

DEPOSIT AND REIMBURSEMENT AGREEMENT

City of Napa
Community Facilities District No. 2017-1
(Gasser Soscol Gateway)

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (the "Agreement"), dated for convenience as of May 1, 2017, is by and between the **City of Napa**, a California charter city (the "City") and **The Peter A. and Vernice H. Gasser Foundation** (the "Landowner").

RECITALS:

A. The Landowner would like the City to consider taking actions necessary to form a community facilities district to be entitled "City of Napa Community Facilities District No. 2017-1 (Gasser Soscol Gateway)" (the "CFD") under Sections 53311 *et seq.* of the California Government Code (the "Act").

B. The Landowner is willing to advance funds to the City or to its agents and consultants as necessary to ensure payment of any and all costs of the City in forming the CFD, provided that any advances are reimbursed to the Landowner from the proceeds of any bonds issued by the City for the CFD to the extent legally permissible.

C. Section 53314.9 of the Act provides that, either before or after formation of the CFD, the City may accept advances of funds and may provide, by resolution, for the use of those funds, including but not limited to pay any cost incurred by the local agency in creating the CFD, and may agree to reimburse the advances under all of the following conditions: (1) the proposal to repay the advances is included both in the resolution of intention and the resolution of formation to establish the CFD; and (2) any proposed special tax is approved by the qualified electors of the CFD and, if the qualified electors of the district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election.

D. The City and the Landowner now desire to specify the terms of the advances of funds and reimbursement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, and for other consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT:

Section 1. The Advances. The Landowner hereby agrees to provide **\$50,000.00**, in the form of cash or a check payable to the City (the "Initial Advance"), to be used by the City to pay the "Initial Costs" (as defined below); the Initial Advance shall be delivered to the City Manager of the City prior to the execution of this Agreement by the City. The City, by its

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execution hereof, acknowledges receipt of the Initial Advance. All references in this Agreement to the "City Manager" shall include any duly authorized designee of the City Manager.

The Landowner further agrees to advance any additional amounts (collectively with the Initial Advance, the "Advances") incurred or reasonably expected to be incurred by the City, promptly upon written demand therefore by the City Manager of the City, said Advances to be made to the City or directly to the City's consultants as specified by the City Manager in writing to the Landowner. In the event that the Landowner shall fail or refuse to remit any such amounts to or at the direction of the City Manager of the City, all processing by the City of the proceedings for the CFD shall cease until such time as the requested amounts are paid by the Landowner.

The Initial Costs include, but are not limited to: (i) the fees and expenses of any consultants to the City employed in connection with the formation of the CFD (such as engineering, legal counsel, including special counsel to the City, financial advisory and special tax consultant); (ii) the costs of appraisals, absorption studies and other reports necessary or deemed advisable by City staff in forming the CFD and issuing bonds for the CFD; (iii) costs of publication of notices, preparation and mailing of ballots and other costs related to any election with respect to the CFD, any special tax to be levied therein or any bonded indebtedness thereof; (iv) the costs of any action prosecuted in the superior court to validate the formation of the CFD, said special tax and/or any bonded indebtedness; (v) a reasonable charge, as determined by the City Manager, in his sole discretion, for an allocable share of administrative expense with respect to City staff engaged in analyzing and participating in the CFD formation, special tax formulation, facilities acquisition and bond issuance proceedings; and (vi) any and all other actual costs and expenses incurred by the City with respect to the creation of the CFD.

Section 2. Use of Funds. Pursuant to Section 53314.9 of the Act, the Advances are subject to reimbursement only as follows:

(a) If the CFD is formed and bonds are issued under the Act by the City secured by special taxes levied upon the land within the CFD, the City shall provide for reimbursement to the Landowner, without interest, of all Advances, said reimbursement to be made solely from the proceeds of such bonds and only to the extent otherwise permitted under the Act. On or within ten (10) business days after the date of issuance and delivery of the bonds, the City Manager of the City shall return any then unexpended Advances to the Landowner, without interest, together with an amount equal to the Advances theretofore expended, without interest, to the extent such amount is funded with proceeds of the bonds and said reimbursement is otherwise permitted under the Act.

(b) If the qualified electors of the CFD do not approve the proposed special tax to be levied on the property within the CFD and the issuance of bonds by the City for the CFD, the City Manager of the City shall, within ten (10) business days of the confirmation of the election results by the City Council of the City, return any then unexpended Advances to the Landowner, without interest, less an amount equal to any Initial Costs which have been incurred or committed, but not yet paid by the City from the Advances.

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(c) If the election is successful and the CFD is formed, but such bonds are not issued, the City Manager of the City shall, within ten (10) business days after adoption of the resolution stating the intent of the City to terminate proceedings under the Act with respect to the issuance of bonds for the CFD, return any then unexpended Advances to the Landowner, without interest, less an amount equal to any Initial Costs incurred by the City or that the City is otherwise committed to pay, which costs would be subject to payment under Section 1 above but have not yet been paid by the City.

Section 3. Reimbursement of Other Landowner Costs. Nothing contained herein shall prohibit reimbursement of other costs and expenses of the Landowner incurred in connection with the CFD from the proceeds of such bonds. Any such reimbursement shall be made solely from the proceeds of such bonds and only to the extent otherwise permitted under the Act and otherwise provided for in the proceedings for the formation of the CFD and the issuance of such bonds.

Section 4. Agreement Not Debt or Liability of City. It is hereby acknowledged and agreed that this Agreement is not a debt or liability of the City, as provided in Section 53314.9(b) of the Act. The City shall in no event be liable hereunder other than to return any unexpended and uncommitted portions of any Advances as provided in Section 2 above and provide an accounting under Section 7 below. The City shall not be obligated to advance any of its own funds with respect to the establishment of the CFD or for any of the other purposes listed in Section 1 hereof. No member of the City Council of the City or member, associate member, director, officer, employee or agent of the City shall to any extent be personally liable hereunder.

Section 5. No Obligation to Form CFD. The provisions of this Agreement shall in no way obligate the City to form the CFD or to take any action with respect thereto.

Section 6. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 7. Accounting. The Advances may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall at all times maintain records of the expenditure of the Advances. The City shall provide the Landowner with a written accounting, including copies of supporting invoices, of Advances expended pursuant to this Agreement within ten (10) business days of receipt by the City Manager of the City of a written request therefor submitted by an authorized officer of the Landowner. No more than one accounting will be provided in any calendar month and the cost of providing the accounting shall be considered an Initial Cost.

Section 9. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

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Section 11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 12. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

Section 13. Waivers. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

Section 14. Entire Agreement. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. 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.

Section 15. Each Parties' Role in Drafting the Agreement. Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.

Section 16. 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 Land Owner and the City.

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IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year first written above.

City of Napa, a California charter city

CITY:

Michael Parness
City Manager

**The Peter A. and Vernice H. Gasser
Foundation**

LANDOWNER:

By: _____

Dated: _____

ATTEST:

Dorothy Roberts
City Clerk

COUNTERSIGNED:

Desiree Brun
City Auditor

APPROVED AS TO FORM:

Michael W. Barrett
City Attorney

Budget Code: _____