

NAPA COUNTY AGREEMENT NO. 7723

NAPA COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT AGREEMENT NO. 412 (Fc)

**MEMORANDUM OF UNDERSTANDING
RELATED TO WATERSHED AND WATER RESOURCES MANAGEMENT**

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made as of February 7, 2012, by and between the County of Napa, a political subdivision of the State of California (“County”), and the Napa County Flood Control and Water Conservation District, a special district of the State of California (“District”).

WHEREAS, the County and District share overlapping county-wide responsibilities for watershed and water resources management; and

WHEREAS, the Parties will mutually benefit from coordinating human and financial resources to achieve the greatest water resources management; and

WHEREAS, County and the District now desire to enter into this Agreement to set forth the manner in which the Parties shall collaborate in watershed and water resources management:

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. The Parties shall meet as needed, but at least once each fiscal year, to plan watershed and water resources management priorities and the fiscal responsibilities of each Party related thereto.
2. The activities covered by this agreement are outlined in Exhibit A and may include sharing of labor resources or financial resources provided those resources are appropriate for the activities to be performed. Financial support shall meet and adhere to any and all conditions and or restrictions that pertain to the revenues to be used by either party.
3. The financial commitments of the Parties to either fund or perform activities of joint benefit and interest shall be outlined and approved through the normal and customary budgeting procedures of each party.
4. The cost of labor, materials, and supplies, direct and indirect expenditures shall be at those rates determined through the normal and customary procedures of the Parties and such labor, materials, and supplies, direct and indirect expenditures shall be appropriated following the purchasing and accounting rules of each party.

ADDITIONAL TERMS AND CONDITIONS

5. **Term.** The term of this Agreement shall be ongoing unless terminated by either party without cause upon thirty (30) days written notice.

6. **Other Termination.** If, during the term of this Agreement or any extension thereof subsequent to the first fiscal year during the term, COUNTY or DISTRICT is unable to appropriate sufficient funds to meet its obligations under this Agreement, such funds are not otherwise available to COUNTY or DISTRICT for this purposes, and there are no other legal procedures or available funds by or with which such obligations can be met, and such non-appropriation of funds has not resulted from any act or omission within the control of COUNTY or DISTRICT each Party shall have the right to terminate this Agreement by giving the other Party written notice of such termination at least thirty (30) days prior to the effective date of the termination. In the event of such termination, the Parties shall be obligated to each other only for payment of compensation and reimbursement of expenses for services satisfactorily completed or incurred and for which invoices are submitted as of the effective date of such termination.

7. **Hold Harmless/Indemnification.** To the full extent permitted by law, COUNTY and DISTRICT shall each defend, indemnify and hold harmless each other as well as their respective officers, agents and employees from any claims, suits, proceedings, loss or liability, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising out of or connected with any acts or omissions of that party or its officers, agents, employees, volunteers, or other contractors or their subcontractors, when performing any activities or obligations required of that party under this Agreement. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

8. **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.

9. **Assignment/Delegation.** As between the County and District, 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.

10. **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.

11. **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.

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

13. **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:	NCFCWCD
Director	District Engineer
Napa County Public Works	Napa County Flood Control and Water Conservation District
1195 Third Street, Suite B-10	804 First Street
Napa, CA 94559	Napa, CA 94559

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 the District Board of Directors.

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.

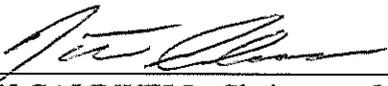
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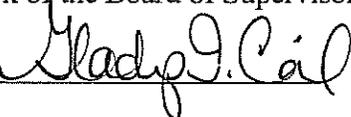
IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

COUNTY OF NAPA, a political subdivision of the State of California

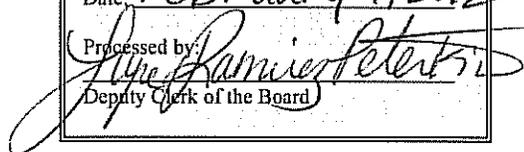
By: 
KEITH CALDWELL, Chairman of the Board of Supervisors

“COUNTY”

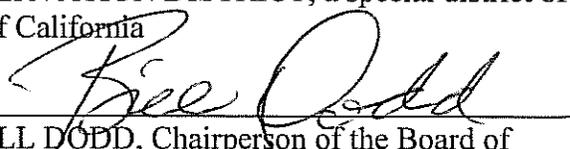
ATTEST: GLADYS I. COIL,
Clerk of the Board of Supervisors

By: 

APPROVED AS TO FORM
Office of County Counsel
By: Janice D. Killion (e-signature)
Date: November 28, 2011

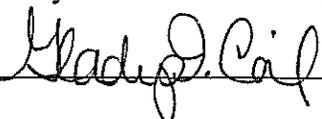
APPROVED BY THE NAPA COUNTY
BOARD OF SUPERVISORS
Date: February 7, 2012
Processed by: 
Deputy Clerk of the Board

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

By: 
BILL DODD, Chairperson of the Board of Directors

“DISTRICT”

ATTEST: GLADYS I. COIL,
Secretary of the District Board

By: 

APPROVED AS TO FORM
Office of District Counsel
By: Robert C. Martin (By E-sign)
Date: 1/10/2012

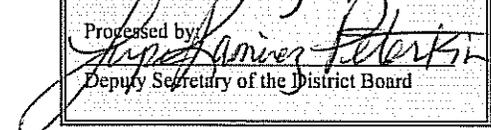
APPROVED BY THE NAPA COUNTY
FLOOD CONTROL AND WATER
CONSERVATION DISTRICT
Date: February 7, 2012
Processed by: 
Deputy Secretary of the District Board

EXHIBIT A

ACTIVITIES OF MUTUAL INTEREST AND BENEFIT

The following activities are covered by this MOU as being of mutual watershed and water resources benefit to the County and District. This list may be amended from time to time.

- 1) Groundwater, surface water, meteorological and hydrological monitoring and modeling activities.
- 2) Maintenance, assessment and restoration of stream channels and other waterways within the coterminous County/District boundaries.
- 3) Participation and cost sharing in the development and implementation of Integrated Regional Water Management Plans (IRWMP) and associated grant funded opportunities.
- 4) Use of and support for the Watershed Information Center and Conservancy Board and website to meet public outreach, data management and reporting needs for water resources programs.
- 5) Floodplain management and flood mitigation projects.
- 6) Water conservation programs and activities.
- 7) Project development, grant writing, contracting, management and implementation in support mutual watershed and water resources benefit.