

**AGREEMENT BETWEEN THE CITY OF NAPA AND NAPA COUNTY
REGARDING ANNUAL REPORTING OF AFFORDABLE HOUSING PRODUCTION**

This Agreement Between the City of Napa and Napa County Regarding Annual Reporting of Affordable Housing Production (the “**Agreement**”) is entered into as of this [REDACTED] day of November, 2019 (“**Effective Date**”), by and between the City of Napa (“**City**”), a California charter city and municipal corporation, and **Napa County** (“**County**”), a political subdivision of the State of California. City and County may hereinafter be collectively referred to as the “**Parties**” and singularly as “**Party**.”

RECITALS

A. The County and Napa Redevelopment Partners, LLC (“**Landowner**”) are each a party to that certain Development Agreement By and Between Napa County and Napa Redevelopment Partners, LLC, which carries Napa County Agreement Number 8264 and was recorded in the official records of the County of Napa on January 26, 2015, as Document Number 2015-0002281 (the “**DA**”). The City assumed the same rights and obligations as the County with respect to the DA after it annexed a portion of the Property included in the DA.

B. The DA provides for Landowner’s development of the Napa Pipe Project (the “**Project**”), a mixed-use development project on approximately 154 acres of land (the “**Property**”). As part of the Project, the DA provides for Landowner to construct up to 190 residential units to be affordable to very low income, low income, and moderate income residents and households of the County. The Project, which has been in the planning phases for more than a decade, was included in the County’s Housing Element of the General Plan to satisfy, in part, the County’s regional housing needs allocation (“**RHNA**”) assigned to the County by the Napa County subregion (“**Subregion**”) pursuant to state housing laws. To that end, the DA contains an “**Affordable Housing Plan**” that requires the Landowner to develop up to 140 homes available at affordable housing cost and rented to very low or low income households (“**Affordable Homes**”) and up to 50 homes available at affordable housing cost to moderate-income households (“**Moderate Income Homes**”).

C. Under the terms of the DA, the parties thereto anticipated that the residential portions of the Project would be developed in phases, and as building permits were issued for each phase, the portions of the Property that had been developed would be annexed to the City. Under this arrangement, the County would issue building permits for the Affordable Homes within the Project and would report issuance of these permits on its annual housing production report to the Department of Housing and Community Development (“**HCD**”), required by Government Code section 65400(a)(2) (“**Annual Report**”) to demonstrate satisfaction of its RHNA requirements.

D. On [REDACTED], the Napa County Local Agency Formation Commission (“**LAFCO**”) approved the annexation of the eastern portion of the Property, consisting of approximately 91 acres east of the Union Pacific Railroad line, to the City of Napa. With LAFCO’s approval, the eastern portion of the Property came within the jurisdiction of the City of Napa and, by operation

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of law, the City assumed the same rights and obligations as the County with respect to the DA for the annexed portion of the Project site.

E. In January, 2018, Landowner notified the City and the County that Landowner desired to accelerate construction of housing on the Property, including the required Affordable Homes. Landowner's proposed redesign of the Project requires several amendments to its existing entitlements, including amendments to the DA. The City and Landowner desire to immediately initiate the annexation of the remainder of the Project site to the City, thereby allowing Landowner to process all required amendments to its entitlements in the City. However, if the entire Project site is annexed to the City, then the City would be the issuer of building permits for the Affordable Homes constructed on the Project site and, under state laws in effect prior to January 1, 2020, the County would not have been able to report issuance of these permits on its Annual Report to demonstrate satisfaction of its RHNA requirements.

F. Based on the unique circumstances described above, wherein the County processed and approved the Napa Pipe Project on unincorporated land and assumed various obligations to facilitate and help fund the development of the Affordable Homes, and subsequent to its efforts the entire Property will be annexed to City of Napa thereby depriving the County of the ability to report issuance of these permits on its Annual Report, the state Legislature adopted Senate Bill 235, Chapter [REDACTED], which added Section 65584.08 and made other amendments to the California Government Code.

G. Government Code section 65584.08 allows the County and the City to reach a mutually acceptable agreement to allow the County to include in its Annual Report those completed entitlements, building permits, and certificates of occupancy issued by the City. This Agreement is intended by the City and County to be the agreement described in Government Code section 65584.08.

H. The County and the City have complied with the conditions required by Government Code section 65584.08(b) as follows:

1. HCD has determined that the Housing Element adopted by the County on [REDACTED] and the Housing Element adopted by the City on March 3, 2015 are in substantial compliance with state law.
2. The County submitted an Annual Report to HCD on [REDACTED] and the City submitted an Annual Report to HCD on March 20, 2019, within the last 12 months.
3. The completed entitlements, building permits, and certificates of occupancy that are to be reported by the County will not also be reported on the Annual Report of the City and vice versa, as described in this Agreement.
4. The Project that is the subject of this Agreement is proposed to be located on Property subsequently annexed by the City that was included in the Napa County Housing Element at the time of the final RHNA allocation by the Subregion, and:

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- a. The City annexed the Property after the final RHNA allocation. The City annexed a portion of the Property on September 22, 2015 and intends to annex the remainder at a later date. The RHNA allocation was final on ____.
- b. The Subregion has provided written confirmation that the methodology used to allocate the RHNA did not account for the annexation.
- c. A portion of the County's RHNA was not transferred from the Property to the City pursuant to Government Code section 65584.7(d).

I. In addition to allowing the County to include the Project's Affordable Homes in its Annual Report, this Agreement is intended to clarify the City's and the County's respective obligations with respect to implementation of the Affordable Housing Plan attached as Exhibit B to the DA (the "**Affordable Housing Plan**").

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants hereinafter set forth, the Parties agree as follows:

AGREEMENT

1. Incorporation of Exhibits and Recitals; Capitalized and Defined Terms. The Preamble, Recitals, Exhibits, and all defined terms set forth therein are hereby incorporated into this Agreement as if set forth herein in full. Where capitalized terms are used herein but are not defined in this Agreement, such capitalized terms shall have the meanings assigned to them in the DA and the Affordable Housing Plan.

2. Statement of Compliance with Legislative Conditions. The Parties hereby declare and acknowledge that each Party has satisfied all the applicable and necessary conditions set forth in Government Code Section 65584.08(b) required to give effect to this Agreement, as provided in the Recitals.

3. Obligation to Comply with and Implement Affordable Housing Plan. The City hereby declares and reaffirms its obligations and commitments to faithfully implement the Affordable Housing Plan at all times while the DA remains in effect.

3.1 Use of Affordable Housing Impact Fees Generated by Project. The City shall use all Affordable Housing Impact Fees generated from development on the Property only for purposes of providing funding assistance to the Qualified Housing Developer for the development of the Affordable Homes through the date that Commencement of Construction (as defined in the Affordable Housing Plan) of one hundred and forty (140) Affordable Homes has occurred. Thereafter, any Affordable Housing Impact Fees generated from development on the Property shall be used to fund the development of the Moderate Income Homes on the Property or to assist Moderate Income Households who work in the County of Napa to rent or purchase the Moderate Income Homes. Notwithstanding the foregoing, the City's obligation to use Affordable Housing Impact Fees as described in this Section 3.1 shall terminate on the first date that both (a) Commencement of Construction of 140 Affordable Homes occurred, and (b) the City has issued

Certificates of Occupancy for forty-five (45) deed restricted Moderate Income Homes on the Property.

3.2 Use of Landowner's Moderate Income Housing Contribution.

In accordance with the Affordable Housing Plan, Landowner will pay One Million Dollars (\$1,000,000) as a Moderate Income Housing Contribution. The City will deposit the entire Moderate Income Housing Contribution into [City to identify appropriate account] and shall use such amounts solely to assist Moderate Income Households who work in the County of Napa to purchase the Moderate Income Homes developed on the Property. The City shall consider in good faith input and recommendations from the County regarding the City's use of the Moderate Income Housing Contribution, consistent with this Agreement.

3.3 Use of County's Affordable Housing Fund.

Commencing on the Effective Date and continuing until the Commencement of Construction (as defined in the Affordable Housing Plan) of 140 Affordable Homes has occurred, the County shall reserve eighty percent (80%) of the net annual revenue (after expenses) in its Affordable Housing Fund and shall use such reserved funds to provide financial assistance to the Qualified Housing Developer for the development of the Affordable Homes in the Project.

4. Annual Reporting Obligations. Each Party shall include in or omit from its Annual Report submitted to the state Department of Housing and Community Development pursuant to Government Code section 65400 all data and information required by Section 65400 relating to the Affordable Homes for which the City issues completed entitlements, building permits, or certificates of occupancy for development on the Property, as set forth below:

4.1 The County shall include in its Annual Report all completed entitlements, building permits, and certificates of occupancy for one hundred percent (100%) of the seventy (70) Affordable Homes (at least 35 Very Low Income Units, with the remainder as Very Low Income Units or Low Income Units) to be constructed on the Property during "Phase One" of the Project (as described in the Phasing Plan attached as Exhibit D to the DA (hereafter, the "**Phasing Plan**")) that are subject to covenants or deed restrictions to ensure their on-going affordability.

4.2 The County shall include in its Annual Report all completed entitlements, building permits, and certificates of occupancy for one hundred percent (100%) of the seventy (70) Affordable Homes (Very Low Income Units and Low Income Units, such that at least 70 units of Phases One and Two are Very Low Income Units and the remainder are Very Low Income Units or Low Income Units) to be constructed on the Property during "Phase Two" of the Project (as described in the Phasing Plan) that are subject to covenants or deed restrictions to ensure their on-going affordability, and for which building permits are issued on or before December 31, 2022.

4.3 The County shall include in its Annual Report all completed entitlements, building permits, and certificates of occupancy for ninety percent (90%), calculated to the nearest whole unit by income level, of the Affordable Homes constructed on the Property during "Phase Two" of the Project (as described in the Phasing Plan) that are subject to covenants or deed restrictions to ensure their on-going affordability, and for which building permits are issued on or after January 1, 2023.

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4.4 The City shall omit from its Annual Reports all completed entitlements, building permits, and certificates of occupancy described in Sections 4.1 through 4.3 above that are reported by the County in an Annual Report in accordance with the terms of this Agreement, and the County shall not include in its Annual Report any other completed entitlements, building permits, or certificates of occupancy approved on the Property.

4.5 The City shall include in its Annual Report all completed entitlements, building permits, and certificates of occupancy for one hundred percent (100%) of the Moderate Income Units and one hundred percent (100%) of the Market Rate Residential Units constructed on the Property during any phase of the Project.

5. Annual Reports to Reflect Contributions. The Parties hereby acknowledge and agree that the City has no obligation to provide funding for the Affordable Homes except for its obligation to use Affordable Housing Impact Fees generated from development on the Property as described in Section 3.1 above. However, and all Annual Reporting rights and obligations in the preceding Section 4 to the contrary notwithstanding, to the extent that the City or the Housing Authority of the City of Napa contributes funding of any form other than Affordable Housing Impact Fees generated by the Project, including without limitation housing vouchers, to the Affordable Homes constructed on the Property during Phase One and Phase Two of the Project, the City shall include in its Annual Report, and the County shall omit from its Annual Report, the required data and information for that number of such units that corresponds, on a percentage basis, to the percentage of City funding for all such units. By way of example, if the City contributes twenty percent (20%) (excluding Affordable Housing Impact Fees generated by the Project and including housing vouchers based on their cash value) of the total funding provided by the City and County for the Affordable Homes during Phase One, and the City issues building permits for one hundred (100) Affordable Homes during Phase One, then the County shall include the required data and information for eighty (80) Affordable Homes in its Annual Report, and the City shall include the required data and information for twenty (20) Affordable Homes in its Annual Report.

6. Limitation on Annual Reporting. In no event shall the County include in any Annual Report any data or information relating to residential units developed on the Property in excess of the one hundred forty (140) Affordable Homes that are described in Section 15.2.2 of the DA and Section 2 of the Affordable Housing Plan. To the extent that more than 140 Affordable Homes are developed on the Property, all such units in excess of 140 units shall be subject to reporting in the City's Annual Reports.

7. Preparation of Annual Reports. Not later than January 31 of each calendar year in which the Annual Report obligations of this Agreement remain in effect, the City shall submit to the County information regarding completed entitlements, building permits, and certificates of occupancy issued for the Affordable Homes on the Property as is reasonably necessary for the County to prepare its Annual Report in compliance with this Agreement. Not later than February 28 of each calendar year in which the Annual Report obligations of this Agreement remain in effect, the City and the County shall exchange drafts of their respective Annual Reports. To the extent that the City or the County objects to any aspect of the other agency's draft Annual Report relating to the Affordable Homes constructed on the Property, the objecting agency shall transmit such objections to the other agency not later than March 10. Within ten (10) calendar days of a

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party's receipt of any such objections, the Parties shall meet and confer in a good faith effort to resolve the objections, with the goal of each Party timely submitting its Annual Report to the Department of Housing and Community Development on April 1.

8. Cooperation. The Parties shall cooperate in the defense of any third party legal action challenging this Agreement.

9. Limitation on Remedies. The sole and exclusive judicial remedy for any Party in the event of a dispute between the Parties arising from or relating to this Agreement shall be an action in mandamus, specific performance, or other injunctive or declaratory relief. The Parties hereby expressly agree that neither Party, nor any of its elected and appointed councils, boards, commissions, officers, agents, employees, volunteers and representatives, shall be liable for any monetary damage for any breach of or default under, arising out of, or relating to this Agreement, and each Party hereby expressly waives any such monetary damages against the other Party.

10. Further Assurances. Each Party covenants to use good faith efforts to take all actions and do all things as may reasonably be necessary or appropriate to carry out this Agreement and implement the Affordable Housing Plan, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or appropriate to achieve the purposes and objectives of this Agreement.

11. Condition Precedent to Parties' Obligations. Each Party hereby acknowledges that this Agreement would not be legally possible, and that neither Party would have entered into this Agreement, if the Legislature had not passed and the Governor had not signed Senate Bill 235 as described in Recital F above. Each Party further acknowledges that, as adopted, Senate Bill 235 will not become law and will not have any legal effect until January 1, 2020, and until Senate Bill 235 becomes law, the Parties cannot legally carry out the obligations described in Sections 4 and 5 of this Agreement. In recognition of these facts, each Party hereby agrees that the Parties' obligations under Sections 4 and 5 of this Agreement shall not be binding on either Party unless and until Section 3 of SB 235, to be codified as Government Code Section 65584.08, becomes law and effectively authorizes the Parties to carry out the annual reporting requirements and obligations set forth in Sections 4 and 5 of this Agreement. If, for any reason, Section 3 of SB 235 does not take effect and become law on January 1, 2020, then either Party may terminate this Agreement by providing the other Party with a Notice of Termination not less than five (5) business days prior to the terminating Party's intended termination date. The right to terminate this Agreement as set forth in this Section 11 may be exercised by a Party only if Section 3 of SB 235 fails to take effect on January 1, 2020, and this Section 11 does not authorize either Party to unilaterally terminate this Agreement in any other circumstance.

12. Time of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

13. Severability. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement will be construed as not containing that term, and the remainder of this Agreement

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will remain in full force and effect; provided, however, this section will not be applied to the extent that it would result in a frustration of the parties' mutual intent under this Agreement.

14. Attorney's Fees. If any litigation is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

15. Modifications. This Agreement may not be amended or modified orally. No amendment or modification of this Agreement is binding unless it is in a writing signed by both parties.

16. Waivers. No waiver of a breach, default, or duty under this Agreement will be effective unless it is in writing and signed by the party waiving the breach, default, or duty. Waiver of a breach, default, or duty under this Agreement will not constitute a continuing waiver or a waiver of any subsequent breach, default, or duty under this Agreement.

17. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the subject matter hereof. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

18. Interpretation. Each party to this Agreement has had an opportunity to review the Agreement, and to consult with its respective legal counsel regarding the meaning of the Agreement. Accordingly, Civil Code Section 1654 will not apply to interpret any uncertainty in the meaning of the Agreement.

19. Counterparts. This Agreement may be executed in counterparts, each one of which is deemed an original, but all of which together constitute a single instrument.

20. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the County and the City.

IN WITNESS WHEREOF, this Agreement is executed on the date(s) indicated below:

"CITY"

CITY OF NAPA,
a California charter city

Steve Potter, City Manager

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ATTEST:

Tiffany Carranza, City Clerk

COUNTERSIGNED:

Desiree Brun, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

“COUNTY”

NAPA COUNTY,
a political subdivision of the State of California

Name:
Its: Executive Officer

Date: _____

ATTEST:

County Clerk

Date: _____

APPROVED AS TO FORM:

County Counsel

Date: _____