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**Appendix E-5**  
**Yountville Water Transfer Agreement**

**AGREEMENT BETWEEN TOWN OF YOUNTVILLE  
AND  
CITY OF AMERICAN CANYON  
FOR TRANSFER OF WATER ENTITLEMENT  
AND PIPELINE CAPACITY**

Copy to: Bill Ross L12  
Night Team  
Date: 2/7/01  
File: Vault

This agreement made this 7th day of December, 2000, by and between the City of American Canyon, a municipal corporation hereinafter referred to as "AMERICAN CANYON," and the Town of Yountville, a municipal corporation hereinafter referred to as "YOUNTVILLE."

**RECITALS**

**WHEREAS**, AMERICAN CANYON is entitled to delivery of water from the North Bay Aqueduct (hereinafter "NBA entitlement") pursuant to a contract between AMERICAN CANYON and the Napa County Flood Control and Water Conservation District dated November 15, 1966; and

**WHEREAS**, YOUNTVILLE is in need of additional supplies of reliable, good quality water to meet the water needs of its customers; and

**WHEREAS**, AMERICAN CANYON has the opportunity to obtain alternate sources of water, in addition to its NBA entitlement, to serve its residents and is willing to transfer a portion of its entitlement to use of NBA capacity to YOUNTVILLE for proper compensation; and

**WHEREAS**, the Napa County Flood Control and Water Conservation District has commissioned a study entitled "Hydraulic Analysis of North Bay Aqueduct Facilities, Phase II" by Navigant Consulting, Inc., dated June, 2000 ("Navigant Study") that has identified possible additional pipeline capacity in the North Bay Aqueduct that may become available to AMERICAN CANYON and YOUNTVILLE;

**NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:**

**1) Transfer of NBA Capacity.**

a) Capacity Transfer

AMERICAN CANYON hereby permanently releases, assigns and transfers to YOUNTVILLE all of its right and interest in capacity in the NBA to the extent necessary for conveyance of 250 acre feet of water per year, at a maximum rate of delivery of 0.46 cubic feet per second ("cfs"), for treatment and delivery to YOUNTVILLE.

b) NBA Pipeline Capacity

YOUNTVILLE hereby relinquishes to AMERICAN CANYON any claim to additional NBA pipeline capacity found, transferred, or acquired as a result of the Navigant study that might otherwise have accrued or been assigned to YOUNTVILLE as a result of transfer of 250 acre-feet of entitlement pursuant to

**City of American Canyon and Town of Yountville  
Transfer of Water Entitlement and Pipeline Capacity**

this Agreement. AMERICAN CANYON'S and YOUNTVILLE's proportionate interest in any such additional pipeline capacity will be calculated on the basis of their proportionate NBA entitlements that existed immediately prior to the effective date of this Agreement.

c) Future Transfer of NBA Pipeline Capacity

YOUNTVILLE hereby agrees that it will not sell, exchange, or otherwise transfer the NBA pipeline capacity of 250 acre-feet it is obtaining under this Agreement without the prior written consent of AMERICAN CANYON. In addition, AMERICAN CANYON reserves a right of first refusal for any such transfer.

2) Transfer of Water Entitlement.

AMERICAN CANYON hereby agrees to transfer to YOUNTVILLE, on a permanent basis, 250 acre-feet per year (up to eleven percent of which may be taken in any thirty day period, which is equivalent to 0.46 cfs) of the water available to AMERICAN CANYON under its North Bay Aqueduct (NBA) entitlement, upon execution of this Agreement by all parties:

3) Compensation:

a) Obligations Associated with Conveyance Capacity

i) YOUNTVILLE shall assume the responsibility for all payment obligations associated with the entitlement to the purchased capacity in the NBA accruing after the effective date of this Agreement, including but not limited to capital repayment for the NBA capacity necessary for delivery of water under this agreement (estimated at \$24,000/year), and operation and maintenance costs associated with delivery of the water to the Jameson Canyon Water Treatment Plant (estimated at \$90/acre foot.)

ii) YOUNTVILLE shall pay the sum of \$57,000 to the City of Vallejo ("VALLEJO") to purchase capacity in the Vallejo Raw Water Pipeline sufficient to allow VALLEJO to deliver 250 acre-feet per year to AMERICAN CANYON. The payment is intended to reimburse VALLEJO for costs it incurred in constructing its pipeline with the additional capacity necessary to accommodate delivery of water to AMERICAN CANYON in the amount of 250 acre-feet per year (the amount necessary to replace the amount of NBA water AMERICAN CANYON is releasing to YOUNTVILLE pursuant to this Agreement). Said payment shall be due on the effective date of this Agreement, subject to paragraph 5, "Agreement's Effectiveness Contingent," and shall be paid within 30 days thereafter.

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b) NBA Entitlement

Upon purchase by YOUNTVILLE of AMERICAN CANYON'S NBA entitlement, YOUNTVILLE shall have the obligation to pay AMERICAN CANYON the sum of \$1,100 for each acre-foot of entitlement purchased, for a total of \$275,000. Said obligation shall be due and payable within 30 days of the effective date of the Agreement, and subject to paragraph 5, "Agreement's Effectiveness Contingent." Interest on any unpaid portion of the obligation shall accrue at the rate of 6% per annum.

c) Other Costs.

(i) Legal Services.

YOUNTVILLE shall be responsible for all costs related to preparation and drafting of this Agreement. Other than as specifically specified herein, each party shall be responsible for its own legal services necessary for review and approval of this Agreement.

(ii) Unanticipated Costs.

Responsibility for any unforeseen or unusual costs resulting from the transfer of entitlement provided for in this agreement will be negotiated between the parties. It is anticipated as a general principle, however, that YOUNTVILLE will be responsible for any additional costs associated with delivery of NBA water to YOUNTVILLE.

d) Interest

Interest shall accrue on any unpaid charges to be paid by YOUNTVILLE to AMERICAN CANYON pursuant to this agreement, at the rate of 6% per annum from their due date until paid, and YOUNTVILLE hereby agrees to pay such interest.

4) Indemnification.

YOUNTVILLE shall hold AMERICAN CANYON, its elected officials, agents, officers, and employees harmless from and indemnify and defend the same against all claims of liability, damages or injury due to the delivery, treatment or use of NBA capacity and water entitlements purchased under this agreement.

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**5) Agreement's Effectiveness Contingent.**

a) Execution of Agreements Required

This Agreement, and the parties' obligations hereunder are contingent upon the following conditions:

i) Completion of the study currently underway by the Town of Yountville evaluating the City of Napa's water treatment and transmission system capacity;

ii) Certification of adequate environmental documents required by the California Environmental Quality Act (Pub. Res. Code § 21,000 et seq.) and the execution of the following additional agreements and shall not become effective until the last of said agreements is executed;

iii) An amendment to the agreement between the City of Napa and YOUNTVILLE for the treatment and transport of the water subject to this agreement or wheeling of a like amount of treated water.

iv) Agreement by the Napa County Flood Control and Water Conservation District that upon exercise of the Option, Table A of the Agreement between Napa County Flood Control and Water Conservation District and AMERICAN CANYON, and between said district and YOUNTVILLE for allocation of NBA water will be amended to reflect the transfer of NBA entitlement to YOUNTVILLE;

v) Execution of Addendum No. 4 to the existing agreement between AMERICAN CANYON and the City of Vallejo to provide replacement water to AMERICAN CANYON in the amount of the water subject to this agreement; and payment to VALLEJO of \$57,000 as specified therein; and

vi) Completion of the Navigant Study, finding that AMERICAN CANYON'S share of the NBA capacity is at least 250 acre-feet per year (0.34 cubic feet per second) greater than the previously calculated capacity, and the written concurrence of the California Department of Water Resources in such finding.

b) Best Efforts

The parties hereto agree to use their best efforts to secure execution of the additional agreements described in this paragraph at the earliest practicable date, provided, however, that neither party is under any obligation to execute an agreement if the terms thereof are, in its sole judgment, unreasonable.

*110 Met -  
NBA Capacity  
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**City of American Canyon and Town of Yountville  
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c) Effect of Payment

Payment of the above amounts of \$57,000 and \$275,000 respectively by YOUNTVILLE shall not be construed by either party as perfecting rights in YOUNTVILLE to the NBA entitlement described in paragraph 3(b) unless the conditions in paragraph 5(a) are completed to the satisfaction of AMERICAN CANYON.

6) Term of Agreement.

The obligations of YOUNTVILLE under this Agreement shall continue concurrent with its entitlement to NBA water under the Napa Flood Control and Water Conservation District 's contract with the State of California for delivery of NBA water.

7) Recognition of Governing Law and Contracts.

This agreement is entered into subject to the provisions of existing state statutes and existing contractual provisions among the Napa County Flood Control and Water Conservation District, the State of California and the City of Napa.

8) Notices.

All notices, requests, payments and demands in connection with this agreement shall be in writing and shall be properly delivered in person or sent by United States mail, first class, postage prepaid, as specified below:

- (a) Town of Yountville  
Attention: Town Administrator  
6550 Yount Street  
Yountville, CA 94599-1271
- (b) City of American Canyon  
Attention: City Manager  
2185 Elliott Drive  
American Canyon, CA 94503-1331
- (c) City of Vallejo  
Attention: City Manager  
555 Santa Clara Street  
Post Office Box 3068  
Vallejo, California 94950

A copy of any such notices shall be sent to the Napa County Flood Control and Water Conservation District at the following address:

**City of American Canyon and Town of Yountville  
Transfer of Water Entitlement and Pipeline Capacity**

Napa County Flood Control & Water Conservation District  
1195 Third Street, Room 301  
Napa, CA 94559-3082

9) **Amendments.**

This contract may be amended at any time by mutual written agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law.

10) **Waiver; Remedies Cumulative.**

Failure by a party to insist upon the strict performance of any of the provisions of this contract by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omission by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach and/or period of time specified. All of the remedies permitted or available to a party under this contract, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.

11) **Construction of Language of Agreement.**

The provisions of this agreement shall be construed as a whole according to its common meaning and purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

12) **Mitigation of Damages.**

In all situations arising out of this agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

13) **Governing Law.**

This contract, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California.

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**14) Captions.**

The captions or headings in this agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision or section of the agreement.

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

**For CITY OF AMERICAN CANYON**

**For TOWN OF YOUNTVILLE:**

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

LAW OFFICES OF WILLIAM B. ROSS  
A Professional Corporation

COOMBS & DUNLAP  
A Professional Corporation

By: William B. Ross  
William B. Ross, City Attorney  
City of American Canyon

By: Diane Price  
Diane Price, Town Attorney  
Town of Yountville

**APPROVED:**

**APPROVED:**

CITY OF AMERICAN CANYON

TOWN OF YOUNTVILLE

By: Mark Joseph  
Mark Joseph, City Manager  
City of American Canyon

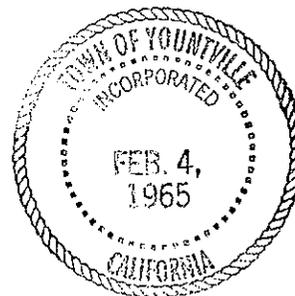
By: Nancy Weiss  
Nancy Weiss, Town Administrator by  
Town of Yountville Kevin R. Plett  
Acting Town Administrator

**ATTEST:**

**ATTEST:**

By: Millett Thomas  
Millett Thomas, Deputy City Clerk  
City of American Canyon

By: Joyce Houghton  
Joyce Houghton, Deputy City Clerk  
Town of Yountville



Town of Yountville  
**Resolution Number 1839-01**

Approving an Agreement Between the Town Of Yountville And The City Of American Canyon For Transfer Of Water Entitlement And Pipeline Capacity

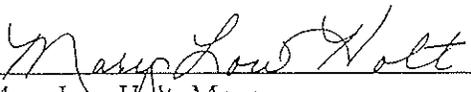
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**Recitals**

- A. The City of American Canyon is entitled to delivery of water from the North Bay Aqueduct ("NBA entitlement") pursuant to a contract between American Canyon and the Napa County Flood Control and Water Conservation District dated November 15, 1966.
- B. The Town of Yountville is in need of additional supplies of reliable, good quality water to meet the water needs of its customers.
- C. American Canyon has the opportunity to obtain alternate sources of water, in addition to its NBA entitlement, to serve its residents and is willing to transfer a portion of its NBA entitlement to use of NBA capacity to Yountville for proper compensation and under certain conditions.
- D. The Napa County Flood Control and Water Conservation District has commissioned a study entitled "Hydraulic Analysis of North Bay Aqueduct Facilities, Phase II" by Navigant Consulting, Inc., dated June, 2000 ("Navigant Study") that has identified possible additional pipeline capacity in the North Bay Aqueduct that may become available to both cities. This Agreement is contingent upon, among other conditions, the Navigant Study finding that the additional pipeline capacity is in fact available.

**Now therefore, the Town Council of the Town of Yountville does resolve as follows:**

The attached Agreement Between the Town of Yountville and the City of American Canyon for Transfer of Water Entitlement and Pipeline Capacity is hereby approved. The Town Administrator is authorized to execute the Agreement on behalf of the Town.

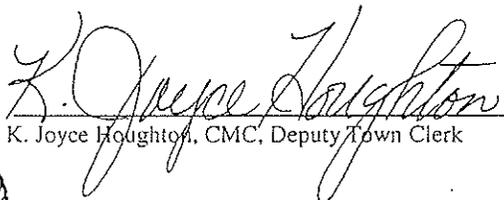
  
\_\_\_\_\_  
Mary Lou Holt, Mayor

ATTEST:

State of California )  
County of Napa )§  
Town of Yountville)

I, K. Joyce Houghton, Deputy Town Clerk of the Town of Yountville, do hereby certify that the foregoing Resolution was duly adopted by the Town Council of the Town of Yountville at a regular meeting thereof held on the 16<sup>th</sup> day of January 2001, by the following vote:

AYES:	Thollander, Jefferson, Holt;
NOES:	None;
ABSENT:	Knight, Miner;
ABSTAIN:	None.

  
K. Joyce Houghton, CMC, Deputy Town Clerk

