliction of emotional distress.

**3. TERM**

The term of this Agreement shall be from the date of its execution until the acceptance of payment from Napa to Calistoga, unless terminated earlier as provided herein, except that the obligations of the parties under Paragraph 3, "Indemnification/Hold Harmless," shall continue in full force and effect after said expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of this Agreement.

**4. INDEMNIFICATION/ HOLD HARMLESS**

To the furthest extent permitted by law, Calistoga shall assume defense of, release, and indemnify and hold harmless, Napa and each of its officers, employees, consultants and agents from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims, etc., and fines of regulatory agencies or attorney's fees and consultant's fees, directly or indirectly, from any cause whatsoever, directly or indirectly, arising out of, connected with, or resulting from Napa's execution of this Agreement, including, without limitation, any claims which are caused in whole or in part by any act or omission of Calistoga, regardless of whether it is caused in part by the negligence of Napa or by any person or entity required to be indemnified hereunder.

To the furthest extent permitted by law, Napa shall assume defense of, release, and indemnify and hold harmless, Calistoga and each of its officers, employees, consultants and agents from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims, etc., and fines of regulatory agencies or attorney's fees and consultant's fees, directly or indirectly, from any cause whatsoever, directly or indirectly, arising out of, connected with, or resulting from Calistoga's execution of this Agreement, which is caused in whole or in part by any act or omission of Napa or any of

its Contractor, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether it is caused in part by the negligence of Calistoga or by any person or entity required to be indemnified hereunder.

**5. INDEPENDENT ENTITIES**

Napa and Calistoga are independent entities, and Napa and Calistoga and the respective officers, agents and employees of Napa and Calistoga are not, and shall not be deemed, employees of the other agency for any purpose, including but not limited to worker's compensation and employee benefits.

**6. DEFAULT**

The following shall constitute a "default" by Napa or Calistoga under this Agreement: a failure by Napa or Calistoga to observe and perform any material provision of this Agreement to be observed or performed by Napa or Calistoga where such failure continues for sixty (60) days after notice thereof from the other party; provided, however, that if the nature of the default is such that the same is curable but cannot reasonably be cured within such sixty (60) day period, Napa or Calistoga, as applicable, shall not be deemed to be in default if Napa or Calistoga shall within such period commence with the cure, provide reasonable written assurance of due performance and thereafter diligently and continually proceed to completion. If a party's default is not cured within the time set forth in this section, the non-defaulting party or parties shall have a right to seek any remedy available at law or equity.

**7. TERMINATION**

If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within sixty (60) days of receipt of written notice from the other party describing the nature of the breach (in accordance with Section 9, above), the non-defaulting party may, in addition to other remedies it may have, terminate this Agreement by giving ten (10) days written notice to the defaulting party in the manner set forth in Section 12, "Notices."

**8. NO WAIVER**

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

**9. NOTICES**

All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's authorized representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The authorized representative of any party may modify their respective contact information identified in this section by providing notice to the other parties. The authorized representative of each party shall be identified on the "Attn" line below:

City of Napa:

Attn: Eric Whan, Deputy Director of Public Works  
1600 First Street  
Napa, California 94559

Calistoga:

Attn: Dan Takasugi, Public Works Director / City Engineer  
414 Washington St.  
Calistoga, California 94515

**10. INTERPRETATION/ VENUE**

**Interpretation.** The headings used herein are for reference only. 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 without regard to the choice of law or conflicts.

**Venue.** This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California.

**11. MODIFICATIONS**

This Agreement may not be modified orally or in any manner other than an agreement in writing signed by both parties.

**12. COOPERATION/ MEDIATION**

Napa and Calistoga shall work together in good faith to resolve any disputes or disagreements that arise in the implementation and administration of this Agreement. Any unresolved dispute arising among the parties to this Agreement shall first be submitted to non-binding mediation before a recognized mediator having experience with agreements of this nature and that is mutually acceptable to the parties, provided that no party shall unreasonably withhold its acceptance. If the parties are unable, after a period of thirty (30) days from commencement of the dispute resolution process, to agree on a mediator, any party shall be entitled to petition a court of competent jurisdiction to appoint such a mediator for the parties. Each party shall bear its own costs, including attorney's fees, incurred in connection with the mediation process. If the mediation does not result in a resolution of the dispute that is acceptable to the parties, any party may pursue its legal remedies.

**13. ATTORNEYS' FEES**

If either party brings an action or proceeding for damages arising out of the other party's performance under this Agreement, to enforce any right, obligation or provision of this Agreement, to compel or enjoin the other party to perform some obligation or promise under this Agreement, the

prevailing party shall be entitled to recover reasonable attorneys' fees and costs as part of such action or proceeding.

**14. ENTIRE AGREEMENT**

This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the cooperative arrangement described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

**15. EACH PARTY'S ROLE IN DRAFTING AGREEMENT**

Each party to this Agreement has had an opportunity to review this Agreement, confer with legal counsel regarding the meaning of this Agreement, and negotiate revisions to this Agreement. Accordingly, no party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of this Agreement.

**16. SIGNATURES**

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this Agreement on behalf of the party on whose behalf they have signed this Agreement.

**17. NO JOINT VENTURE**

It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture between or among the parties or cause one party to be responsible in any way for the debts or obligations of the other party, except as specifically stated in this Agreement.

**18. PROVISIONS SUBJECT TO APPLICABLE LAW**

All rights, powers and remedies provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable law and is intended to be limited to the extent necessary so that such exercise will not render this Agreement invalid, unenforceable or not entitled to be recorded under applicable law. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Agreement shall in no way be affected thereby.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

**CITY OF NAPA:**

By: \_\_\_\_\_  
Jacques LaRochelle, Director of Public Works

**ATTEST:**

By: \_\_\_\_\_  
Dorothy Roberts, City Clerk

**COUNTERSIGNED:**

By: \_\_\_\_\_  
Ann Mehta, City Auditor

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Michael Barrett, City Attorney

**CALISTOGA:**

By: \_\_\_\_\_  
Richard D. Spitler, City Manager

**ATTEST:**

By: \_\_\_\_\_  
Amanda Davis, Deputy City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Michelle Kenyon, City Attorney