

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Bill Mushallo, Administrative Services Director
DATE: August 3, 2010
SUBJECT: Memorandum of Understanding Related to the Collection,
 Disbursement and Auditing of Assessment Funds of the Napa
 Valley Tourism Improvement District

APPROVAL FOR FORWARDING:


 William Norton, Interim City Manager

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- 1 **ISSUE:** To Consider a Memorandum of Understanding for actions related to
 2 the administration of the Napa Valley Tourism Improvement District.
 3
- 4 **RECOMMENDATION:** To authorize execution of the Memorandum of
 5 Understanding related to the Collection, Disbursement, and Auditing of
 6 Assessment Funds of the Napa Valley Tourism Improvement District and
 7 authorize the Interim City Manager to execute the agreement.
 8
- 9 **BACKGROUND/DISCUSSION:** The Napa County Board of Supervisors, on
 10 June 15, 2010, approved the establishment of the Napa Valley Tourism
 11 Improvement District (NVTID). The purpose of the NVTID is to promote tourism
 12 throughout Napa County. Funding for the activities of the NVTID will be provided
 13 by a 2 percent assessment levied on short term room rentals on lodging
 14 businesses throughout the County. The assessment will be collected by the
 15 County (in the unincorporated area) and the cities of American Canyon,
 16 Calistoga, St. Helena, Napa and the Town of Yountville. Lodging businesses will
 17 remit the NVTID assessment to their respective municipality (or the County in the
 18 unincorporated area) at the same time that the Transient Occupancy Tax is
 19 remitted. The assessment became effective on July 1, 2010 and is levied on
 20 short term room rentals (less than 30 days) on all hotel/motel and bed and
 21 breakfast establishments. Vacation rental units are exempted from the NVTID
 22 assessment.
 23
- 24 Of the total NVTID assessment collected, 74 percent will remitted to the County.
 25 The County will remit those funds to the Napa Valley Tourism Corporation for
 26 expenditure on valley-wide marketing and tourist promotion activities. The City

27 will remit 25 percent of the collected assessments to the local group responsible
28 for individual destination marketing and tourism improvement purposes, in
29 accordance with the requirements of the District plan. The remaining 1 percent
30 of the assessment (approximately \$5,000) will be allocated to the General Fund
31 for the cost of administering this program.

32

33 A Memorandum of Understanding (MOU) to be executed by the County of Napa
34 and the cities of American Canyon, Calistoga, Napa, St. Helena and the Town of
35 Yountville identifies the responsibilities of each local entity for the collection,
36 distribution, accounting and reporting of the NVTID assessment. The MOU
37 provides that the assessment will be collected and deposited into a separate
38 fund/account. The funds will be allocated as identified above with monthly reports
39 provided to the County by each local entity. The MOU also identifies the County's
40 right to inspect and verify reporting records and provides that each local entity
41 will make reasonable efforts to collect the assessment.

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44 **FISCAL IMPACT:** It is anticipated that the NTVID assessment will generate
45 \$495,000 in FY 2010-11 for destination marketing and tourism activities and
46 \$5,000 in revenue to the General Fund for program administration cost.

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ATTACHMENTS:

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1. Draft Resolution

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2. Memorandum of Understanding Related to the Collection, Disbursement,
and Auditing of Assessment Funds of the Napa Valley Tourism

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Improvement District

RESOLUTION NO. 2010-____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,
COUNTY OF NAPA, STATE OF CALIFORNIA, APPROVING THE
MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF
CALISTOGA AND THE COUNTA OF NAPA RELATED TO THE COLLECTION,
DISBURSEMENT, AND AUDITING OF ASSESSMENT FUNDS OF THE NAPA
VALLEY TOURISM IMPROVEMENT DISTRICT**

1 **WHEREAS**, on June 15, 2010 the County of Napa approved the creation of the
2 Napa Valley Tourism Improvement District (NVTID), a benefit assessment district which
3 includes all incorporated jurisdictions, including the City of Calistoga and the
4 unincorporated areas of the County.

5
6 **WHEREAS**, the NVTID levies a self assessment of 2% of gross revenues on
7 short term (less than 30 days) room rental revenue on lodging businesses.

8
9 **WHEREAS**, the City will collect the 2% NVTID assessment at the same time it
10 collects the City's TOT. The City will forward 74% of the 2% assessment to the County.
11 The County will remit those funds to the Napa Valley Tourism Corporation for
12 expenditure on valley-wide marketing and tourist promotion activities. 1% of the 2%
13 assessment will be retained by the City as an administration fee. The remaining 25% of
14 the 2% assessment will be paid to the local group responsible for individual destination
15 marketing and tourism improvement purposes, in accordance with the requirements of
16 the District plan.

17
18 **NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of
19 Calistoga Adopts the resolution approving the Memorandum of Understanding between
20 the City of Calistoga and the County of Napa related to the collection, disbursement,
21 and auditing of assessment funds of the Napa Valley Tourism Improvement District.

22
23 **PASSED, APPROVED, AND ADOPTED** by the City Council of the City of
24 Calistoga at a regular meeting held this 3rd day of August 2010 by the following vote:

25
26 **AYES:**

27 **NOES:**

28 **ABSTAIN/ABSENT:**

29
30
31 _____
32 **MICHAEL DUNSFORD, Mayor**

33 **ATTEST:**

34 _____
35 **SUSAN SNEDDON, City Clerk**

NAPA COUNTY AGREEMENT NO. _____
AMERICAN CANYON AGREEMENT NO. _____
CITY OF NAPA AGREEMENT NO. _____
ST. HELENA AGREEMENT NO. _____
CALISTOGA AGREEMENT NO. _____
YOUNTVILLE NO. _____

**MEMORANDUM OF UNDERSTANDING
RELATED TO THE
COLLECTION, DISBURSEMENT, AND AUDITING OF ASSESSMENT FUNDS OF
THE NAPA VALLEY TOURISM IMPROVEMENT DISTRICT**

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made as of _____, 2010, by and between the County of Napa, a political subdivision of the State of California (“County”), and the Cities of American Canyon, Napa, St. Helena and Calistoga and the Town of Yountville, municipal corporations (individually “Local Entity” and collectively the “Local Entities”).

WHEREAS, County has formed the Napa Valley Tourism Improvement District (“District”) pursuant to the provisions of the Property and Business Improvement District Law of 1994 (Streets and Highways Code §36600 et seq.); and

WHEREAS, the District will levy assessments on lodging businesses within the County of Napa and the Local Entities to fund valley-wide marketing and tourist serving programs as more fully set forth in the Napa Valley Tourism Improvement District Management District Plan (“District Plan”), as approved by the County Board of Supervisors. The District will place a 2.0% assessment on the gross room rentals of eligible lodging establishments (hereinafter “District Assessment”). Within the jurisdiction of each Local Entity, the respective tax collector shall collect the District Assessment (hereinafter “local collected assessment”) in conjunction with their collection of local transient occupancy taxes; and

WHEREAS, pursuant to the District Plan, the Local Entities and the County shall retain 1% of the local collected assessment, as a local government administrative fee, prior to any District or local governing committee allocations; and

WHEREAS, also pursuant to the District Plan, the Local Entities are to remit to County 74% of the local collected assessment, and the County in turn will remit that amount to the Napa Valley Tourism Corporation, who will be under contract with County for providing valley-wide marketing and tourist serving programs. The remaining 25% of the local collected assessment shall be retained by the County and each respective Local Entity individually for expenditures related to individual destination marketing for each jurisdiction as more fully set forth in the District Plan; and

WHEREAS, the County Treasurer-Tax Collector has delegated authority to the Local Entities Treasurers' to collect the County-wide District assessment as set forth by Napa County Resolution No. 2010-72.

WHEREAS, County and the Local Entities now desire to enter into this Agreement to document the accounting processes including collections, allocations, and reporting required to be submitted by the Local Entities to the County Auditor-Controller with respect to the District assessment funds.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements of the parties, and other valuable consideration the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Responsibilities for Monthly Accounting/Reporting of District Assessments.**

- A. **Accounting:** Each Local Entity shall deposit the local collected assessment in a separate fund or account on behalf of the District.
- B. **Collections:** Each Local Entity Treasurer shall collect the local collected assessment in conjunction with its local Transient Occupancy Tax (TOT) collection procedures, including provisions relating to delinquencies, penalties, and interest.
- C. **Allocations:**
 - a. Each Local Entity shall remit the required 74% of the local collected assessment to the County Auditor-Controller within 30 days after the funds are due to and collected by the Local Entity.
 - b. Each Local Entity shall retain 1% of the local collected assessment to offset the cost of administration of the District Assessment.
 - c. Each Local Entity shall retain 25% of the local collected assessment to be used for individual destination marketing and tourism improvement purposes, in accordance with the requirements of the District Plan.
- D. **Reporting Requirements:** Monthly summary reports will be submitted to the County Auditor-Controller with each allocation payment. Monthly (Quarterly for County) reports must include the information as outlined in Attachment A. All detailed records to substantiate the amounts on the reports will be kept at each Local Entity and is subject to audit. Records must be kept for five years.

2. **Inspection and Verification of Records.** The County Auditor-Controller has the right to inspect and verify the records of each Local Entity to ensure collections are being submitted in accordance with District requirements. Any findings of non-compliance, underpayment, or overpayment, will be resolved within 30 days after the issuance date of the audit report. Any funds not remitted within 30 days will be subject to interest at the rate of 1.5%.

3. **Collections.** Each Local Entity will be responsible for reasonable collection efforts of the assessment. If, after all reasonable efforts are made, an entity subject to the assessment continues to be in non-compliance with remitting the assessment, the Local Entity shall submit a written request to, and authorization for, the County Treasurer-Tax Collector to pursue collection. The Local Entity will provide all necessary documentation and records for this collection. Any penalties and interest collected by the County Treasurer-Tax Collector will be retained by the Treasurer-Tax Collector.

ADDITIONAL TERMS AND CONDITIONS

4. **Term.** The term of this Agreement shall be co-extensive with the existence of the Napa Valley Tourism Improvement District.

5. **Hold Harmless By County.** County agrees to defend, indemnify and hold the Local Entities, their elected officials, officers, employees and agents and successors and assigns of each of them (collectively, "Indemnified Parties") harmless from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, proceedings and judgments including, without limitation, reasonable attorneys' fees arising from or in any way connected with any claims against the Indemnified Parties for damages or violation of any law resulting from any act, omission, or other action taken by the County in performance of its duties under this Agreement.

6. **Hold Harmless By Local Entities.** Each Local Entity agrees to defend, indemnify and hold County, its elected officials, officers, employees and agents and successors and assigns of each of them (collectively, "Indemnified Parties") harmless from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, proceedings and judgments including, without limitation, reasonable attorneys' fees arising from or in any way connected with any claims against the Indemnified Parties for damages or violation of any law resulting from any act, omission, or other action taken by the Local Entity in performance of its duties under this Agreement.

7. **Warranty of Legal Authority.** Each party warrants and covenants that it has the present legal authority to enter into this Agreement and to perform the acts required of it hereunder. If any party is found to lack the authority to perform the acts required of it hereunder or is prevented from performing the acts by a court of competent jurisdiction, this Agreement shall be void as to that party.

8. **Assignment/Delegation.** As between the County and each Local Entity, neither party hereto shall assign, or transfer any benefit or obligations of this Agreement without the prior written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party shall have so consented.

9. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this Agreement will remain in full force and effect.

10. **Attorneys' Fees.** The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled to reimbursement for its expenses, including court costs and reasonable attorneys' fees.

11. **Waiver.** Any waiver (express or implied) by either the County or respective Local Entity of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach.

12. **Notices.** Whenever notice is to be given, it shall be in writing and delivered by personal, overnight express or courier service, with a written receipt, or sent by registered or certified mail in a sealed envelope, postage prepaid, return receipt requested and addressed as follows:

County of Napa:

Napa County Auditor-Controller
1195 Third Street, Suite B-10
Napa, CA 94559

Town of Yountville:

Town Manager
Town of Yountville
6550 Yount Street
Yountville, CA 94599

City of American Canyon:

Finance Director
City of American Canyon
4381 Broadway St., Ste 201
American Canyon, CA 94503

City of Napa:

Finance Director
City of Napa
P.O. Box 660
Napa, CA 94559-0660

City of St. Helena:

Finance Director
1480 Main Street
St. Helena, CA 94574

City of Calistoga:

Administrative Services Director
1232 Washington Street
Calistoga, CA 94515

Changes may be made in addresses to where notices are to be delivered by giving notice pursuant to this paragraph.

13. **Entire Agreement.** This document is intended both as the final expression of the agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

14. **Amendment.** This Agreement may only be amended in writing by an amendment authorized by the County's Board of Supervisors and each Local Entity's governing body.

15. **Recitals Adopted.** The parties hereby agree to and adopt the Agreement recitals as portions of the Agreement.

16. **Joint Defense in Event of Third Party Challenges to the Agreement.** In the event of a third party challenge of any type to this Agreement, the parties agree to jointly defend the validity and implementation of the Agreement.

17. **Counterparts Signature.** This Agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one agreement.

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

COUNTY OF NAPA

By: _____
DIANE DILLON,
Chair of the Board of Supervisors

Date: _____

ATTEST: GLADYS COIL
Napa Clerk of the Board of Supervisors

APPROVED AS TO FORM:
ROBERT WESTMEYER, County Counsel

By: _____

By: _____

CITY OF AMERICAN CANYON

By: _____
LEON GARCIA, Mayor

Date: _____

ATTEST: REBEKAH BARR,
American Canyon City Clerk

APPROVED AS TO FORM:
WILLIAM ROSS
American Canyon City Attorney

By: _____

By: _____

CITY OF NAPA

By: _____
JILL TECHEL, Mayor

Date: _____

ATTEST: DOROTHY ROADMAN,
Napa City Clerk

APPROVED AS TO FORM:
MICHAEL BARRETT
Napa City Attorney

By: _____

By: _____

TOWN OF YOUNTVILLE

By: _____
CYNTHIA L. SAUCERMAN, Mayor

Date: _____

ATTEST: MICHELLE DAHME,
Town Clerk

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

By: _____

By: _____

CITY OF ST. HELENA

By: _____
DEL BRITTON, Mayor

Date: _____

ATTEST: DELIA GUIJOSA,
St. Helena City Clerk

APPROVED AS TO FORM:
JOHN TRUXAW,
St. Helena City Attorney

By: _____

By: _____

CITY OF CALISTOGA

By: _____
MICHAEL DUNSFORD, Vice Mayor

Date: _____

ATTEST: SUSAN SNEDDON,
Calistoga City Clerk

APPROVED AS TO FORM:
MICHELLE KENYON,
Calistoga City Attorney

By: _____

By: _____

ATTACHMENT A

SUMMARY REMITTANCE REPORTS – REQUIREMENTS

Summary TOT collection reports must include the following:

- Name of Jurisdiction
- Reporting Period
- Name of Hotel/Motel (Column A)
- # of Rooms (Column B)
- Total TOT and “local collected assessment” revenue collected by entity for the Reporting Period (Column C)
- A column showing actual TOT collected (just hotel tax portion) (Column D)
- A column showing additional 2% TBID assessment (“local collected assessment”) collected (Column E)
- A column showing 1% of local collected assessment (for administrative allocation to each Local Entity) (Column F)
- A column showing 25% local collected assessment (Column G)
- A column showing the remaining 74% of the local collected assessment (to be submitted to the County) (Column H)
- A column totaling the last three columns (Column I) *should equal Column E

Each column should be totaled.

The total of column H should reconcile to the amount of payment submitted to the County per reporting period.

This is a minimum requirement. You can always provide additional information.