

**NAPA COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT AGREEMENT NO. _____(FC)**

**(JOINT ZONE PROJECT NO. 96-1 MAINTENANCE AND WATERSHED
MANAGEMENT PROGRAM COST-SHARING AGREEMENT)
(ENTITY: CITY OF CALISTOGA)**

THIS AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into as of this 1st day of July, 2013, by and between the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (hereinafter referred to as “DISTRICT”) and the CITY OF CALISTOGA (hereinafter referred to as “ENTITY”);

RECITALS

This Agreement is made in recognition by DISTRICT and ENTITY of the following facts:

1. ENTITY owns or otherwise has authority to enter the property where the work which is the subject of this Agreement is located; has the authority to perform or arrange for the performance of the work; and has the authority to enter into and be bound by this Agreement and the terms and conditions thereof.
2. The authority and procedure for DISTRICT to levy annual unbonded assessments for watershed management programs and river/tributary maintenance projects and flood control granted to DISTRICT through amendment of the Napa County Flood Control and Water Conservation Act (“Act”) in 1995 has been exercised by DISTRICT through adoption of that watershed management project approved by DISTRICT as Joint Zone Project No. 96-1 (hereinafter referred to as “JZP 96-1”).
3. The funds raised by DISTRICT through annual renewal of the unbonded assessments approved for JZP 96-1 by the governing board of DISTRICT in the manner provided by the Act are allocated by DISTRICT each fiscal year through approval of the DISTRICT’s Engineer’s Report to fund a variety of projects related to watershed management and river, tributary and flood control channel maintenance within the zones created within the jurisdiction of DISTRICT in conjunction with the initial approval of JZP 96-1.
4. Prior to and during the 2013/2014 budget hearings, the DISTRICT Board adopted the respective DISTRICT Engineer’s Project Reports and Budgets identifying the watershed management and river/tributary and flood control channel maintenance projects (hereinafter referred to as “maintenance projects”) within the zones of JZP 96-1 for that fiscal year and renewed, levied and allocated the annual unbonded assessment for such years for JZP 96-1 between the identified maintenance projects.
5. Such maintenance projects or remaining portions thereof within the jurisdiction of ENTITY on and after July 1, 2013 are described in Attachment “A,” attached hereto and incorporated by reference herein.

TERMS

NOW, THEREFORE, DISTRICT and ENTITY agree as follows:

1. **Scope of Work.** ENTITY shall complete or arrange for the completion of, and DISTRICT shall reimburse ENTITY for the costs of the maintenance projects described in Attachment A, under the terms and conditions set forth herein.

2. **Term of the Agreement.** The term of this Agreement shall commence on the date first above written and shall expire on June 30, 2014 unless terminated earlier in accordance with Paragraphs 10 (Termination for Cause) or 11 (Termination for Convenience); except that the obligations of ENTITY to DISTRICT under Paragraph 7 shall continue in full force and effect after said expiration date or early termination. Notwithstanding the foregoing and unless earlier terminated for cause or convenience as set forth in Paragraphs 10 and 11, this Agreement shall be automatically renewed for an additional year at the commencement of each fiscal year commencing with July 1, 2014. The projects to be performed in subsequent fiscal years and authorized funds shall be as described in a new Agreement. Any carryover funds associated with projects not performed during the term of the Agreement, or any unspent or unbilled funds will be specifically identified by the ENTITY in writing during the budgeting cycle for future fiscal years upon request of the DISTRICT. Any funds associated with projects not completed shall not be automatically carried over to subsequent fiscal years. The total of all authorized funding under this agreement will be specified in Attachment A. Upon such exhaustion of the specified funds, the Agreement shall automatically terminate except as to the obligations of ENTITY to DISTRICT under Paragraph 7, which shall continue in full force and effect until expiration of all applicable statutes of limitation as to matters arising during the term or renewed term of the Agreement.

3. **Procedure for Reimbursement.**

(a) **No Responsibility of DISTRICT for Payments to Third Parties.**

ENTITY shall be solely responsible for all payments due or owing to any person or entity for services performed or materials provided in connection with completion of any of the maintenance projects.

(b) **Submission of Claims.** No reimbursement of ENTITY by DISTRICT for any of the costs of any of the maintenance projects shall be made by DISTRICT until ENTITY has provided and DISTRICT Engineer has received a written claim completed on a form satisfactory to the DISTRICT Engineer and DISTRICT Auditor documenting the payments paid by ENTITY for the work. Upon request, DISTRICT shall provide ENTITY with appropriate claim forms.

(c) **Progress Payments.** Progress payments shall be made by DISTRICT to ENTITY only where the total project cost is more than \$10,000. Where the total project cost is less than \$10,000 only one claim for reimbursement shall be submitted and one payment made by DISTRICT to ENTITY. ENTITY shall submit all claims for reimbursement of costs associated with the projects described in Attachment "A" no later than December 30, 2013 or 180 days following the end of each subsequent fiscal year if the Agreement is amended. The DISTRICT shall have no obligation to reimburse claims for costs incurred if submitted beyond this time period.

(d) **Maximum Reimbursement.** The maximum reimbursement of ENTITY by DISTRICT under this Agreement for fiscal year 2013/2014 shall be the sum set forth in

Attachment A. If the actual final cost of any of the maintenance projects is less than the “Maximum Allocation” in Attachment A, the remainder of the allocation shall **not** carry over into the next fiscal year unless prior to the end of the then-applicable fiscal year Attachment A is amended to reallocate the unused amount to a different project. If the final cost of the ENTITY’s maintenance projects is greater than the Maximum Allocation stated in Attachment A, ENTITY may request an amendment to increase the Maximum Allocation under this Agreement. Whether this amendment is feasible will depend on how much unallocated funding is available and whether another Entity has unallocated funds. DISTRICT will endeavor, but will not be required, to reimburse ENTITY for expenditures in excess of Maximum Allocation. ENTITY may request changes in the maintenance projects and their respective funding within its own allocation during the term of this Agreement. DISTRICT agrees to consider such requests but is not obligated to approve the requested changes. Any such changes within the current allocation shall be reflected in an amendment of this Agreement.

4. **Right of Entry; Interagency Cooperation.** ENTITY shall have sole responsibility for obtaining on behalf of itself, DISTRICT, any agency issuing permits for or otherwise having jurisdiction over any of the maintenance projects, or any of their representatives, right of entry onto and full access to any property where work related to any of the maintenance projects will be performed. ENTITY also hereby agrees to provide DISTRICT or any agency or person operating under the authority or with the funding of DISTRICT right of entry onto and right of passage over any other land owned or within the legal possession of ENTITY where such right of entry or passage is deemed necessary by DISTRICT or such person or agency to obtain access to the site of any of the maintenance projects and to cooperate with all such agencies and persons in the accomplishment of such projects or any other DISTRICT project.

5. **Records Access and Retention.** ENTITY shall retain and make available to DISTRICT for copying and inspection upon request all records pertaining to the design, construction, completion and costs of any of the maintenance projects for at least five (5) years following completion of such project.

6. **Responsibility for Effects of Delays or Stoppages.** ENTITY specifically acknowledges and agrees that any delays or stoppages effecting the commencement or completion of any of the maintenance projects shall not result in any further responsibility of DISTRICT and, to the extent DISTRICT shall have, or is claimed to have, an obligation for additional funding in consequence of such delays or stoppages, such obligation shall become the obligation of ENTITY.

7. **Hold Harmless/Indemnification.**
(a) ENTITY shall defend, indemnify and hold harmless DISTRICT and the officers, agents and employees of DISTRICT from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by ENTITY or its officers, agents or employees, of activities or obligations required of ENTITY under this Agreement except where the loss was proximately caused by acts or omissions of ENTITY performed in strict compliance with express direction from DISTRICT’s governing board, officers or personnel other than direction based upon and conforming to advice from ENTITY.

(b) DISTRICT shall defend, indemnify and hold harmless ENTITY and the officers, agents and employees of ENTITY from any claim, loss or liability including without limitation, those for personal injury (including death) or damage to property, arising out of or connected with any aspect of the performance by DISTRICT or its officers, agents, or employees, of obligations required of DISTRICT under this Agreement as well as for claims where the loss was proximately caused by acts or omissions of ENTITY performed in strict compliance with express direction from DISTRICT's governing board, officers or personnel other than direction based upon and conforming to advice from ENTITY.

8. **Control of Project.** ENTITY shall have sole responsibility for design, contracting, oversight, control, and completion of any of the maintenance projects. This responsibility shall include, but is not limited to, compliance with all applicable laws pertaining to competitive bidding or payment of prevailing wages on public projects, permit exemptions, tax exemptions, or public liability. ENTITY shall be responsible for ensuring that nothing in this Agreement shall convey to DISTRICT any easement over or property rights to any of the maintenance projects, property on which such projects are located, or property affected by such projects, and that nothing in this Agreement shall impose on DISTRICT any responsibility for future use or maintenance of any of the maintenance projects.

9. **Independent Contractor.** ENTITY shall perform this Agreement as an independent contractor. ENTITY and the officers, agents, employees, volunteers, and contractors of ENTITY are not, and shall not be deemed, DISTRICT employees for any purpose, including workers' compensation or employee benefits. ENTITY shall, at its own risk and expense, determine the method and manner by which each of the maintenance projects shall be performed and completed; provided however that DISTRICT may monitor the work performed by ENTITY. DISTRICT shall not deduct or withhold any amounts whatsoever from the reimbursement paid to ENTITY, including, but not limited to amounts required to be withheld for state and federal taxes. ENTITY alone shall be responsible for all such payments.

10. **Termination for Cause.** 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 thirty (30) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving fifteen (15) days written notice to the defaulting party in the manner set forth in Paragraph 14 (Notices).

11. **Termination for Convenience.** This Agreement may be terminated by either party for any reason and at any time by giving no less than ninety (90) days written notice of such termination to the other party and specifying the effective date thereof; provided, however, that no such termination may be effected by DISTRICT unless an opportunity for consultation is provided prior to the effective date of the termination.

12. **Disposition of and Payment for Work upon Termination.** In the event of termination for cause under Paragraph 10 or termination for the convenience of a party under Paragraph 11, shall be entitled to receive reimbursement for the costs of any satisfactory work completed prior to receipt of the notice of termination, except that ENTITY shall not be relieved

of liability to DISTRICT for damages sustained by DISTRICT by virtue of any breach of the Agreement by ENTITY whether or not the Agreement was terminated for convenience or cause, and DISTRICT may withhold any payments not yet made to ENTITY for purpose of setoff until such time as the exact amount of damages due to DISTRICT from ENTITY is determined.

13. **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.

14. **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 either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party 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.

DISTRICT

Napa County Flood Control and Water
Conservation District
Phillip M. Miller, P.E., District Engineer
804 First St.
Napa, CA 94559

ENTITY

City of Calistoga
Mike Kirn, P.E., Public Works Director
1232 Washington Street
Calistoga, California 94515
cc: John Montelli, Maint. Superintendent

15. **Amendment/Modification.** Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties.

16. **Interpretation/Venue.** 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. The venue for any legal action filed by either side in state court to enforce any provision of this Agreement shall be the Superior Court of California, County of Napa, a unified court. The venue for any legal action filed by either side in federal court to enforce any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California.

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. **Compliance with Laws.** ENTITY shall observe and comply with all applicable Federal, State and local laws, ordinances, and Codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) **Non-Discrimination.** During the performance of this Agreement, ENTITY and its contractors shall not deny the benefits thereof to any person on the basis of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), nor shall they discriminate unlawfully against any employee or applicant for employment because of sex, race, color, ancestry, religion or religious creed, national origin or ethnic group identification, sexual orientation, marital status, age (over 40), mental disability, physical disability or medical condition (including cancer, HIV and AIDS), or use of family care leave. ENTITY shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, ENTITY shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to ENTITY services or works required of DISTRICT by the State of California pursuant to agreement between DISTRICT and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and ENTITY and any of its contractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) **Documentation of Right to Work.** ENTITY agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of ENTITY performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. ENTITY shall make the required documentation available upon request to DISTRICT for inspection.

(c) **Inclusion in Subcontracts.** To the extent any of the services required of ENTITY under this Agreement are subcontracted to a third party, ENTITY shall include the provisions of (a) and (b), above, in all such subcontracts as obligations of the subcontractor.

19. **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.

20. **Attorney's Fees.** In the event that either 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.

21. **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.

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

CITY OF CALISTOGA

By: _____
CHRIS CANNING, Mayor

ATTEST:
AMANDA DAVIS,
Deputy City Clerk

“ENTITY”

By: _____

APPROVED AS TO FORM:
MICHELLE KENYON,
City Attorney

By: _____

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

By: _____
JILL TECHEL, Chairperson of the Board of Directors

ATTEST: GLADYS COIL,
Secretary of the District Board

“DISTRICT”

By: _____

APPROVED AS TO FORM
Office of District Counsel
By: *Robert C. Martin* (By E-Sign.)
Date: June 18, 2013

**APPROVED BY THE NAPA COUNTY
FLOOD CONTROL AND WATER
CONSERVATION DISTRICT**
Date: _____
Processed by:

Deputy Secretary of the District Board

ATTACHMENT “A”

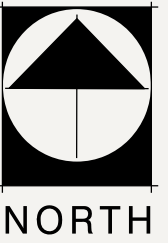
**Napa County Flood Control and Water Conservation District Funding
Allocation List for the City of Calistoga for JZP 96-1 Projects Beginning
July 1, 2013 (Assessment Funds - 2013/2014)**

Attached is a list of the specific projects approved by DISTRICT to be carried out for and/or by the City of Calistoga (ENTITY) beginning on July 1, 2013 with JZP 96-1 funding from assessments for FY 2013-2014. The total authorized funds for new projects are \$7,500.

As required by Government Code section 7550, each document or report prepared by ENTITY for or under the direction of DISTRICT pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

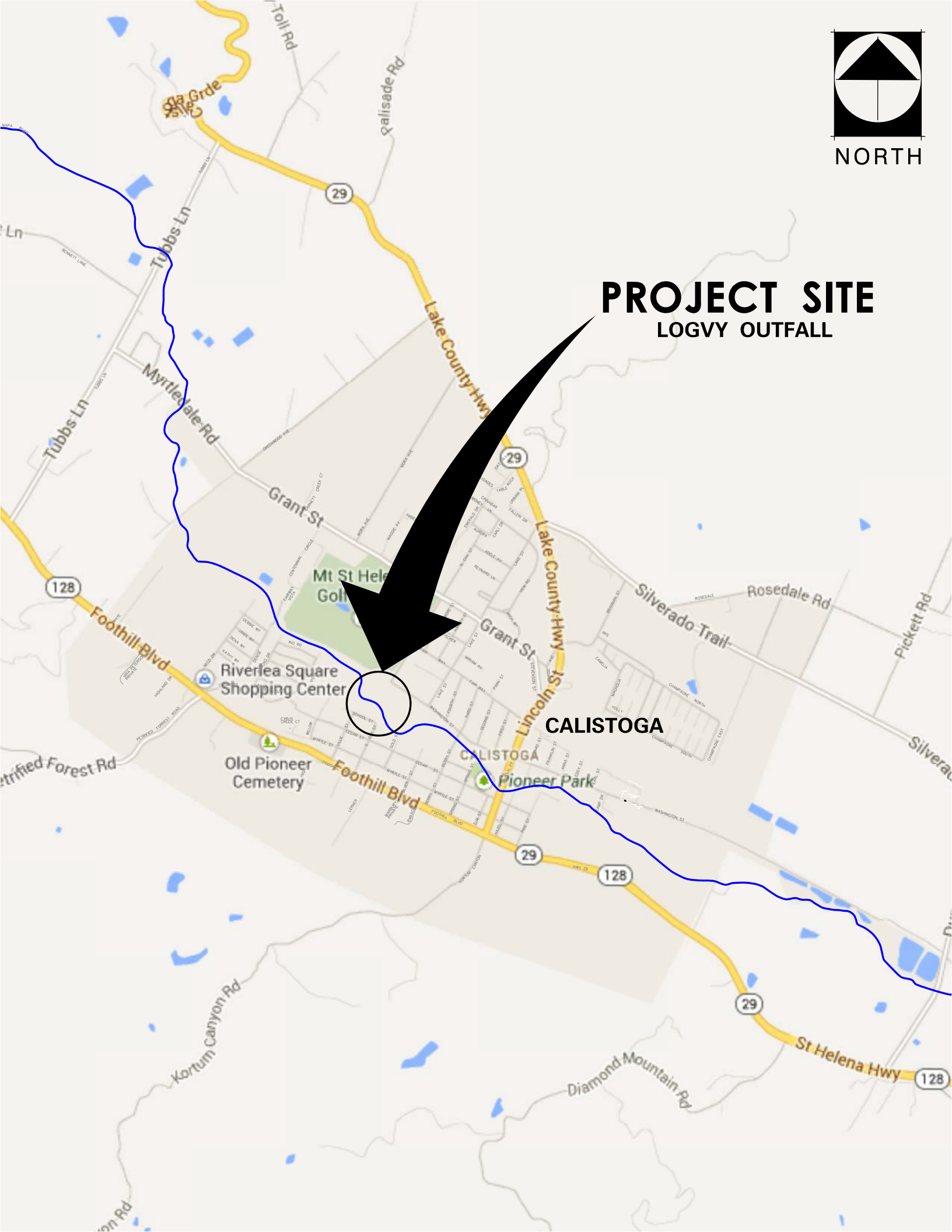
Funding Year/General Category	Specific Project	Account No.	Maximum Allocation
FY '13 - '14 Trunkline Replacement	50% Cost Share to replace 36” diameter storm drain outfall pipe to the Napa River at city’s Logvy Park	8001	\$7,500

TOTAL \$7,500



PROJECT SITE

LOGVY OUTFALL



CALISTOGA