

**NAPA COUNTY AGREEMENT NO. \_\_\_\_**

**AGREEMENT REGARDING BACKFILL PAYMENTS**

THIS AGREEMENT REGARDING BACKFILL PAYMENTS (“**Agreement**”) is entered into effective as of \_\_\_\_\_, 2021 (“**Effective Date**”), by and among the City of Napa, a California charter city and municipal corporation (“**City**”), Napa County, a political subdivision of the State of California (“**County**”), the Napa Valley Unified School District, a \_\_\_\_\_ (“**NVUSD**”) and the Napa County Office of Education, a \_\_\_\_\_ (“**NCOE**”). City, County, NVUSD and NCOE are referred to herein individually as a “**Party**”, and collectively as the “**Parties.**”

*RECITALS:*

A. Redevelopment agencies (“**RDAs**”) were created in 1945 to address blighted areas within cities and counties. Pursuant to the California Community Redevelopment Law (Health & Safety Code section 33000 *et seq.*) assessed valuation growth within redevelopment areas was shifted away from taxing agencies, including cities, counties, schools and special districts, and to RDAs to pay indebtedness incurred by the RDAs. In 1993, AB 1290 established statutory pass-through payments to return some of the shifted assessed valuation growth back to the affected taxing entities.

B. In 2011, the Governor signed into law ABX1-26 (Chapter 5, Statutes of the 2011-12 First Extraordinary Session, hereinafter “**Dissolution Act**”) which put an immediate freeze on the authority of the RDAs, called for their dissolution and outlined the process of how RDAs would be wound down. Pursuant to the Dissolution Act, all California redevelopment agencies, including the Napa Community Redevelopment Agency, were dissolved and successor agencies were created to wind down the business and fiscal affairs of the former RDAs, along with oversight boards charged with overseeing the successor agencies’ work. Since February 1, 2012, the Successor Agency to the Napa Community Redevelopment Agency (“**Napa Successor Agency**”) has been winding down the affairs of the former Napa Community Redevelopment Agency.

C. The Dissolution Act specifies that each successor agency must be dissolved once all enforceable obligations of the RDA have been liquidated, all real property of the RDA has been disposed of, and all outstanding litigation of the RDA has been resolved.

D. At the January 28, 2021 meeting of the Napa Redevelopment Successor Agency Oversight Board (“**Oversight Board**”), the Oversight Board approved the final Recognized Obligations Payment Schedule (“**ROPS**”) and directed the Napa Successor Agency to conduct the final steps required to effectuate dissolution, of the Napa Successor Agency. As of the date of final ROPS, the only remaining obligation of the Napa Successor Agency was the outstanding balance on a loan from the City’s Water

Fund in the amount of \$64,651. The loan’s maturity date was March 1, 2022, but the loan could be paid early thereby allowing the Napa Successor Agency to be dissolved sooner.

E. By dissolving the Napa Successor Agency early, local taxing agencies would ensure that they will retain the current Five Million Dollar (\$5,000,000) of growth shift to the Napa Successor Agency. If the Napa Successor Agency is not dissolved early, the \$5,000,000 of RDA distributions would be excluded from the excess Educational Revenue Augmentation Fund (“**ERAF**”) calculation and used instead to pay the State’s VLF (vehicle license fee) Swap Obligation. Early repayment of the City’s Water Fund loan and the early dissolution of the Napa Successor Agency would benefit all local taxing jurisdictions, with the exception of the two school agencies, NVUSD and NCOE. NVUSD and NCOE would be harmed because they would lose the facilities portion of pass-through payments in the amounts of \$834,713 for NVUSD and \$220,230 for NCOE, for a total loss of \$1,054,943, as illustrated in this table:

|       | Estimated Pass-Throughs | Property Tax Portion | Facilities Portion  |
|-------|-------------------------|----------------------|---------------------|
| NVUSD | \$ 1,472,156            | \$ 637,443           | \$ 834,713          |
| NCOE  | \$ 234,447              | \$ 14,217            | \$ 220,230          |
| Total | <u>\$ 1,706,603</u>     | <u>\$ 651,660</u>    | <u>\$ 1,054,943</u> |

F. At the January 28, 2021, Oversight Board meeting, the Oversight Board supported a process by which the final debt of the Napa Successor Agency would be paid early, subject to City and County agreeing to make certain “backfill” payments (“**Backfill**”) to NVUSD and NCOE to compensate NVUSD and NCOE for financial impact they would suffer from early dissolution of the Napa Successor Agency. If the City and County were to agree to make NVUSD and NCOE whole by backfilling their losses, all local taxing jurisdictions, including NVUSD and NCOE, would gain a net benefit from the early dissolution of the Napa Successor Agency. The following table illustrates the net benefits and shows the proportional amount of the Backfill to be paid to the two school agencies by the City (14%) and by the County (86%), respectively, which percentages approximate the net ERAF distribution percentages:

|              | Estimated Increased Excess ERAF | Estimated School Backfill | Estimated Net Gain  |
|--------------|---------------------------------|---------------------------|---------------------|
| Napa County  | \$ 4,826,000                    | \$ 898,500                | \$ 3,927,500        |
| City of Napa | \$ 764,000                      | \$ 142,200                | \$ 621,800          |
| Others       | \$ 245,000                      | -                         | \$ 245,000          |
| Total        | <u>\$ 5,835,000</u>             | <u>\$ 1,040,700</u>       | <u>\$ 4,794,300</u> |

G. The City Water Fund debt must be paid prior to June 30, 2021, in order to obtain the ERAF increase. On May 26, 2021, the City Manager authorized the use of City General Fund Revenue to pay the fund a “shortfall” of \$61,116.53 (“**Shortfall Payment**”),

the amount required for the Napa Successor Agency to retire the City Water Fund debt, thereby paving the way to early dissolution of the Napa Successor Agency and receipt of the increased excess ERAF.

H. City has requested that the County repay the County's share of the Shortfall Payment by increasing the County's Backfill amount from \$898,500 to \$959,998 thereby decreasing City's Backfill amount from \$142,200 to \$94,945, with the total Backfill amount to be paid to the two school agencies remaining \$1,054,943.

I. This Agreement provides for the payment by the City and the County of their proportional shares of the Backfill amount to NVUSD and NCOE as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties mutually covenant and agree as follows. The recitals set forth above are a substantive part of this Agreement and are incorporated herein by reference.

#### AGREEMENTS:

1. Payment of the Backfill Amount. No later than ninety (90) days following the Effective Date, County and City shall pay, by check or wire transfer, the following Backfill amounts to NVUSD and NCOE: County shall pay the sum of \$759,589 to NVUSD and the sum of \$200,409 to NCOE, and the City shall pay the sum of \$75,124 to NVUSD and the sum of \$19,821 to NCOE.

2. Dissolution of the Napa Successor Agency. Upon payment of the Backfill amounts as set forth in Paragraph 1 above, the City shall take all steps reasonably necessary to cause the dissolution of the Napa Successor Agency pursuant to Health and Safety Code Section 34187.

3. Release. As of the Effective Date, NVUSD and NCOE each, for themselves and their respective executives, officers, officials, employees, consultants, agents, attorneys, and successors and assigns, do hereby fully release and forever discharge the City and the County (including their respective executives, officers, officials, employees, consultants, agents, attorneys, successors and assigns) of and from any and all claims, damages, causes of action, demands, losses, obligations, duties, debts, costs, liabilities and expenses of any nature or kind whatsoever (including punitive or exemplary damages, attorneys' fees or other relief of any kind or character) whether known or unknown, asserted or unasserted, direct or derivative, whether at law or in equity, and whether past, present or future, arising from, based upon, or in any way related to this Agreement, and/or the early dissolution of the Napa Successor Agency (the "**Released Claims and Obligations**"). Notwithstanding anything to the contrary in this Agreement, this release shall not release any Party from any obligations arising under this Agreement. NVUSD and NCOE each covenant and agree never to commence and/or prosecute any action or proceeding based upon the Released Claims and Obligations. The covenants and agreements contained in this Paragraph may be pled as a full and complete defense to any action or proceeding and as a basis for abatement of, or injunction against, such action or proceeding.

4. Civil Code Section 1542. Except as otherwise provided herein, NVUSD and NCOE each hereby expressly waive the provisions of Section 1542 of the Civil Code of the State of California which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

NVUSD's Initials \_\_\_\_\_

NCOE's Initials \_\_\_\_\_

NVUSD and NCOE each understand and accept the risk that the Released Claims and Obligations may include substantial claims or damages that have not yet manifested, or that are presently unknown, or that have not yet been identified, and NVUSD and NCOE nonetheless intend to and do voluntarily and deliberately release these possible claims.

5. Merger/Prior Agreements. This Agreement constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements among the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, the Parties have not relied upon any statement, representation, warranty or agreement of any other Party, except for those expressly contained in this Agreement.

6. Amendments. No amendment to or modification of this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

7. Severability. If any term, provision, covenant, or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, covenants, and conditions shall continue in full force and effect to the extent that the basic intent of the Parties as expressed herein can be accomplished. In addition, the Parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of any invalidated or voided provision, covenant, or condition can be accomplished to the maximum extent legally permissible.

8. No Third-Party Beneficiaries; Assignments. Nothing in this Agreement is intended to create any third-party beneficiaries to this Agreement, and no person or entity other than the Parties shall be authorized to enforce the provisions of this Agreement.

9. Further Assurances. Each Party agrees to execute, acknowledge and deliver all additional documents and instruments, and to take such other actions as may be reasonably necessary to carry out the intent of this Agreement.

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

11. Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. Electronic signatures, including signature delivered in a PDF, jpeg, or other electronic document, shall be deemed binding as originals.

*SIGNATURES ON FOLLOWING PAGE*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**CITY:**

CITY OF NAPA, a California charter city and municipal corporation

By: \_\_\_\_\_  
Steve Potter, City Manager

Attest:

\_\_\_\_\_  
Tiffany Carranza, City Clerk

Approved as to form:

By: \_\_\_\_\_  
Michael W. Barrett, City Attorney

**NVUSD:**

NAPA VALLEY UNIFIED SCHOOL DISTRICT, a \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**NCOE:**

NAPA COUNTY OFFICE OF EDUCATION, a \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**COUNTY:**

NAPA COUNTY, a political subdivision of the State of California

By: \_\_\_\_\_  
Alfredo Pedroza, Chair of the Board of Supervisors

Approved as to form:

Office of County Counsel

By: Thomas S. Capriola  
Deputy County Counsel

Approved by the Napa County Board of Supervisors:

Processed By:

\_\_\_\_\_  
\_\_\_\_\_

Attest: \_\_\_\_\_  
\_\_\_\_\_, Clerk of the Board of Supervisors