

**MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF SAN JOSÉ AND THE COUNTY OF SANTA CLARA
REGARDING REGIONAL HOUSING NEEDS ALLOCATIONS FOR 2023-2031
HOUSING ELEMENT PLANNING PERIOD**

This Memorandum of Agreement (“Agreement”) between the City of San José, a chartered city and municipal corporation (“City”), and the County of Santa Clara, a political subdivision of the State of California (“County”), is effective as of the last date upon which it is executed by both the City and the County (“Effective Date”). City and County are both a “Party” and “Parties” to this Agreement.

RECITALS

A. **WHEREAS**, pursuant to Government Code sections 65580 through 65589.11 (the “Housing Element Law”), the Association of Bay Area Governments (ABAG) periodically adopts a Regional Housing Needs Allocation (RHNA) for each county and city in the greater San Francisco Bay Area, including the County and the City. Under the Housing Element Law, each city and county must periodically revise the housing element of its general plan utilizing the latest RHNA adopted by ABAG, including the designation of specific housing sites in a site inventory (“Site Inventory”).

B. **WHEREAS**, on May 20, 2021, the Executive Board of ABAG approved the Final RHNA Methodology and Draft Allocations for the 2023-2031 RHNA cycle. Following the statutory appeal period, on December 16, 2021, ABAG adopted the final RHNA, and the California Department of Housing and Community Development (HCD) approved ABAG’s final RHNA on January 12, 2022. The final RHNA assigned 62,200 and 3,125 units to the City and County, respectively. Housing Element updates for the 2023-2031 RHNA cycle are scheduled to be due to the Department of Housing and Community Development (HCD) by January 31, 2023.

C. **WHEREAS**, for over twenty-five years, the County General Plan has sought to curtail sprawl and preserve agricultural and environmental resources by focusing growth within incorporated areas and urban parts of the unincorporated county within an Urban Service Area (USA). To this end, the County’s General Plan confers to cities land use planning for these urbanized parts of unincorporated county. The County’s General Plan does is not designed to allow significant new development within these areas unless the project conforms with the affiliated city’s General Plan, and the city has the option to annex the project area.

D. **WHEREAS**, in reliance on these County General Plan policies, the City has conducted land use planning in these urbanized parts of unincorporated county, including the identification of over 237 acres of urban unincorporated land in the Site Inventories the City submitted to HCD for the prior 2007-2014 and 2015-2023 RHNA cycles. Accordingly, the County has not identified any parcels within unincorporated urban pockets in Site Inventories for prior RHNA cycles.

E. **WHEREAS**, accommodating the County's current RHNA allocation of 3,125 units will require the County to exert planning control over the urbanized parts of unincorporated county, which would unnecessarily consume administrative resources and decrease the pace of housing development. Alternatively, the County could permit large-scale development in non-urban parts of the county, which is inconsistent with its General Plan principles and would threaten agriculture, natural resources, and climate resiliency. Instead, the City and County wish to continue their success in facilitating housing development, curtailing sprawl, and protecting natural resources during the 2023-2031 RHNA cycle by reallocating the County's RHNA to the City, so that new, urban-scale development will continue to be located within urbanized parts of the unincorporated county.

F. **WHEREAS**, the County selected and analyzed potential housing sites on unincorporated parcels within the Urban Services Area (USA) of the City. The County found that the sites most likely to be developed in the 2023-2031 RHNA cycle would yield between 4,517 and 6,281 housing units in total. More specifically, such sites could realistically yield: 1,095 to 1,430 units of very low-income housing; 692 to 993 units of low-income housing; and 683 to 896 units of moderate-income housing.

G. **WHEREAS**, the Housing Element Law (Government Code section 65584.07) provides that a city may agree to increase its RHNA in proportion to the decrease of the associated county's RHNA share, provided that the county's share of low-income and very low-income housing is reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

H. **WHEREAS**, City and County desire to effect a transfer for the 2023-2031 RHNA cycle as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements contained herein, the Parties hereto mutually agree as follows:

1. Transfer of RHNA Share. The Parties agree to transfer a RHNA share totaling 3,125 units for the 2023-2031 RHNA cycle as set forth below, contingent on ABAG's approval of this Agreement pursuant to Government Code section 65584.07(a)(1)-(4):
 - a. Very Low-Income Unit Transfer. The County and City agree to transfer 828 very low-income units, resulting in an increase of 828 very low-income units to the City and a decrease of 828 very low-income units to the County. For the purposes of this paragraph, "very low-income units" shall mean units where household income for eligibility to live in the unit does not exceed 50% of the local area median income (AMI) as established by state and federal law.
 - b. Low-Income Unit Transfer. The County and City agree to transfer 477 low-income units, resulting in an increase of 477 low-income units to the City and a

decrease of 477 low-income units to the County. For the purposes of this paragraph, “low-income units” shall mean units where household income for eligibility to live in the unit does not exceed 80% of the local AMI as established by state and federal law.

- c. Moderate-Income Unit Transfer. The County and City agree to transfer 508 moderate-income units, resulting in an increase of 508 moderate-income units to the City and a decrease of 508 moderate-income units to the County. For the purposes of this paragraph, “moderate-income units” shall mean units where household income for eligibility to live in the unit does not exceed 120% of the local AMI as established by state and federal law.
- d. Above Moderate-Income Unit Transfer. The County and City agree to transfer 1,312 above moderate-income units, resulting in an increase of 1,312 above moderate-income units to the City and a decrease of 1,312 above moderate-income to the County. For the purposes of this paragraph, “above moderate-income units” shall mean units where household income for eligibility to live in the unit exceeds 120% of the local AMI as established by state and federal law.
- e. Summary of Transfers.

	RHNA		Transfer		Revised RHNA	
	City	County	City	County	City	County
Very Low-Income Units	15,088	828	828	-828	15,916	0
Low-Income Units	8,687	477	477	-477	9,164	0
Moderate-Income Units	10,711	508	508	-508	11,219	0
Above Moderate-Income Units	27,714	1,312	1,312	-1,312	29,026	0
Total	62,200	3,125	3,125	-3,125	65,325	0

2. Cooperation. The City and County shall take all steps reasonably necessary to comply with Government Code section 65584.07 and such other transfer statutes, as applicable, to implement this Agreement, including but not limited to executing this Agreement, providing the appropriate documentation to ABAG or any other agency, as required, and receiving ABAG approval of the Agreement by the statutory deadline of January 31, 2023. The Parties agree to work together to obtain ABAG approval and any other approval where required to effectuate this Agreement. The Parties further agree to utilize the revised RHNA that includes the transfer of

RHNA units contemplated by this Agreement in preparing their respective Housing Elements for the 2023-2031 RHNA cycle.

3. Indemnification. In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by Party shall not be shared pro rata but, instead, County and City agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees, and agents, harmless from any claim, expense, cost, damage, or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such party under this Agreement. No Party, nor any officer, board member, or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Parties hereto, their officers, board members, employees, or agents, under or in connection with or arising out of any work, authority, or jurisdiction delegated to such other Parties under this Agreement.

4. Termination. This Agreement shall automatically terminate if ABAG does not approve the Parties' RHNA share transfer pursuant to Government Code section 65584.07(a)(1)-(4). If ABAG approves a revised RHNA allocation that differs from the allocations set forth in Section 1 of this Agreement, the Parties shall confer to determine whether to proceed and execute a written amendment to this Agreement.

5. Amendment. This Agreement may not be amended or modified, except in writing signed by all Parties to this Agreement. The authorized representative of the County for any amendments or modifications to the Agreement shall be the County Executive, or its designee, after approval as to form and legality by County Counsel.

6. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties. It incorporates and supersedes all the agreements, covenants, and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants, and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.

7. Waiver. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.

8. Governing Law; Venue. This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

9. Binding. This Agreement shall be binding upon the successors and assigns of the County and City.

10. Execution. Unless otherwise prohibited by law or County policy, the Parties agree that an electronic copy of a signed Agreement, or an electronically signed Agreement, has the same force and legal effect as an Agreement executed with an original ink signature. The term “electronic copy of a signed Agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed Agreement in a portable document format. The term “electronically signed Agreement” means an Agreement that is executed by applying an electronic signature using technology approved by the County. This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective governing bodies on the dates set forth opposite their signatures.

CITY OF SAN JOSÉ

COUNTY OF SANTA CLARA

By: _____

By: _____

SUSAN ELLENBERG Date
President, Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

Attest:

Attest:

By: _____

By: _____

TIFFANY LENEAR Date
Acting Clerk of the Board of Supervisors

Approved as to form and legality:

Approved as to form and legality:

By: _____

By: _____

ELIZABETH G. PIANCA Date
Lead Deputy County Counsel