

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Santa Rosa Water
Water Engineering Services
35 Stony Point Road
Santa Rosa, CA 95401

Recorded for the City of Santa Rosa
Pursuant to Cal. Govt. Code §66007
NO FEE PER GOVERNMENT CODE 27383

AGREEMENT TO COMPLETE WATER DEMAND OFFSET PROJECT

Between

PROPERTY OWNER
AND
CITY OF SANTA ROSA

This Agreement is made and entered into this ____ day of _____, 20__, by and between _____ (“Property Owner”) and the City of Santa Rosa, a charter City in the State of California (“The City”).

RECITALS

- A. The Property Owner is undertaking development of _____ on the real property located at _____, Santa Rosa, California, Assessor’s Parcel Number _____ (hereinafter the “Project” or the “Property”). A legal description of the Property is attached hereto as Exhibit A and incorporated herein by this reference.
- B. Pursuant to Water Demand Offset Policy No. 000-72, adopted by the Council of the City of Santa Rosa via Resolution No. RES-2022-062 on March 29, 2022 (“WDO Policy” or “Policy”), and the City’s adopted Water Shortage Contingency Plan, the City requires new development to offset water demand by a 1:1 ratio when the City Council has declared a water shortage that requires existing water customers to adhere to site-specific water allocations (i.e. water rationing). For example, in the City’s 2020 Water Shortage Contingency Plan, site-specific water allocations are assigned to existing customers in water shortages of Stage 5 or greater.
- C. WDO Policy states that the provisions of the Policy apply to all projects which are subject to paying new or increased connection fees for City water service.
- D. Resolution No. RES-2022-062 established Water Demand Offset Fees as a means of achieving the 1:1 water demand offset required by the WDO Policy, which Fees are subject to annual inflationary adjustments on January 1st of each calendar year based on the Engineering News Record’s 20-Cities CCI, and which Fees may be amended from time to time by the City Council.

- E. Resolution No. RES-2022-062 also authorized implementation of City-approved water demand offset projects (“DOPs”) as an alternative means to achieving the 1:1 water demand offset required by the WDO Policy and in lieu of paying Water Demand Offset Fees.

Pursuant to the WDO Policy, Property Owner may propose a DOP in lieu of paying Water Demand Offset Fees for the Project when Property Owner initially submits the WDO Application, and Property Owner must complete the DOP prior to final inspection or temporary or permanent occupancy of all or any portion of the Project. If the City is not experiencing a declared water shortage that requires existing customers to adhere to site-specific water allocations at the time Property Owner requests final inspection or temporary or permanent occupancy for the Project, Property Owner will not be required to complete the DOP.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above and the covenants, conditions and promises contained herein, Property Owner and the City agree as follows:

1. Water Demand Offset Amount.

- (a) Estimated Water Demand Offset Amount. The estimated Water Demand Offset amount (in thousand-gallon units) for the Project (“Estimated WDO Amount”) is calculated based on relevant Project information contained in Exhibit B (attached hereto and incorporated herein by this reference), which will include the Property Owner’s Water Demand Offset Application (“WDO Application”) and any additional calculations, corrections, or other information as needed.

ESTIMATED WDO AMOUNT FOR PROJECT _____ THOUSAND GALLONS

- (b) Actual Water Demand Offset Amount. The actual Water Demand Offset amount (in thousand-gallon units) for the Project (“Actual WDO Amount”) will be calculated when Property Owner requests final inspection or temporary or permanent occupancy of all or any portion of the Project and will be based on relevant Project information contained in Property Owner’s most recent WDO Application (as provided for in Section 5b below) and any additional calculations, corrections, or information as needed.

2. Completion of Demand Offset Project; Timing.

- (a) Water Demand Offset Project As Alternative Compliance. Property Owner has proposed to implement a DOP for the Project to achieve the required water demand offset, rather than paying applicable Water Demand Offset Fees. Property Owner’s proposed DOP for the Project and City requirements for the DOP are set forth in Exhibit B. By executing this Agreement, the City hereby approves Property Owner’s proposed DOP as a means of achieving the Estimated WDO Amount.

- (b) Property Owner, on behalf of itself, and its successor and assigns, hereby unconditionally promises and agrees to timely complete the DOP for the Project pursuant to the terms provided for in this Agreement.
- (c) Timing of Water Demand Offset Project Final Completion. Property Owner shall complete the DOP prior to final inspection of the Project, or prior to temporary or permanent occupancy of all or any portion of the Project. The City will provide a Release of Agreement to Complete Water Demand Offset Project after final completion of the DOP is confirmed by City staff.
- (d) No Completion of Demand Offset Project Necessary. If the City is not experiencing a declared water shortage that requires existing customers to adhere to site-specific water allocations when Property Owner requests final inspection or temporary or permanent occupancy of all or any portion of the Project, Property Owner will not be required to complete the DOP and the City will provide to Property Owner a Release of Agreement to Complete Water Demand Offset Project without requiring completion of the DOP.

3. Contingent Payment of Water Demand Offset Fees.

- (a) Obligation to Pay Actual WDO Fee if DOP is not Completed. If Property Owner has not completed the DOP prior to final inspection of the Project, Property Owner must pay the Actual Water Demand Offset Fees as set forth in Section 3b below in order to proceed with final inspection or occupancy.
- (b) Actual Water Demand Offset Fee Amount. The actual Water Demand Offset Fee amount for the Project (“Actual WDO Fee Amount”) will be calculated when Property Owner requests final inspection or temporary or permanent occupancy of all or any portion of the Project and will be based on: 1) relevant Project information contained in Property Owner’s most recent WDO Application (as provided for in Section 5b below); 2) any additional calculations, corrections, or information as needed; and 3) the Water Demand Offset Fee Schedule in effect at the time Property Owner requests final inspection or temporary or permanent occupancy of all or any portion of the Project.
- (c) Payment Obligation. Property Owner, on behalf of itself, and its successor and assigns, hereby unconditionally promises and agrees to pay, as and when determined, the Actual WDO Fee Amount pursuant to the terms provided for in this Agreement.
- (d) Timing of Payment. Property Owner shall pay the Actual WDO Fee Amount prior to final inspection of the Project, or prior to temporary or permanent occupancy of all or any portion of the Project, provided that the City is experiencing a declared water shortage that requires existing customers to adhere to site-specific water allocations at that time. The City will provide a Release of Agreement to Pay Water Demand Offset Fees after full payment of the Actual WDO Fee Amount.
- (e) No Payment Due. If the City is not experiencing a declared water shortage that requires existing customers to adhere to site-specific water allocations when Property Owner requests final inspection or temporary or permanent occupancy of all or any portion of the Project, Property Owner will not be required to pay the Actual WDO Fee Amount and the City will provide to

Property Owner a Release of Agreement to Pay Water Demand Offset Fees without requiring payment of the Actual WDO Fee Amount.

4. Recording of Agreement.

The obligations of Property Owner to the City under this Agreement shall be recorded against the Property in the Official Records of Sonoma County, California pursuant to California Government Code Section 66007. Property Owner shall be responsible for recording this Agreement and providing a conformed copy to the City, which will be required prior to the issuance of any building permit for the Project.

5. Further Conditions.

- (a) Change in ownership. Notwithstanding any other provision of this Agreement to the contrary, the City shall not be obligated in any way to approve occupancy, including but not limited to temporary occupancy, for any structure constructed as part of the Project if this Agreement is removed from title by a foreclosure, a deed in lieu of foreclosure or by any other means, including foreclosure of a superior lien, unless the DOP for this Project is completed or the Actual WDO Fee Amount is first paid, or unless a substitute Agreement to Complete Water Demand Offset Project or substitute Agreement to Pay Water Demand Offset Fees is executed by the City and the Property Owner or its successor in interest. Any change in obligations under this Agreement must be recorded in accordance with Section 4 above.
- (b) Change in Project. In the event of any changes or modifications to the Project which could result in a change to the WDO Amount, Property Owner shall submit a new WDO Application. If the WDO Amount changes, a substitute Agreement to Complete Water Demand Offset Project shall be executed by the City and Property Owner or its successor in interest. Any change in payment obligations under this Agreement must be recorded in accordance with Section 4 above.

6. Default.

Each of the following shall constitute an "Event of Default" hereunder:

- (a) If Property Owner fails to complete the DOP for this Project or fails to render any payment due hereunder as and when said DOP or payment is due and payable if such default shall continue uncured for ten (10) days following such due date; or
- (b) If Property Owner allows occupancy or resale for the purpose of occupancy without completion of the DOP or without payment of the Actual WDO Fee Amount to the City under circumstances in which either is due.

7. Remedies.

- (a) Upon the occurrence of an Event of Default, City shall have all rights and remedies available at law or equity, including but not limited to refusing to perform the final building inspection or give a final approval for use, including any occupancy, of any structures constructed as part of the Project, all of which shall be cumulative.

- (b) In addition to any other remedy provided by law or granted elsewhere under this Agreement, the City may elect to seek in a court of appropriate jurisdiction such injunctive orders or other relief as the City considers may be necessary to secure the performance by Property Owner, its successors and assigns, of its commitments and obligations under this Agreement. In any such action, the City shall, in addition to injunctive relief, be entitled to the full scope of remedies afforded by law, including, but not limited to, economic damages.
- (c) In the event of any default by Property Owner under this Agreement, including, but not limited to, the failure to pay the Actual WDO Fee Amount when due, interest shall be due and shall be paid to City on the actual amount of the Actual WDO Fee Amount from the date due under this Agreement until the date actually paid to the City, or, alternatively, until a court judgment concerning this Agreement is entered in favor of the City and against Property Owner, whichever event occurs first. The annual rate of interest under this Section 7 shall be 10 percent per annum.

8. Cost of Collection.

If any amounts under this Agreement are not paid when due, Property Owner promises to pay all costs and expenses of collection, whether or not an action shall be instituted to enforce this Agreement.

9. No Joint Venture Relationship.

The relationship between the City and Property Owner under this Agreement is that of a creditor/debtor and not that of a joint venture. Property Owner is not the agent of the City for any purpose in connection with this Agreement, the Property, or the Project.

10. Entire Agreement.

This Agreement, together with any exhibits hereto, constitutes the entire Agreement between the parties respecting the matters covered, and supersedes all prior agreements and representations concerning the subject matter hereof, whether written or oral.

11. No Severability.

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the entirety of this Agreement shall be rendered null and void and the Actual WDO Fee Amount shall thereupon be immediately due and payable.

12. Notices

Any notices and payments called for by this Agreement shall be personally delivered or served by first-class or certified mail on the parties at the following addresses:

To City: City of Santa Rosa
Water Engineering Services
35 Stony Point Rd.
Santa Rosa, CA 95401

With a Copy to: City Attorney's Office
100 Santa Rosa Avenue, Dept #8
Santa Rosa, CA 95404

To Property Owner: _____

Notice of any change of address shall be given pursuant to this Section 12. Any correctly addressed notice that is refused or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

13. Conditions to Assignment.

Property Owner shall not transfer or assign its rights or obligations under this Agreement without the prior written consent of City and Property Owner shall not be relieved of its obligations under this Agreement until City has received notice (in accordance with Section 12 above) that the transferee/assignee has executed and recorded an assumption agreement.

14. Headings Not Part of Agreement.

The headings used in this Agreement are not part of the Agreement and will not be considered in its interpretation.

15. Modifications to Agreement.

This Agreement may be modified or amended only by subsequent written agreement(s) signed by each of the parties to this Agreement.

16. Governing Law; Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any and all actions, suits or other legal proceedings arising in connection with this agreement shall be held in courts located in the County of Sonoma.

17. Authority; Signatures Required for Corporations.

Property Owner hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Property Owner in accordance with the terms hereof. Unless

signature authority is otherwise demonstrated to the satisfaction of the City, this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president, or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date set forth in the first paragraph hereof.

CITY OF SANTA ROSA

PROPERTY OWNER

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: Director of Santa Rosa Water

By: _____

Name: _____

Title: _____

NOTE: ACKNOWLEDGEMENTS MUST BE ATTACHED FOR ALL SIGNATORIES.

Attachments:

Exhibit A

Exhibit B