

**NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
AGREEMENT NO. \_\_\_\_\_**

**COUNTY OF NAPA AGREEMENT NO. \_\_\_\_\_**

**CITY OF NAPA AGREEMENT NO. \_\_\_\_\_**

**CITY OF ST. HELENA AGREEMENT NO. \_\_\_\_\_**

**CITY OF CALISTOGA AGREEMENT NO. \_\_\_\_\_**

**CITY OF AMERICAN CANYON AGREEMENT NO. \_\_\_\_\_**

**TOWN OF YOUNTVILLE AGREEMENT NO. \_\_\_\_\_**

**AGREEMENT TO FUND AND ADMINISTER  
THE NAPA COUNTYWIDE STORMWATER MANAGEMENT PROGRAM  
(NAPA COUNTYWIDE STORMWATER  
POLLUTION PREVENTION PROGRAM)**

**THIS AGREEMENT** (“Agreement”), is entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2013 by and between the Napa County Flood Control and Water Conservation District, a special district of the State of California, (“DISTRICT”), the City of American Canyon, the City of Napa, the City of St. Helena, the City of Calistoga (collectively, “CITIES”), and the Town of Yountville (TOWN), and the County of Napa, a political subdivision of the State of California, (“COUNTY”). DISTRICT, CITIES, TOWN, and COUNTY are also referred to herein as “Party” individually and “Parties” collectively.

**RECITALS**

**WHEREAS**, as public agencies, COUNTY, CITIES, TOWN, and DISTRICT are authorized by Government Code section 6500 *et seq.* to enter into a joint exercise of powers agreement for the funding and performance of functions within each others’ jurisdictions which each agency is individually authorized to conduct within its own jurisdiction; and

**WHEREAS**, the Federal Clean Water Act requires COUNTY, CITIES, and TOWN (hereinafter also referred to as Permittees) to comply with the National Pollutant Discharge Elimination System (“NPDES”) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (General MS4 Permit) as ordered by the United States Environmental Protection Agency; and

**WHEREAS**, COUNTY, CITIES, and TOWN are required to operate as a Permittees under the State of California’s General MS4 Permit; and

**WHEREAS**, COUNTY, CITIES, and TOWN filed a Notice of Intent to comply with the terms of the General MS4 Permit; and

**WHEREAS**, DISTRICT has sponsored and developed the Napa Countywide Stormwater Management Program, commonly referred to as the Napa Countywide Stormwater Pollution Prevention Program (“NCSPPP”), to facilitate compliance by COUNTY, CITIES, and TOWN with the General MS4 Permit requirements; and

**WHEREAS**, COUNTY, CITIES, and TOWN each shall reimburse the DISTRICT for a proportional percentage of the costs for the DISTRICT’S administration of the NCSPPP; and

**WHEREAS**, the Parties acknowledge that the NCSPPP responsibilities, yearly budget, and the calculation of the Parties’ proportional cost reimbursement and Party-specific stormwater program implementation responsibilities may change each year; and

**WHEREAS**, the State has recently issued a new General MS4 Permit which includes increases in cost of compliance for Permittees and the Parties agree to certain increases in the scope of responsibilities to be undertaken by the NCSPPP in support of the Permittee’s compliance activities; and

**WHEREAS**, the Parties agree to make a good faith effort to negotiate agreements to extend the term of this Agreement on a yearly basis until fiscal year 2017-2018 and in light of the increased costs and responsibilities of the new General MS4 Permit, the Parties acknowledge that future agreements for Fiscal Year 2014 – 2015 (and beyond) may include revisions to the historical calculation of the Parties’ proportional cost reimbursement that will reflect the cost of services provided by the DISTRICT that are attributable to each Party;

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, the Parties agree as follows:

### **TERMS**

1. **Term of the Agreement.** The term of this Agreement commences on July 1, 2013 or after this Agreement is signed by DISTRICT, CITIES, TOWN, and COUNTY whichever is later and terminates on June 30, 2014. The term of this Agreement shall be automatically renewed for an additional one year at the end of each fiscal year, under the terms and conditions then in effect, unless any of the parties gives the other parties written notice of intention not to renew in accordance with the provisions set forth in paragraph 7(a) or 7(b).

2. **The Parties’ Obligations.** DISTRICT shall administer certain necessary actions in connection with the NCSPPP to facilitate Parties’ compliance with the General MS4 Permit requirements on behalf of CITIES, TOWN and COUNTY, as more particularly described in Exhibit A, attached hereto and incorporated by this reference. CITIES, TOWN, and COUNTY shall be responsible for those tasks specifically required of them to facilitate compliance with the General MS4 Permit requirements on the local level.

3. **CITIES', TOWN's, AND COUNTY's Proportional Cost Reimbursement Obligations.**

(a) **Fiscal Year 2013 – 2014.** During the term of this agreement (Fiscal Year 2013 – 2014), CITIES, TOWN, and COUNTY shall reimburse DISTRICT for the proportional costs of administering the NCSPPP to comply with the General MS4 Permit requirements in accordance with the method described in Exhibit B, attached hereto and hereby incorporated by reference. The Parties agree to consider and negotiate in good faith a new methodology for subsequent fiscal years that will reflect the cost of services provided by the DISTRICT that are attributable to each Party and that it will generally include the following concepts:

(1) **Program Administration.** DISTRICT staff support, supplies, membership dues, travel and event expenses, permit tracking software and miscellaneous expenses that will be a baseline of costs to be shared amongst all of the CITIES, TOWN, and COUNTY according to a new apportionment methodology.

(2) **Optional Permit Implementation Services.** Optional permit implementation services to be provided by DISTRICT at the request of one or more of the CITIES, TOWN, and/or COUNTY that will be an additional cost beyond the baseline Program Administration to be borne only by those Permittees who expressly request such services in accordance with a new separate apportionment methodology to be negotiated by the Parties who request such additional service at the time of that request.

4. **Method and Timing of Reimbursement.** DISTRICT shall provide for strict accountability of all funds and report all receipts and disbursements, upon request. Each Party to this Agreement shall be invoiced regularly by the DISTRICT for the proportional costs described in Section 3 hereof. Payment by each Party of the invoice shall be made and received in DISTRICT's administrative offices on or before the close of business within 45 days of the date of invoice. The due date shown on the invoice shall not be less than 30 calendar days after the date of issuance of the invoice. If any Party fails, without reasonable cause, to make payment within the prescribed time, the costs so invoiced shall be increased by the amount of a late penalty. Such penalty on the unpaid balance shall be calculated at the rate earned by DISTRICT's Treasurer for pooled funds invested.

5. **Insurance.**

(a) **Liability Insurance.**

(1) **General Liability.** Each Party shall obtain and maintain in full force and effect during the term of this Agreement commercial or comprehensive general liability insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, issued by a company duly and legally licensed to transact business in the State of California, covering liability for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of that Party to any officer, agent, or employee of that Party under this Agreement except for acts or omissions performed in strict compliance with express direction of the other Parties' governing boards, officers or personnel.

(2) **Comprehensive Automobile Liability Insurance.** Each Party shall obtain and maintain in full force and effect during the term of this Agreement a comprehensive automobile liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with that Party's activities under this Agreement of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000) combined single limit per occurrence.

(b) **Certificates of Coverage.** Where the foregoing coverages are provided by insurance rather than by self-insurance (written proof of which shall be provided to the other Parties), the coverages shall be evidenced by one or more certificates of coverage which shall be filed with the DISTRICT's Secretary or Clerk prior to payment for performance of any of the Parties' duties under this Agreement; shall name the other Parties, their officers, employees, and agents as additional insureds; shall be kept current during the term of this Agreement; and shall provide that the other Parties shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change. Upon request by the other Parties, the Party shall provide or arrange for the insurer to provide the other Parties with certified copies of the actual insurance policies or relevant portions thereof within thirty (30) days of the request.

6. **Hold Harmless/Defense/Indemnification.** Each Party shall defend, release, indemnify, and hold harmless each other Party as well as their respective officers, agents, and employees from any claim, loss, liability penalty, demand, or expense including without limitation, those for personal injury (including death), damage to property or for costs of remediation or other actions needed to correct or abate any violation of federal, state, or local law, regulation, or permit provision arising out of, or connected with, any acts or omissions of that Party or its officers, agents, or employees when performing any obligations or exercising any rights under this Agreement, the NCSPPP or General Permit.

7. **Termination for Cause and Non-Appropriation.**

(a) **Termination for Cause.** If any Party shall fail to fulfill in a timely and proper manner that Party's obligations under this Agreement, including each Party's Proportional Cost Reimbursement Obligation, that Party's obligations under the NCSPPP or General MS4 Permit or otherwise breach this Agreement and fail to cure such failure or breach within thirty (30) days of receipt of written notice from the other Party describing the nature of the failure or breach, the non-defaulting Party may, in addition to any other remedies it may have, terminate this Agreement as to the defaulting Party by giving thirty (30) days written notice to the defaulting Party in the manner set forth in Paragraph 9 (Notices).

(b) **Termination for Non-Appropriation.** This Agreement may be terminated by any of the CITIES, TOWN, or by COUNTY as to that Party only if despite that Party's best efforts, that Party is unable to appropriate sufficient funds in any fiscal year to meet its financial obligations under this Agreement. Termination under this paragraph shall be effective only after the terminating Party has given no less than thirty (30) days written notice of such termination to all other Parties specifying the effective date thereof. Upon termination by any Party, that Party's share of any administrative costs borne by DISTRICT shall be shared by the remaining parties pursuant to the formula described in Exhibit B.

8. **No Waiver.** The waiver by any 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 authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval, or communication that any Party desires to give the other Parties shall be addressed to the other Parties at the address set forth below. Any Party may change its address by notifying the other

Parties of the change of address. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

COUNTY

Hillary Gitelman, Director  
County of Napa  
Department Planning, Building & Environmental Services  
1195 Third Street, Room 210  
Napa, CA 94559

DISTRICT

Richard Thomasser  
Operations Manager  
Napa County Flood Control and Water Conservation District  
804 First Street  
Napa, CA 94559

CITIES

Dana Shigley  
City Manager  
City of American Canyon  
4381 Broadway, Suite 201  
American Canyon, CA 94503

Jacques LaRochelle  
Public Works Director  
City of Napa  
Department of Public Works  
P.O. Box 660  
Napa, CA 94559

John Ferons  
Public Works Director/City Engineer  
City of St. Helena  
Department of Public Works  
1480 Main Street  
St. Helena, CA 94574

Michael Kirn  
Public Works Director/City Engineer  
City of Calistoga  
414 Washington Street  
Calistoga, CA 94515

TOWN  
Graham Wadsworth  
Director of Public Works and Town Engineer  
Town of Yountville  
Town Hall  
6550 Yount Street  
Yountville, CA 94599-1271

10. **Interpretation; Venue.**

(a) **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.

(b) **Venue.** This Agreement is made in Napa County, California. The venue for any legal action in state court filed by a 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 a 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; however, nothing in this sentence shall obligate a Party to submit to mediation or arbitration any dispute arising under this Agreement.

11. **Authority to Contract.** Each Party warrants hereby that it is legally permitted and otherwise has the authority to enter into and perform this Agreement.

12. **Conflict of Interest.** Each Party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Each Party further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

13. **Non-Solicitation of Employees.** Each Party agrees not to solicit for employment the employees of the other Parties who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other Parties, except that nothing in this Paragraph shall preclude any Party from publishing or otherwise distributing applications and information regarding the Party's job openings where such publication or distribution is directed to the general public.

14. **Mutual Agreement to Terminate Prior Joint Powers Agreement.** By executing this Agreement, the Parties hereby terminate their prior Joint Powers Agreement entitled "Agreement to Fund and Administer the Napa County Stormwater Management Program" approved by the Parties which became effective on July 1, 2009, except that the obligations of the Parties under Paragraphs 5 (Insurance) and 6 (Indemnification) of that Agreement shall continue in full force and effect after said termination in relation to acts or omissions occurring prior to this termination of that Agreement.

15. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third Parties and the Parties do not intend to create such rights.

16. **Attorney's Fees.** In the event that a Party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing Party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

17. **Severability.** 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.

18. **Entirety of Contract.** 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.

19. **Execution by Counterparts.** This Agreement may be executed on behalf of the respective Parties in one or more counterparts all of which collectively shall constitute one document and agreement.

[Signature Pages Follows]

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

COUNTY OF NAPA

By: \_\_\_\_\_  
BRAD WAGENKNECHT, Chairman  
of the  
Board of Supervisors  
"COUNTY"

ATTEST: GLADYS I. COIL  
Clerk of the Board of Supervisors

By: \_\_\_\_\_

APPROVED AS TO FORM:  
MINH C. TRAN  
County Counsel

By:  
Date: June 21, 2013



CITY OF NAPA

By: \_\_\_\_\_  
JILL TECHEL, Mayor  
"CITY"

ATTEST: DOROTHY ROBERTS  
City Clerk

By: \_\_\_\_\_

COUNTERSIGNED:  
DESIREE BRUN, City Auditor

By: \_\_\_\_\_

APPROVED AS TO FORM:  
MICHAEL BARRETT, City Attorney

By: \_\_\_\_\_

CITY OF ST. HELENA

By: \_\_\_\_\_  
ANN NEVERO, Mayor  
"CITY"

ATTEST: DELIA GUIJOSA  
City Clerk

By: \_\_\_\_\_

APPROVED AS TO FORM:  
THOMAS B. BROWN,  
City Attorney

By: \_\_\_\_\_

CITY OF CALISTOGA

By: \_\_\_\_\_  
CHRIS CANNING, Mayor  
"CITY"

ATTEST: AMANDA DAVIS,  
Deputy City Clerk

By: \_\_\_\_\_

APPROVED AS TO FORM:  
MICHELLE KENYON,  
City Attorney

By: \_\_\_\_\_

CITY OF AMERICAN CANYON

By: \_\_\_\_\_  
LEON GARCIA, Mayor  
"CITY"

ATTEST: REBEKAH BARR  
City Clerk

By: \_\_\_\_\_

APPROVED AS TO FORM:  
WILLIAM D. ROSS,  
City Attorney

By: \_\_\_\_\_

TOWN OF YOUNTVILLE

By: \_\_\_\_\_  
JOHN F. DUNBAR, Mayor  
"TOWN"

ATTEST: MICHELLE DAHME,  
Town Clerk

By: \_\_\_\_\_

APPROVED AS TO FORM:  
ARNOLD ALVAREZ-GLASMAN, Town  
Attorney

By: \_\_\_\_\_

NAPA COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT, as  
special district of the State of California

By: \_\_\_\_\_  
JILL TECHEL, Chair of the  
Board of Directors  
"DISTRICT"

ATTEST: GLADYS I COIL  
Secretary of the District Board

By: \_\_\_\_\_

APPROVED AS TO FORM:  
Counsel for Napa County Flood Control and  
Water Conservation District

By: Robert C. Martin (By E-Sign)  
Date: June 21, 2013

APPROVED BY THE NAPA COUNTY  
FLOOD CONTROL AND WATER  
CONSERVATION DISTRICT

Date: \_\_\_\_\_  
Processed by:

\_\_\_\_\_  
Deputy Secretary of the District Board

# **EXHIBIT A**

## **Napa Countywide Stormwater Pollution Prevention Program**

### **ADMINISTRATION, PLANNING, AND FUNDING**

Napa Countywide Stormwater Pollution Prevention Program (NCSPPP) refers to the Countywide and Local Programs implemented by the County of Napa; Cities of American Canyon, Napa, Calistoga and St. Helena; and the Town of Yountville. Each NCSPPP agency is implementing a Local Program and contributes financial and in-kind support to the Countywide Program. The agencies use an existing institutional arrangement, the Napa County Flood Control and Water Conservation District (NCFCWCD), to make decisions regarding the Countywide Program. NCSPPP agencies have entered into a Joint Powers Agreement (JPA) to fund the Countywide Program based on the agency's population size/assessed value.

### **COUNTYWIDE PROGRAM**

#### **Program Administration**

The NCFCWCD will be the lead agency responsible for administering the NCSPPP. Administrative duties include fostering continued implementation of the permit-required stormwater management plan (SMP), annual reports provided by the Parties, coordinating meetings with local programs, and managing the financing of NCSPPP activities and contracts with outside agencies and organizations.

#### **NCFCWCD Staffing**

The NCFCWCD has a Stormwater Program Manager on staff to administer and coordinate the Countywide Program. The Stormwater Program Manager will also implement many Countywide Program activities.

#### **NCFCWCD Staff Duties**

Specific administrative and planning functions of the Countywide Program include:

- Coordinate with other city, county, regional, and state agencies to stay abreast of stormwater technology and the development of stormwater regulations. Examples include the San Francisco Regional Water Board, California State Water Resource Control Board, Bay Area Stormwater Management Agencies Association, and the California Association of Stormwater Quality Agencies.

- Implement Countywide Program measurable goals.
- Coordinate with Local Programs through the Agency Staff Committee (ASC). The ASC includes representatives from all NCSPPP agencies who meet regularly to discuss common issues and identify solutions.
- Coordinate meetings between Local Program and Regional Water Board staff.
- Compile and organize the Annual Report.

### Countywide Program Structure

**Public Education and Outreach** – The Countywide Program implements a number of education and outreach activities. These activities include holding workshops, distributing brochures and other materials on water quality pollution prevention practices, attending community events, conducting public surveys and presentations, outreach to the business community, developing a stormwater website, and implementing a school outreach program.

**Public Involvement/Participation** – The Countywide Program will be responsible for ensuring the public has the opportunity to participate in the development and implementation of activities related to the program, coordinating a volunteer water quality monitoring program, and promoting and facilitating creek cleanup events and stewardship groups.

**Illicit Discharge Detection and Elimination** - The Countywide Program has developed an illicit discharges detection and elimination program, including outreach materials. Municipal staff will be trained on how to recognize and respond to illicit discharges. The Countywide Program will be responsible for developing a countywide IDDE ordinance for JPA use.

**Construction Site Runoff Control and Post-Construction Stormwater Management in New Development and Redevelopment** – The Countywide program will be responsible for developing outreach materials and holding workshops on the stormwater requirements for construction sites. The Countywide Program will also train city, town, and county inspectors on how to inspect construction sites for compliance with clean water regulations. The Countywide Program will be responsible for developing a countywide ordinance for JPA use.

**Pollution Prevention/Good Housekeeping Municipal Operations** – The Countywide program will be responsible for developing Best Management Practices (BMP) fact-sheets for municipal activities like road, creek, and park maintenance, fuel dispensing, and use of chemicals. The Countywide Program will also provide training for municipal staff on the use of BMPs.



# EXHIBIT B

## PROPORTIONAL COST REIMBURSEMENT

COST-SHARE TOWARD ASSESSMENT FUND

DISTRICT shall contribute \$81,034 from its Maintenance and Watershed Programs Project No. 96-1 fund. In addition, the City of American Canyon will contribute \$3,980 to compensate for its share of assessments not collected for Maintenance and Watershed Programs Project No. 96-1. American Canyon's share toward the assessment fund is based upon it's percentage of BAU's (8%) in Napa County.

COST-SHARE TOWARD REMAINING BALANCE

CITIES, TOWN, and COUNTY shall each reimburse DISTRICT for a proportional percentage of the costs for DISTRICT'S administration of the NCSPPP based upon the following formula:  
 Cost share = (% of the DISTRICT population) (0.50) + (% Total Number of Benefit Assessment Units)(0.50).

**TOTAL JPA BUDGET** **\$284,308**

**MAXIMUM COST-SHARE TOWARD ASSESSMENT FUND**

City of American Canyon	\$3,980
Napa County Flood Control and Water Conservation District	\$81,034
<b>Total Share of Assessment fund</b>	<b>\$85,014</b>

**REMAINING BALANCE** **\$199,294**

**MAXIMUM COST-SHARE TOWARD REMAINING BALANCE**

	Population (2010)	Population %	BAU%	Combined %	FY13/14 Cost
City of American Canyon	19,454	14.25	7.57	10.9102	\$21,743
City of Napa	76,915	56.35	41.88	49.1160	\$97,885
Town of Yountville	2,933	2.15	1.4	1.7389	\$3,466
City of St. Helena	5,950	4.36	5.0	4.6119	\$9,191
City of Calistoga	5,155	3.78	3.0	3.3898	\$6,756
Napa County	26,077	19.11	41.36	30.2331	\$60,253
<b>Totals</b>	<b>136,484</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>\$199,294</b>