

**RESOLUTION NO. 2021-031**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA AUTHORIZING AMENDMENT NO. 2 TO THE COOPERATIVE JOINT POWERS AGREEMENT WITH THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT TO FUND AND ADMINISTER THE NAPA COUNTY STORMWATER MANAGEMENT PROGRAM AGREEMENT NO. 641**

**WHEREAS**, on April 30, 2003, the State Water Resources Control Board adopted Water Quality Order No. 2003-005-DWQ, NPDES General Permit CAS000004 Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (“Phase II Permit”) to comply with Clean Water Act; and

**WHEREAS**, in 2003, the City of Calistoga applied for and obtained coverage for City of Calistoga under the State Board’s Phase II Permit; and

**WHEREAS**, on February 5, 2013, the State Board adopted a revised Phase II Permit, which went into effect on July 1, 2013; and

**WHEREAS**, on June 24, 2013 the City of Calistoga applied for coverage under the new Phase II Permit as required by the State Board; and

**WHEREAS**, to prevent the necessity of each city in the County having to acquire a separate NPDES permit, the Napa County Flood Control and Water Conservation District (NCFCWC) has developed the Napa County Stormwater Management Program encompassing the City of Calistoga, City of Napa, City of St. Helena, City of American Canyon, Town of Yountville, and the County of Napa; and

**WHEREAS**, on August 15, 2015, the City Council approved the Cooperative Joint Powers Agreement with the Napa County Flood Control and Water Conservation District to fund and administer the Napa County Stormwater Management Program (Agreement No. 641) for the period of July 1, 2015 – June 30, 2018; and

**WHEREAS**, the General MS4 Permit, originally effective through June 30, 2018, was administratively continued by the State Water Resources Control Board until such time that it reissues the General MS4 Permit; and

**WHEREAS**, on June 19, 2018, the Parties entered into Amendment No. 1 to the Agreement extending the term until June 30, 2021; and

**WHEREAS**, the Parties anticipate cooperating in the funding and administration of the NCSPPP for the foreseeable future; and

**WHEREAS**, Government Code section 6510 authorizes Joint Powers Agreements to continue “until rescinded or terminated,”; and

**WHEREAS**, the Parties now wish to amend the Agreement to extend the term indefinitely, subject to termination by the Parties; and

**WHEREAS**, the City of Calistoga is authorized under State law to grant authority to a designated representative to bind the City under contract; and

**WHEREAS**, the FY 2021/22 Budget (Account 01-4121-4402) includes the City's share of the JPA annual work plan which is \$31,608 and "soft costs" associated with staff time spent on permit issuance, compliance inspections, review of mandated annual reports, training, etc.; and

**WHEREAS**, the City Council wishes to grant authority to the Mayor of the City of Calistoga to execute Amendment No. 2 to the Cooperative Joint Powers Agreement to Fund and Administer the Napa County Stormwater Management Program on behalf of the City of Calistoga.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CALISTOGA DOES HEREBY** find the following:

- 1.) Authorizes the Mayor of the City of Calistoga to execute, on behalf of the City, Amendment No. 2 to the Cooperative Joint Powers Agreement with the Napa County Flood Control and Water Conservation District to Fund and Administer the Napa County Stormwater Management Program, contingent upon approval as to form by the City Attorney.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Calistoga at a regular meeting held this **18<sup>th</sup>** day of **May 2021**.

I, Marni Rittburg, City Clerk of the City of Calistoga, hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Calistoga at a regular meeting held on the **18<sup>th</sup>** day of **May 2021**, by the following vote:

**AYES:** Councilmembers Gift, Kraus, and Williams, Vice Mayor Lopez-Ortega and Mayor Canning

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None

**ATTEST:**

  
Marni Rittburg, CMC, City Clerk

**APPROVED:**

  
Chris Canning, Mayor

**NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
AGREEMENT NO. 190013B (FC)**

**NAPA COUNTY AGREEMENT NO. 170795B**

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

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

**CITY OF CALISTOGA AGREEMENT NO. 641**

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

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

**AMENDMENT NO. 2 TO**

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

**THIS AMENDMENT NO. 2 TO COOPERATIVE JOINT POWERS AGREEMENT** (this “Amendment”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2021, 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 Napa County, a political subdivision of the State of California (“COUNTY”). DISTRICT, CITIES, TOWN, and COUNTY are also referred to herein collectively as “Parties” and individually as “Party.”

**RECITALS**

**WHEREAS**, CITIES, TOWN and COUNTY are permittees under the Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems adopted by the State Water Resources Control Board on February 5, 2013 as Order No. 2013-0001-DWQ and National Pollutant Discharge Elimination System General Permit No. CAS000004, as amended (“General MS4 Permit”); and

**WHEREAS**, on March 8, 2016, DISTRICT, CITIES, TOWN, and COUNTY entered into Cooperative Joint Powers Agreement for the funding and administration of the Napa Countywide Stormwater Pollution Prevention Program (NCSPPP) (the “Agreement”) pursuant to which the DISTRICT administers the NCSPPP to facilitate CITIES, TOWN, and COUNTY’s compliance

with the General MS4 Permit, and CITIES, TOWN, and COUNTY reimburse the DISTRICT for their respective share of the DISTRICT's costs; and

**WHEREAS**, the General MS4 Permit, originally effective through June 30, 2018, was administratively continued by the State Water Resources Control Board until such time that it reissues the General MS4 Permit; and

**WHEREAS**, on June 19, 2018, the Parties entered into Amendment No. 1 to the Agreement extending the term until June 30, 2021; and

**WHEREAS**, the Parties anticipate cooperating in the funding and administration of the NCSPPP for the foreseeable future; and

**WHEREAS**, Government Code section 6510 authorizes Joint Powers Agreements to continue "until rescinded or terminated," and

**WHEREAS**, the Parties now wish to amend the Agreement to extend the term indefinitely, subject to termination by the Parties;

**NOW THEREFORE**, the Parties hereby amend the Agreement as follows:

### **TERMS**

1. Paragraph 1 of the Agreement is amended to read in full, as follows:

1. **Term of the Agreement.** The term of this Agreement shall commence on March 8, 2016, and remain in full force and effect unless terminated in accordance with the provisions set forth in Paragraph 7(a) or 7(b). Termination as to one Party shall not affect the term of this Agreement as to the remaining Parties unless there is only one Party remaining, upon which this Agreement shall terminate.

2. Paragraph 3(a) of the Agreement is amended to read in full as follows:

(a) **Reimbursement Methodology.** During the term of this Agreement, 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 have agreed upon a methodology for payment of the cost of services provided by the DISTRICT that are attributable to each Party for the following:

(1) **Program Administration.** Services to be provided by DISTRICT, also herein referred to as Category 1 items, which will constitute a baseline of program costs to be shared amongst all of the CITIES, DISTRICT, TOWN, and COUNTY.

(2) **Permit Implementation Services.** Services to be provided by DISTRICT, also herein referred to as Category 2 items, which will be an additional cost beyond the baseline and will be shared amongst all of the CITIES, TOWN, and COUNTY.

(3) **Optional Permit Implementation Services.** Services to be provided by DISTRICT at the request of one or more of the CITIES, TOWN, and/or COUNTY, also herein referred to as Category 3 items, which will be an additional cost beyond the baseline Program Administration to be borne only by those Permittees who expressly request in writing such services.

3. Paragraph 7 of the Agreement is amended to read in full as follows:

7. **Termination for Cause or Convenience.**

(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 Parties describing the nature of the failure or breach, the non-defaulting Parties may, in addition to any other remedies they 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 Convenience.** Any Party may withdraw from this Agreement for any reason, including but not limited to its inability 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 withdrawing Party has given no less than thirty (30) days written notice of such withdrawal to all other Parties specifying the effective date thereof. Upon withdrawal 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 and the withdrawing Party shall only be responsible for payment of administrative costs previously appropriated by the withdrawing Party.

4. This Amendment No. 2 represents all the changes to the Agreement agreed to by the Parties. No enforceable oral representations or other agreements have been made by the Parties unless otherwise stated herein. All other provisions of the Agreement and prior amendments not addressed in this Amendment No. 2 shall remain in full force and effect.

5. This Amendment No. 2 may be executed in counterparts, which when taken together, shall constitute a single signed original as though all Parties had executed the same page.

**IN WITNESS WHEREOF**, the Parties have executed this Amendment of the Agreement as of the date first above written.

NAPA COUNTY, a political subdivision of  
the State of California

By \_\_\_\_\_  
ALFREDO PEDROZA,  
Chair of the Board of Supervisors

"COUNTY"

|                                                                                                                                                         |                                                                                                                                      |                                                                                        |
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| <p>APPROVED AS TO FORM<br/>Office of County Counsel</p> <p>By: <u>Thomas C. Zeleny</u><br/>Deputy County Counsel</p> <p>Date: <u>April 14, 2021</u></p> | <p>APPROVED BY THE NAPA COUNTY<br/>BOARD OF SUPERVISORS</p> <p>Date: _____<br/>Processed By: _____<br/>Deputy Clerk of the Board</p> | <p>ATTEST: JOSE LUIS VALDEZ<br/>Clerk of the Board of Supervisors</p> <p>By: _____</p> |
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CITY OF NAPA

By: \_\_\_\_\_  
STEVE POTTER, City Manager  
"CITY"

ATTEST: TIFFANY CARRANZA  
City Clerk

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

COUNTERSIGNED:  
JOY RIESENBERG, City Auditor

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

APPROVED AS TO FORM:  
MICHAEL BARRETT, City Attorney

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

CITY OF ST. HELENA

By: \_\_\_\_\_  
GEOFF ELLSWORTH, Mayor  
"CITY"

ATTEST: CINDY TZAFPOULOS  
City Clerk

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

APPROVED AS TO FORM:  
ETHAN WALSH,  
City Attorney

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



CITY OF CALISTOGA

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

ATTEST: MARNI RITTBURG,  
City Clerk

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

APPROVED AS TO FORM:  
MICHELLE KENYON,  
City Attorney

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

CITY OF AMERICAN CANYON

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

ATTEST: CHERRI WALTON  
Interim 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:  
GARY B. BELL, Town Attorney

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

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

By: \_\_\_\_\_  
 ALFREDO PEDROZA  
 Chairperson of the Board of Directors

“DISTRICT”

|                                                                                                                                                                                |                                                                                                                                                                                                                                                                                           |                                                                              |
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| <p>APPROVED AS TO FORM<br/>         Office of District Counsel</p> <p>By: <u>Shana A. Bagley (e-sign)</u><br/>         District Counsel</p> <p>Date: <u>April 16, 2021</u></p> | <p>APPROVED BY THE BOARD OF<br/>         DIRECTORS OF THE NAPA<br/>         COUNTY FLOOD CONTROL AND<br/>         WATER CONSERVATION<br/>         DISTRICT</p> <p>Date: _____<br/>         Processed By: _____<br/>         _____<br/>         Deputy Secretary of the District Board</p> | <p>ATTEST:<br/>         Secretary of the District Board</p> <p>By: _____</p> |
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