

**AMENDMENT NO. 4
OF NAPA COUNTY AGREEMENT NO. 3061
(CONVERSION TO NCTPA)**

**(JOINT POWERS AGREEMENT CREATING THE NAPA COUNTY
CONGESTION MANAGEMENT AGENCY, ALSO KNOWN AS CITY OF NAPA
AGREEMENT NO. 6147; CITY OF AMERICAN CANYON RESOLUTION NO. 92-
33/AGREEMENT NO. 98-15; TOWN OF YOUNTVILLE RESOLUTION. NO. 868;
CITY OF ST. HELENA RESOLUTION NO. 91-32; CITY OF CALISTOGA
RESOLUTION NO. 91-19)**

**THIS AMENDMENT NO. 4 TO THAT JOINT POWERS AGREEMENT ALSO
KNOWN AS NAPA COUNTY AGREEMENT NO. 3061** ("the Agreement") is entered into as of
the effective date determined under (4), below, by and between the COUNTY OF NAPA, CITY OF
AMERICAN CANYON, CITY OF NAPA, TOWN OF YOUNTVILLE, CITY OF ST. HELENA,
and CITY OF CALISTOGA ("Member Jurisdictions");

RECITALS

WHEREAS, Chapter 2.6 of Division 1 of Title 7 (commencing with Section 65088) was
added to the California Government Code operative as of August 1, 1990 to require each county
which included an urbanized area to develop a congestion management program; and

WHEREAS, the law permitted compliance with Chapter 2.6 to be achieved in each county by
creating a joint powers agency composed of the county and a majority of the cities representing a
majority of the population in the incorporated area of the county; and

WHEREAS, because Napa County contains an urbanized area as defined in Chapter 2.6, all of
the then-existing Member Jurisdictions within Napa County entered into the Agreement, effective as of
September 3, 1991, to create the Napa County Congestion Management Agency ("CMA") for the
purpose of complying with Chapter 2.6; and

WHEREAS, following its incorporation, the City of American Canyon was added to the
Agreement as a Member Jurisdiction by Amendment No. 1, ratified by the City of American Canyon
on March 19, 1992; and

WHEREAS, on or about February 25, 1994, the Agreement was amended for a second time
to delegate to the CMA certain transportation planning and implementation-related duties and
responsibilities beyond those required by Chapter 2.6; and

WHEREAS, on or about April 4, 1994 the Agreement was amended for a third time to
modify the provisions relating to the CMA technical advisory committee, congestion management
program (CMP) monitoring, and standards for determination of Level of Service (LOS) on roadways;
and

WHEREAS, by Chapter 293 of the Statutes of 1996, effective January 1, 1997, the Legislature added Section 65088.3 to the California Government Code exempting from the requirements of Chapter 2.6 any county in which a majority of local governments, collectively comprised of the city councils and the county board of supervisors and representing together a majority of the population of the county, have adopted resolutions electing to be exempt from the congestion management program requirements set forth in Chapter 2.6; and

WHEREAS, the present Member Jurisdictions together constitute a majority of the local city and county governments and represent a majority of the population within Napa County; and

WHEREAS, while they desire to exercise their option to elect exemption from the congestion management requirements of Chapter 2.6, the Member Jurisdictions also desire to continue coordinated transportation planning and implementation through an updated and expanded joint powers agency organized under the Joint Exercise of Powers Act (Government Code section 6500 et seq.); and

WHEREAS, to achieve both objectives, the Member Jurisdictions now desire to amend the Agreement as set forth hereinbelow;

TERMS

NOW, THEREFORE, THE MEMBER JURISDICTIONS agree as follows:

1. The Member Jurisdictions find the foregoing Recitals to be true and correct.
2. The terms of the Agreement are hereby amended to read in full as set forth in Attachment "A", attached hereto and incorporated by reference herein.
3. By approving this Amendment No. 4 and authorizing execution thereof each Member Jurisdiction hereby elects as of the effective date of this Amendment No. 4 to exempt Napa County from the congestion management requirements of Chapter 2.6 of Division 1 of Title 7 of the California Government Code as permitted by Government Code section 65088.3.
4. This Amendment No. 4 and the attached provisions of Attachment "A" shall become effective on the date the documents have been ratified by all of the Member Jurisdictions and assented to in writing by the Metropolitan Transportation Commission (MTC) or its representative.

IN WITNESS WHEREOF, this Amendment No. 4 to the Joint Powers Agreement creating the Napa County Congestion Management Agency was executed by the Member

Jurisdictions through their duly-authorized representatives as noted below:

COUNTY OF NAPA

By Vince Ferriole
VINCE FERRIOLE, Chairman of
the Board of Supervisors

ATTEST: MARY JEAN MCLAUGHLIN,
Clerk of the Board of Supervisors

By Leri Sisson, Deputy

CITY OF AMERICAN CANYON

By Roger Cypher
ROGER CYPHER, Mayor

ATTEST: MARK JOSEPH,
American Canyon City Clerk

By myj

CITY OF NAPA

By Ed Henderson
ED HENDERSON, Mayor

For ATTEST: PAMYL A MEANS,
Napa City Clerk

By Yvonne Harper

Date: MAY 19 1998

APPROVED AS TO FORM:
ROBERT WESTMEYER
Napa County Counsel

By Myron L. Woodbury, Chief Deputy

APPROVED AS TO FORM:
WILLIAM ROSS, American
Canyon City Attorney

By William D. Ross

Date: 7/2/98

APPROVED AS TO FORM: TOM
BROWN, Napa City Attorney

By Tom Brown

APPROVED MAY 19 1998
BOARD OF SUPERVISORS
COUNTY OF NAPA

MARY JEAN MCLAUGHLIN
CLERK OF THE BOARD

By M. Jean McLaughlin Deputy

TOWN OF YOUNTVILLE

By Mary Lou Holt
MARY LOU HOLT, Mayor

ATTEST: NANCY WEISS, Town Administrator/
Town Clerk

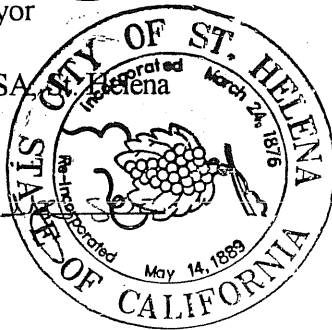
By N. Joyce Threlton, Deputy

CITY OF ST. HELENA

By Frank Toller
FRANK TOLLER, Mayor

ATTEST: DELIA GUIJOSA,
City Clerk

By Delia Gujosa



CITY OF CALISTOGA

By Mario Callegari
MARIO CALLEGARI, Mayor

ATTEST: PATT OSBORNE,
Calistoga City Clerk

By Patt Osborne

Date: 6-12-98

APPROVED AS TO FORM:
PRESTON SHACKELFORD,
Yountville Town Attorney

By _____

Date: _____

APPROVED AS TO FORM:
DIANE PRICE, St. Helena City
Attorney

By Diane Price

Date: 6/17/98

APPROVED AS TO FORM:
MICHELLE KENYON, Calistoga
City Attorney

By P. Kenyon

ATTACHMENT "A"

NAPA COUNTY TRANSPORTATION PLANNING AGENCY JOINT EXERCISE OF POWERS AGREEMENT

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NAPA COUNTY TRANSPORTATION PLANNING AGENCY
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SECTION 1. FORMATION

- 1.1 **Creation and Name.** The County of Napa, the Cities of Napa, St. Helena, Calistoga, American Canyon, and the Town of Yountville (hereinafter referred to as "Member Jurisdictions"), pursuant to Article 2 of Chapter 5 of Division 7 of Title 1 (commencing with section 6500) of the California Government Code, do hereby form, establish and create a joint powers agency to be known as "Napa County Transportation Planning Agency", hereinafter referred to as "NCTPA", which shall constitute a public entity separate and distinct from the Member Jurisdictions and shall supersede and replace the Napa County Congestion Management Agency ("CMA").

SECTION 2. PURPOSE

- 2.1 **General.** NCTPA is formed to serve as the countywide transportation planning body for the incorporated and unincorporated areas within Napa County, for the purpose of conducting in a coordinated and more simplified way countywide transportation policy development and planning activities, including those relating to transit on both a short-term and long-term basis and within an intermodal policy framework; improving transit services; providing coordinated and more competitive input to the region's transportation planning and funding programs; and performing such other transportation related duties and responsibilities as the Member Jurisdictions may delegate to NCTPA by this Agreement or amendment thereto.
- 2.2 **Chapter 2.6 Compliance Not Included in Purpose.** It is the intention of the Member Jurisdictions in converting the Napa County Congestion Management Agency into the NCTPA by this Agreement to exempt Napa County and the Member Jurisdictions from the requirements of Chapter 2.6 of Division 1 of Title 7 (commencing with Government Code section 65088) pertaining to congestion management planning, as permitted by Government Code section 65088.3. For this reason, compliance with Chapter 2.6 shall not be deemed to be a purpose of NCTPA.
- 2.3 **Abandoned Vehicle Abatement Authority.** NCTPA shall supersede and replace the CMA as the service authority for the abatement of abandoned vehicles (AVAA) for Napa County and the Member Jurisdictions pursuant to Vehicle Code section 9250 et seq. and 22710 seq. All resolutions, authorizations, funds, imposition of service fees, and responsibilities of the CMA in its capacity as the service authority shall be deemed to be ratified and assumed by and remain thereafter as the resolutions, authorizations, funds, imposition of service fees, and responsibilities of NCTPA as AVAA on and after the effective date of Amendment No. 4 of the Agreement until such time as modified or terminated by the NCTPA Board.

- 2.4 **Preparation of County Transportation Plan.** The purposes of NCTPA shall include delegation by the County of Napa to NCTPA of the County's authority under Government Code section 66531 to prepare and submit to the MTC a county transportation plan for the incorporated and unincorporated territory of Napa County which shall include consideration of the planning factors included in Section 134 of the federal Intermodal Surface Transportation Efficiency Act of 1991, as such may be amended from time to time.
- 2.5 **Exercise of Common and Additional Powers.** The purposes of NCTPA shall include establishment of NCTPA as an independent joint powers entity to enable the Member Jurisdictions not only to exercise jointly the common powers of the Member Jurisdictions set forth in Section 2.1 but also to exercise such additional powers as are conferred by Section 5 of this Agreement or by the Government Code upon all joint powers agencies.

SECTION 3. ASSUMPTION OF CMA CONTRACTS

- 3.1 **Assumption of CMA Contracts.** All contracts between the CMA and any person or entity, public or private, which are in effect as of the effective date of Amendment No. 4 of this Agreement shall be assigned to and assumed by NCTPA on and after that date and all references therein to "CMA", "Congestion Management Agency", or "Napa County Congestion Management Agency" shall thereafter refer to NCTPA.
- 3.2 **Delegation of Contract Responsibilities of CMA Manager.** All references in any CMA contracts assumed by NCTPA under Section 3.1 to the CMA Manager or to John Ponte shall refer, on after the effective date of Amendment No. 4 of the Agreement, to the Executive Director of NCTPA or such person designated by the NCTPA Board to act as Executive Director for AVAA matters pending appointment of an Executive Director by the NCTPA Board.

SECTION 4. ORGANIZATION

- 4.1 **Composition.** NCTPA shall be composed of the Member Jurisdictions, to-wit: the County of Napa, the Cities of American Canyon, Napa, St. Helena, and Calistoga, and the Town of Yountville.
- 4.2 **Principal Office.** The principal office of NCTPA shall be established by resolution of the NCTPA Board.
- 4.3 **Governing Board.** The powers of NCTPA shall be vested in its governing board (hereinafter referred to as "NCTPA Board").
- 4.3.1 **Appointment, Replacement and Voting Power of NCTPA Board Members ("Members").**

- (a) **Voting Members.** Each voting Member of the NCTPA Board shall be an elected official of the governing board of the appointing authority. Upon creation of NCTPA, the voting members of the governing board of the Napa County Congestion Management Agency shall cease to serve in that capacity, shall automatically become the voting Members of the NCTPA Board, and shall continue to serve as such until they cease to hold their elected positions, are removed in the sole discretion of their appointing authorities, resign or are otherwise removed from or disqualified from holding their elected positions as a matter of law or by judgment of a court of competent jurisdiction.
- (b) **Non-Voting Member Representing the PCC.** The non-voting Member appointed by NCTPA-Board upon nomination by the Paratransit Coordinating Council (PCC) shall also be a member or alternate member of the PCC, selected by and serving at the pleasure of the PCC.
- (c) **Second Non-Voting Member Appointed by the NCTPA Board.** The NCTPA Board may in its sole discretion appoint a second non-voting Member whose appointment shall be made in accordance with the Maddy Local Appointive List Act of 1975, Government Code section 54970 et seq., as such has been and may be amended from time to time. Such non-voting Member shall serve at the pleasure of the NCTPA Board.
- (d) **Vacancies.** Except for a vacancy in the non-voting position appointed by the NCTPA Board under subsection (c), vacancies on the NCTPA Board shall be filled, to the extent practicable, by the respective appointing authorities within sixty (60) days of the occurrence thereof. NCTPA and the NCTPA Board shall be entitled to rely upon written notice from the clerk of the governing board of the appointing authority as conclusive evidence of the appointment and removal of all Members and their alternates.
- (e) **Composition and Voting Power of Members.** The composition and voting power of the Members of the NCTPA Board shall be as follows:

<u>Appointing Entity</u>	<u>Number of Members</u>	<u>Voting Power</u>
City of American Canyon	1	1
City of Calistoga	1	1
City of Napa	2	5 (one Member shall have 3 votes; one shall have 2 votes)
City of St. Helena	1	1

Town of Yountville	1	1
County of Napa	2	2 (each Member shall have one vote)
NCTPA Board (nominated by 1 Paratransit Coordinating Council)		0 (non-voting)
NCTPA Board	1	0 (non-voting)

- (f) **Alternate Members.** Each appointing authority may, in its discretion, appoint one alternate for each Member of the NCTPA Board appointed by that appointing authority. Each alternate shall have the same qualifications as the corresponding Member. All alternate Members may attend and participate in any discussions of the NCTPA Board in the same manner as the Members, but an alternate of a voting Member shall vote only when the Member for whom he or she is an alternate is physically absent or cannot vote due to a conflict of interest.

4.3.2 Compensation. No compensation shall be received by any Member of the NCTPA Board unless expressly authorized by unanimous resolution of all of the voting Members of the NCTPA Board.

4.4 Advisory Committees.

4.4.1 Technical Advisory Committee (TAC). A single Technical Advisory Committee (TAC) shall be appointed by the NCTPA Board to advise the NCTPA Board regarding transit and roadway issues, including planning, project, and policy aspects. The TAC shall replace and supersede the Executive Technical Advisory Committee (ETAC) created by the CMA administration as well as the Intercity Transit Advisory Committee (ITAC). The TAC members shall include the Executive Director of NCTPA, serving ex-officio; a member nominated by the PCC and appointed by the NCTPA Board; and two members and two alternate members from the technical staffs of each of the Member Jurisdictions, serving ex officio as designated by the chief administrative officers of the respective Member Jurisdictions.

4.4.2 Bicycle Advisory Committee (BAC). The Countywide Citizens' Bicycle Advisory Committee (CCBAC) created by and advisory to the CMA shall be replaced and superseded by the Bicycle Advisory Committee (BAC), which shall be appointed by and serve in an advisory capacity to the NCTPA Board. Members of CCBAC at the time of creation of NCTPA shall automatically become members of BAC until expiration of their original terms, resignation, or removal by the NCTPA Board and

any Bylaws or Rules of Conduct for the CCBAC at the time of creation of the NCTPA shall continue in full force and effect until amended by the BAC.

4.4.3 Paratransit Coordinating Council (PCC). The PCC is currently advisory to the Napa County Board of Supervisors and also serves as the social services transportation advisory council for Napa County provided under Public Utilities Code section 99238 by the MTC, the transportation planning agency designated under Public Utilities Code section 99214 and Government Code section 29523. Unless the PCC is reorganized as an advisory committee of NCTPA by amendment of this Agreement and the consent of the Board of Supervisors of the County of Napa and MTC as required by law, the non-voting Member appointed by the NCTPA Board upon nomination by the PCC shall serve as the primary means of advice to the NCTPA Board regarding, and representation of, the special transportation interests of the disabled and elderly, in order to carry out the intent of the Legislature expressed in Public Utilities Code section 99238(d) to avoid duplicative transit advisory councils whenever possible.

4.4.4 Other Advisory Committees. The NCTPA Board may create such other advisory committees, both ad hoc and standing, as it sees fit from time to time.

4.4.5 Compliance with Maddy Act. When appointing members to the committees provided for in Sections 3.4.2 and 3.4.4, the NCTPA Board shall comply with the provisions of the Maddy Local Appointive List Act of 1975, Government Code section 54970 et seq., as such has been and may be amended from time to time.

4.4.6 Compliance with Brown Act. Except for ad hoc committees, all advisory committees created pursuant to this Section 4.4 shall be subject to the requirements of the Ralph M. Brown Act, Government Code section 54950 et seq.

SECTION 5. POWERS

5.1 General. NCTPA shall have all powers necessary to carry out the purpose of this Agreement except the power to tax. Such powers shall be subject only to the limitations set forth in this Agreement, applicable laws and regulations, and such restrictions upon the manner of exercising such powers as are imposed by law upon the County of Napa in the exercise of similar powers except where specifically authorized otherwise by the Joint Exercise of Powers Act, Government Code section 6500 et seq..

5.2 Approved Powers. The powers of NCTPA specifically include but are not limited to the following:

- (a) To sue and be sued in its own name;
- (b) To incur debts, liabilities and obligations;

- (c) To employ agents, employees and to contract with third parties for goods and services, including but not limited to the services of engineers, planners, attorneys, accountants, fiscal agents (including auditors, controllers, and treasurers), and providers of transit services;
- (d) To acquire, improve, hold, lease and dispose of real and personal property of all types;
- (e) To make and enter into any contracts with any of the Member Jurisdictions for goods, services, equipment, or real property;
- (f) To assume contracts made by any Member Jurisdiction or made pursuant to joint powers agreement between any of the Member Jurisdictions;
- (g) To apply for and accept grants, advances and contributions;
- (h) To make plans and conduct studies;
- (i) To coordinate efforts with local, regional, state and federal agencies having jurisdiction over matters pertaining to transportation (including roads) and transit;
- (j) To engage in all activities necessary for NCTPA to act as the Abandoned Vehicle Abatement Authority for Napa County;
- (k) To operate, directly or by contract with any person or entity including any Member Jurisdiction, any transit and paratransit services within Napa County in whole or in part and, if so, to submit any corresponding claims for funds or reimbursement, such claims to be approved by all Member Jurisdictions upon whose apportionment, from any fiscal year, the funds or reimbursement are to be drawn, under the Transportation Development Act (TDA), Section 29530 et seq. of the Government Code, as such may be amended from time to time;
- (l) To act as the overall program manager within Napa County for the purpose of receiving and reallocating the county's proportionate share of vehicle registration fees collected by the Bay Area Air Quality Management District (BAAQMD) under AB 434 (Chapter 807, Statutes of 1991, set forth in Health and Safety Code section 44241 et seq.);
- (m) To act as, exercise the powers conferred upon, and fulfill the responsibilities of the Consolidated Transportation Service Agency (CTSA) for Napa County as that term is defined in Public Utilities Code section 99204.5 as amended from time to time, if and when appointed as CTSA by the MTC, such appointment being deemed to supersede the appointment of the County of Napa as CTSA;

- (n) To invest any funds in the treasury of NCTPA that are not required for the immediate necessities of NCTPA in such manner as the NCTPA Board deems advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601, except where otherwise restricted for particular funds by conditions imposed by the person or agency which is the source of those funds.

SECTION 6. PERSONNEL AND ADMINISTRATION

6.1 Employees. NCTPA may appoint, retain and compensate as a charge against the funds of NCTPA employees, whether temporary, probationary, limited term or permanent and/or may contract with any person or entity, including a Member Jurisdiction, for the furnishing of any services, including but not limited to legal, financial, accounting, data processing, secretarial, purchasing, and personnel services, which are necessary to fulfill the powers, duties and responsibilities of NCTPA under this Agreement or as necessary to comply with the laws applicable to joint powers agencies within the State of California, including but not limited to the services described in Sections 6.2 through 6.4, below. Where such services are provided by employees of a Member Jurisdiction by contract between such Member Jurisdiction and NCTPA or pursuant to Section 6.3 or 6.4 of this Agreement, NCTPA and the employing Member Jurisdiction hereby expressly waive any conflict of interest or incompatibility of employment created thereby.

6.2 Executive Director.

6.2.1 General. NCTPA shall hire or contract for the provision of the services of an Executive Director to serve as the chief administrative officer of NCTPA, performing management and other duties which shall be described in a job description/scope of services approved by resolution of the NCTPA Board.

6.2.2 Filings with Secretary of State. In addition to any other duties assigned to the Executive Director or otherwise required by law, the Executive Director is hereby authorized to and shall be responsible for filing on behalf of NCTPA and the NCTPA Board all notices required by Government Code sections 6503.5 and 53051. Notwithstanding the foregoing, unless and until an Executive Director is appointed, such filings are authorized to and shall be made by the Napa County Director of Public Works.

6.3 Treasurer.

6.3.1 General. The Napa County Treasurer-Tax Collector shall serve as the NCTPA Treasurer and in that capacity shall be the depository and have custody of all of the funds of NCTPA, from whatever source, and shall perform the functions described in Government Code section 6505.5 (a) through (e). Notwithstanding the foregoing, the NCTPA Board may retain a certified public accountant to serve as NCTPA Treasurer in lieu of the Napa County Treasurer-Tax Collector.

6.3.2 **Bond.** The NCTPA Treasurer shall post an official bond in an amount to be fixed by the NCTPA Board. The cost of such bond shall be a charge against NCTPA funds, except that if the NCTPA Treasurer is the Napa County Treasurer-Tax Collector, the cost of the bond to be borne by NCTPA shall be that amount which is in excess of the cost of the official bond posted by the Napa County Treasurer-Tax Collector for functions unrelated to NCTPA.

6.3.3 **Compensation.** Pursuant to Section 6505.5, the Napa County Board of Supervisors shall determine the charges to be made against NCTPA for the services performed by the Napa County Treasurer-Tax Collector for NCTPA which shall be a charge against NCTPA funds. If the NCTPA Board retains a certified public accountant to be NCTPA Treasurer, the compensation of the NCTPA Treasurer shall be determined by the NCTPA Board and shall be a charge against NCTPA funds.

6.4 **Auditor-Controller.**

6.4.1 **General.** The Napa County Auditor-Controller shall serve as the auditor-controller of NCTPA and shall be responsible for drawing warrants to pay demands against NCTPA when the demands have been approved by the NCTPA Board or, upon delegation by the NCTPA Board, by the Executive Director when acting as purchasing agent for NCTPA.

6.4.2 **Custodian of Property; Bond.** With the exception of NCTPA funds which shall be in the custody of the NCTPA Treasurer, the Napa County Auditor-Controller shall, acting as NCTPA Auditor-Controller, be the public officer designated pursuant to Government Code section 6505.1 to have charge of, handle, have access to, and maintain inventory any property of NCTPA and shall post an official bond in an amount to be fixed by the NCTPA Board. The cost of such bond, to the extent in excess of the cost of the official bond posted by the Napa County Auditor-Controller in connection with functions unrelated to NCTPA, shall be a charge against NCTPA funds.

6.4.3 **Compensation.** Pursuant to Government Code section 6505.5, the Napa County Board of Supervisors shall determine the charges to be made against the NCTPA for the services performed by the Napa County Auditor-Controller for NCTPA, which shall constitute a charge against the funds of NCTPA.

SECTION 7. DUTIES AND RESPONSIBILITIES

7.1 **Limitation to Transportation Matters.** The authority of NCTPA shall be limited to transportation and transportation related issues.

- 7.2 **Coordination of Transportation Systems.** NCTPA may facilitate the coordination of transportation systems operated by or on behalf of the Member Jurisdictions with Napa County and adjacent counties.
- 7.3 **Coordination of Transportation and Land Use Management.** NCTPA shall develop and implement programs and policies for the coordination of transportation and related land use management by the Member Jurisdictions. Such programs may include, but shall not be limited to, providing analysis of the impacts of land use decisions by the Member Jurisdictions on regional transportation systems and the costs associated with mitigating those impacts. In carrying out this responsibility, NCTPA shall review and comment on all discretionary projects related to transportation under consideration by any of the Member Jurisdictions and may review and comment on such discretionary projects under consideration by any other public entity which are submitted to NCTPA for review and comment.
- 7.4 **Countywide Transportation Plans.** NCTPA shall develop, adopt, implement, update as necessary, and submit to MTC a county transportation plan under Government Code section 66531 for the incorporated and unincorporated territory of Napa County which shall include consideration of the planning factors included in Section 134 of the federal Intermodal Surface Transportation Efficiency Act of 1991, as such may be amended from time to time.
- 7.5 **Submission of Funding Applications and Claims.** NCTPA may submit applications and funding claims for transportation related purposes to local government, MTC, the State of California, the Federal Government and other entities supporting transportation.
- 7.6 **Intermodal Policies and Programs.** NCTPA may consider and adopt policies and programs for all modes of transportation including but not limited to, transit, paratransit, streets and roads, bicycle and pedestrian facilities, airports, marinas, harbors, and railroads.
- 7.7 **Transportation Development Act (TDA) Claims for Transit and Paratransit Services.** If NCTPA operates directly or by contract with any person or entity including any Member Jurisdiction the operation of any transit and paratransit services within Napa County in whole or in part, NCTPA shall be deemed authorized by this Agreement to submit any corresponding claims for funds or reimbursement under the Transportation Development Act (TDA), Section 29530 et seq. of the Government Code, as such may be amended from time to time. Any such claim for funds or reimbursement under the Transportation Development Act shall be approved, in advance of their submission to the Regional Transportation Planning Agency, by all Member Jurisdictions whose apportioned amount, from any fiscal year, will be the source of the funds or reimbursement.
- 7.8 **Consolidated Transit Services Agency.** If, in the future and with the consent of all of the Member Jurisdictions and MTC NCTPA is appointed in place of the Napa County Board of Supervisors as the consolidated transportation service agency (CTSA) for Napa County as that term is defined in Public Utilities Code section 99204.5 as such may be amended from time to

time, then and only then may NCTPA make claims pursuant to the procedure set forth in Article 7 of Chapter 3 of Title 21 of the California Code of Regulations, commencing with 6680.

- 7.9 **Overall Program Manager (AB 434).** NCTPA shall act as the overall program manager within Napa County for the purpose of receiving and reallocating the county's proportionate share of vehicle registration fees collected by the Bay Area Air Quality Management District (BAAQMD) under AB 434 (Chapter 807, Statutes of 1991, set forth in Health and Safety Code section 44241 et seq.)
- 7.10 **Other Duties and Responsibilities.** NCTPA shall carry out such other transportation related duties and responsibilities as the Member Jurisdictions, by unanimous approval expressed through amendment of this Agreement or resolutions of their respective governing boards, may delegate to NCTPA.

SECTION 8. FINANCE

- 8.1 **Fiscal Year.** The fiscal year for NCTPA shall begin on July 1 and end on June 30.
- 8.2 **Budget.** A budget for NCTPA shall be adopted by the NCTPA Board for each fiscal year prior to June 30 of the preceding fiscal year. Notwithstanding the foregoing, the budget approved by the governing board of the CMA for the CMA fiscal year 1997-1998 ending on June 30, 1998 is hereby adopted and shall serve as the budget of the NCTPA Board until June 30, 1998. The budget shall include sufficient detail to constitute an operating guideline. It shall also include the anticipated sources of funds and the anticipated expenditures to be made for the operations of NCTPA. Approval of the budget by the NCTPA Board shall constitute authority for the Executive Director to expend funds for the purposes outlined in the approved budget, subject to the availability of funds on hand as determined by the NCTPA Auditor-Controller and subject to the constraints imposed upon general law counties pertaining to execution of contracts by purchasing agents. Nothing in this Section 8.2 shall be construed to limit the power of the NCTPA Board to modify the budget in whatever manner it deems appropriate and to instruct the Executive Director accordingly.
- 8.3 **Revenues.**
- 8.3.1 **General.** Unless otherwise agreed by the Member Jurisdictions by amendment of this Agreement, the total expenditures in the annual planning budget shall be paid for with revenues derived from funds paid directly to NCTPA by persons or entities, public or private, other than the Member Jurisdictions and from contributions from the Member Jurisdictions (in money or, upon approval by the NCTPA Board, in kind) based on the relative populations of the Member Jurisdictions. In determining said population ratios the latest population statistics by the State Department of Finance shall be used.

8.3.2 Approval Required for Member Jurisdiction Contributions. Notwithstanding the foregoing, no Member Jurisdiction shall be required to expend any of its general fund monies to support the operations of NCTPA in any fiscal year unless such expenditure has been first approved by the legislative body of the Member Jurisdiction.

8.3.3 Transportation Funds. Subject to consent by the affected Member Jurisdiction or Jurisdictions, funds for carrying out the duties and responsibilities of NCTPA under this Agreement may come from and NCTPA may apply directly for, gas tax funds made available under Streets and Highways Code section 2105 (providing they are charged, with the assent of the affected Member Jurisdiction, against funds which would otherwise accrue to that Member Jurisdiction based upon the latest California State Department of Finance population figures); TDA funds allocated to the Member Jurisdictions annually, whose pass-through must first be approved by the legislative body of each such Member Jurisdiction; and any other funds available to the Member Jurisdictions which are specifically earmarked for transportation purposes.

8.4 Accountability.

8.4.1 Accountable to Member Jurisdictions. NCTPA shall be strictly accountable to the Member Jurisdictions for all receipts and disbursements of NCTPA.

8.4.2 Limitation on Expenditures. NCTPA may not obligate itself beyond the monies due to NCTPA under this Agreement plus any monies on hand or irrevocably pledged to its support from other sources.

8.4.3 Annual Audit. The NCTPA Board shall cause an annual audit to be prepared and filed to the extent required by Government Code Section 6505.

8.5 Debts, Liabilities and Obligations.

8.5.1 General. Except as provided in Section 8.4.2, the debts, liabilities, and obligations of NCTPA shall be solely the obligation of NCTPA and not the debts, liabilities, and obligations of the Member Jurisdictions or their respective officers or employees. However, nothing in this Agreement shall prevent any Member Jurisdiction from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of NCTPA, provided that both the NCTPA Board and that Member Jurisdiction give prior approval of such contract or assumption.

8.5.2 Liability.

- (a) Primary Liability.** If liability is imposed upon NCTPA by a court of competent jurisdiction by reason of negligent or willful acts or omissions of NCTPA or any of its officers, employees, agents, volunteers, or contractors,

any resulting monetary judgment against NCTPA shall be paid first from the discretionary funds of NCTPA or, if the liability arose from the actions of a contractor, contribution shall be sought from the contractor.

- (b) **Insurance.** To comply with subsection (a), above, NCTPA shall obtain and maintain in force during the life of this Agreement insurance for errors and omissions, general liability, and vehicle liability in amounts deemed by the NCTPA Board to be sufficient to fully cover NCTPA, its officers, employees, board members, and agents, and the Member Jurisdictions for any reasonably foreseeable losses. Where services are provided by contract to NCTPA, the contract shall require the contractor to obtain insurance sufficient to hold NCTPA and the Member Jurisdictions harmless and indemnify them against any claims for liability arising from the provision of the services. The cost of such coverage, whether obtained directly by NCTPA or as any increased in the contract price for services obtained under contract, shall be a charge against NCTPA funds.
- (c) **Contribution by Member Jurisdictions.** If NCTPA funds or insurance coverage are insufficient, or if any Member Jurisdiction is sued and found liable for a negligent or willful act or omission of NCTPA or any of its officers, employees, agents, volunteers, or contractors and NCTPA funds or contractor contribution are insufficient to pay the judgment or to reimburse the sued Member Jurisdiction for paying the judgment, the Member Jurisdictions shall be responsible for the liability for purposes of contribution under Government Code section 895.4 in proportion to the voting power of each Member Jurisdiction on the NCTPA Board.

SECTION 9. RULES OF CONDUCT

- 9.1 **Bylaws.** The NCTPA Board may from time to time adopt bylaws for the conduct of the affairs of NCTPA and the NCTPA Board, provided such Rules of Conduct are not inconsistent with this Agreement.
- 9.2 **Quorum.** A majority (6) of the voting power and five of the eight voting members (or their alternates) of the NCTPA Board shall constitute a quorum for the transaction of business at any meeting of the NCTPA Board. Notwithstanding the foregoing, if a quorum has been present at the commencement of the meeting, the affirmative vote of a majority of the voting power of the NCTPA Board (6) shall constitute the act of the NCTPA Board even if, at the time of such vote, less than five voting members (or their alternates) are present.
- 9.3 **Adjournment of Meetings.** Any meeting of the NCTPA Board, whether or not a quorum is present, may be adjourned from time to time by a vote of the majority of the voting members (or their alternates) present or, if no voting members or their alternates are present, may be adjourned by the person appointed to serve as Clerk or Secretary of the NCTPA Board.

- 9.4 **Brown Act.** All meetings of the NCTPA Board shall comply with the requirements of the Ralph M. Brown Act (Government Code section 54950 et seq.).

SECTION 10. NOTICES

- 10.1 **Method.** All notices which any Member Jurisdiction or NCTPA may wish to give in connection with this Agreement shall be in writing and served by personal delivery during business hours at the principal office of the Member Jurisdiction or NCTPA to an officer or person apparently in charge of that office, or by deposit in the United States mail, postage prepaid, and addressed to the Member Jurisdiction or NCTPA at its principal office or to such other address as the Member Jurisdiction or NCTPA may designate from time to time by written notice to NCTPA and each of the parties. Service of notice shall be deemed complete on the day of personal delivery (or 24 hours after such delivery for notice of special meetings) or three (3) days after mailing if deposited in the United States mail.
- 10.2 **Addresses for Notice.** Until changed by written notice to NCTPA and the Member Jurisdictions, notices under this Agreement shall be delivered to the following addresses:

NCTPA:

Napa County Public Works Director
Room 201, County Administration Building
1195 Third Street
Napa, California 94559

COUNTY OF NAPA:

Clerk of the Board of Supervisors
Room 3.10, County Administration Building
1195 Third Street
Napa, California 94559

CITY OF AMERICAN CANYON:

American Canyon City Clerk
2185 Elliott Drive
American Canyon, California 94589

CITY OF NAPA:

Napa City Clerk
955 School Street
Napa, California 94559

TOWN OF YOUNTVILLE:

Yountville Town Clerk
6550 Yount Street
Yountville, California 94599

CITY OF ST. HELENA:

St. Helena City Clerk
1480 Main Street
St. Helena, California 94574

CITY OF CALISTOGA:

Calistoga City Clerk
1232 Washington Street
Calistoga, California 94515

SECTION 11. ASSIGNMENT, WITHDRAWAL AND TERMINATION

- 11.1 Assignment.** This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Member Jurisdictions, except that no Member Jurisdiction shall assign any of its rights under this Agreement except to a duly-formed public entity organized and existing under the laws of the State of California and then only when approved by amendment of this Agreement.
- 11.2 Withdrawal.** A Member Jurisdiction may withdraw from NCTPA without the consent of the other Member Jurisdictions by giving no less than 90 days prior written notice to the NCTPA Board. A Member Jurisdiction may withdraw from NCTPA at any time with the written consent of all of the other Member Jurisdictions contained in an amendment of this Agreement. A Member Jurisdiction electing to withdraw prior to termination of the Agreement pursuant to Section 11.3 shall not be entitled to share in the distribution of assets provided for in Section 11.3.
- 11.3 Termination.** The Agreement shall continue in effect until terminated. The Agreement may be terminated at any time and NCTPA dissolved with the written consent of the majority of the then-existing Member Jurisdictions representing a majority of the votes on the NCTPA Board. Such consent shall be expressed in duly-authorized resolutions of the Member Jurisdictions.
- 11.4 Disposition of Assets.** In the event of termination of the Agreement and dissolution of NCTPA, any remaining assets of NCTPA shall be sold or, if sale is prohibited under the terms of original acquisition, returned to or otherwise disposed of at the direction of the party or persons from whom they were obtained. After all liabilities, encumbrances and liens have been paid, the proceeds of such sales shall be allocated proportionately to the Member Jurisdictions based upon their respective populations as determined by the latest California State Department of Finance population figures. Notwithstanding the foregoing, in accordance with Government Code section 6512, any funds remaining at the time of termination which were contributed by the Member Jurisdictions shall be returned to the Member Jurisdictions in proportion to the contributions made.

SECTION 12. AMENDMENTS

- 12.1 **Method of Amendment.** Amendments to this Agreement shall be made only with the written consent of all then-existing Member Jurisdictions without regard to voting power on the NCTPA Board.

SECTION 13. WAIVER

- 13.1 **Limitation.** Waiver by any Member Jurisdiction of breach of any provision of this Agreement shall not constitute a waiver of any other breach of such provision or of any other provision of this Agreement, nor shall failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

SECTION 14. SEVERABILITY

- 14.1 **General.** Should any part, term or provision of this Agreement be decided by a final judgment of a court of competent jurisdiction to be illegal or in conflict with any State or federal law or regulation or any applicable local ordinance or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms and provisions shall not be affected.

SECTION 15. SECTION HEADINGS

- 15.1 **Effect.** All section numbers and headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

SECTION 16. APPLICABLE LAW AND VENUE

- 16.1 **Applicable Law.** The rights, obligations, duties and liabilities of NCTPA and of the Member Jurisdictions under this Agreement shall be interpreted in accordance with and governed by the law of the State of California.
- 16.2 **Venue for Disputes.** Venue for any action filed by any Member Jurisdiction under state law to enforce this Agreement or any provision thereof shall be in the courts of Napa County. Venue for any action filed by any Member Jurisdiction under federal law or as a federal action shall be in the federal courts for the Northern District of California.

SECTION 17. NO RIGHTS CREATED IN THIRD PARTIES

- 17.1 **No Rights for Third Parties.** The parties to this Agreement hereby expressly agree that it is not the intent of the parties to create, and this Agreement shall not be deemed or construed to create any third party beneficiaries or otherwise inure to the benefit of any third parties.