

**SPECIAL REIMBURSEMENT AGREEMENT BETWEEN
JAIME DOWELL
AND
THE NAPA SANITATION DISTRICT

RELATED TO SANITARY SEWER
IMPROVEMENTS AT 99 BERNA AVENUE**

This Special Reimbursement Agreement (“Agreement”) is entered into and effective as of _____, 2021 by and between Jaime Dowell, the sole owner of 99 Berna Avenue (“OWNER”) and the Napa Sanitation District, a County sanitation district, formed pursuant to Health & Safety Code Sections 4700, et seq. (“NAPASAN”).

WHEREAS, OWNER is proposing to construct an Accessory Dwelling Unit (ADU)/garage structure at 99 Berna Avenue within the City of Napa; and

WHEREAS, NAPASAN owns and maintains a public sanitary sewer main that conflicts with the proposed location of the ADU/garage structure; and

WHEREAS, OWNER cannot construct the ADU/garage structure without relocating the sanitary sewer main; and

WHEREAS, OWNER has agreed to relocate the sanitary sewer main and dedicate a new public sanitary sewer easement to NAPASAN prior to constructing the new ADU/garage structure; and

WHEREAS, NAPASAN has approved the plans for the sanitary sewer improvements and OWNER has entered into an Improvement Agreement with NAPASAN which outlines the roles and responsibilities associated with the sanitary sewer improvements; and

WHEREAS, the existing sanitary sewer main at 99 Berna Avenue has reached the end of its useful life and is considered a priority for rehabilitation based on the determination by NAPASAN; and

WHEREAS, if OWNER was not planning to construct the sewer main relocation project, NAPASAN would prioritize rehabilitation of the sewer main due to its condition; and

WHEREAS, NAPASAN and the public will receive an immediate benefit from OWNER’S sewer main relocation project; and

WHEREAS, pursuant to Section 3.02.110 of the Napa Sanitation District Code, NAPASAN has determined special conditions exist that warrant the execution of this agreement for reimbursement to OWNER of the cost that NAPASAN would otherwise expended to rehabilitate the existing sewer system, based on actual costs from NAPASAN’s 2021 Collection System Rehabilitation Project; and

WHEREAS, pursuant to Section 2.03.020 of the Napa Sanitation District Code and the Uniform Public Construction Cost Accounting Act (Section 22000, et seq. of the Public Contract Code), this project would not require informal or formal bidding procedures.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements of the parties, and other valuable consideration the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Cost Reimbursement.** NAPASAN agrees to reimburse OWNER for the cost equivalent to rehabilitating 110 linear feet of 8-inch sewer main and constructing three standard manholes. The cost is \$22,180 and is based on unit costs from NapaSan’s 2021 Collection System Rehabilitation Project.
2. **Payment Upon Completion.** NAPASAN shall pay OWNER the amount described in Section 1, above, upon successful completion of the sewer main relocation. “Successful completion” includes final inspection by NAPASAN, acceptance of the improvements by the NAPASAN Board of Directors, and submittal of a maintenance bond to NAPASAN per the terms of the Improvement Agreement dated April 7, 2021.

ADDITIONAL TERMS AND CONDITIONS

3. **Hold Harmless By OWNER.** OWNER agrees to defend, indemnify and hold NAPASAN, its elected officials, officers, employees and agents and successors and assigns of each of them (collectively, “Indemnified Parties”) harmless from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, proceedings and judgments including, without limitation, reasonable attorneys’ fees arising from or in any way connected with any claims against the Indemnified Parties for damages or violation of any law resulting from any act, omission, or other action taken by the OWNER in performance of its duties under this Agreement.
4. **Hold Harmless By NAPASAN.** NAPASAN agrees to defend, indemnify and hold OWNER, successors, and assigns (collectively, “Indemnified Parties”) harmless from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, proceedings and judgments including, without limitation, reasonable

attorneys' fees arising from or in any way connected with any claims against the Indemnified Parties for damages or violation of any law resulting from any act, omission, or other action taken by the NAPASAN in performance of its duties under this Agreement.

5. **Warranty of Legal Authority.** Each party warrants and covenants that it has the present legal authority to enter into this Agreement and to perform the acts required of it hereunder. If any party is found to lack the authority to perform the acts required of it hereunder or is prevented from performing the acts by a court of competent jurisdiction, this Agreement shall be void.

6. **Assignment/Delegation.** Neither party hereto shall assign, or transfer any benefit or obligations of this Agreement without the prior written consent of the other, and no assignment shall be of any force or effect whatsoever unless and until the other party shall have so consented.

7. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this Agreement will remain in full force and effect.

8. **Attorneys' Fees.** The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled to reimbursement for its expenses, including court costs and reasonable attorneys' fees.

9. **Waiver.** Any waiver (express or implied) by either party of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach.

10. **Notices.** Whenever notice is to be given, it shall be in writing and delivered by personal, overnight express or courier service, with a written receipt, sent by email, or sent by registered or certified mail in a sealed envelope, postage prepaid, return receipt requested and addressed as follows:

Napa Sanitation District:

Matt Lemmon
1515 Soscol Ferry Road
Napa, California 94558
mlemmon@napasan.com

99 Berna Avenue:

Jaime Dowell
99 Berna Avenue
Napa, CA 94559
jjdowell@gmail.com

Changes may be made in addresses to where notices are to be delivered by giving notice pursuant to this provision.

11. **Entire Agreement.** This document is intended both as the final expression of the agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. This Agreement may be executed in counterparts, each of which shall constitute an original.
12. **Amendment.** This Agreement may only be amended in writing by an amendment authorized by the NAPASAN and OWNER.
13. **Recitals Adopted.** The parties hereby agree to and adopt the Agreement recitals as portions of the Agreement.
14. **Termination For Cause.** Either party may terminate this Agreement for cause of non-performance. Such termination shall be based upon sixty (60) days' notice given to the other party in the manner set forth in Agreement Paragraph 10, provided however that no such termination shall occur if the defaulting party cures its non-performance within 30 days of notice of such nonperformance.
15. **Joint Defense In Event Of Third Party Challenges To The Agreement.** In the event of a third party challenge of any type to this Agreement, the parties agree to jointly defend the validity and implementation of the Agreement.
16. **Counterparts Signature.** This Agreement may be executed in counterparts, each of which shall be an original, but all counterparts shall constitute one agreement.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

99 BERNA AVENUE

By: 

JAMIE DOWELL,
Sole Owner

NAPA SANITATION DISTRICT

By: _____

TIMOTHY B. HEALY,
General Manager

APPROVED AS TO FORM:
JOHN BAKKER, District Counsel

By: _____

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