

MEMORANDUM OF UNDERSTANDING AND AGREEMENT
Between Napa County and the City of Napa
Relating to the Development of the Napa Pipe Property

This Memorandum of Understanding and Agreement ("MOU") between the City of Napa, a municipal corporation ("City") and the County of Napa, a political subdivision of the State of California ("County"), is entered into as of this ____ day of _____ 2013 (the "Effective Date"). City and County are from time to time hereinafter referred to individually as a "Party" and collectively as the "Parties."

Recitals

A. This MOU is intended to memorialize the guiding principles and processes for the joint review by the County and the City of a series of development applications to be submitted by Napa Redevelopment Partners ("Developer") for approximately 154 acres of property in unincorporated Napa County described generally on Exhibit A hereto and commonly known as the "Napa Pipe" property (the "Property"). Developer's development proposal for the Property is described generally in the County's Resolution No. 2013-03 dated January 14, 2013 certifying the Napa Pipe Final EIR, and materials referenced therein, including the Supplemental Environmental Analysis dated September 19, 2012, and referred to therein as the "Developer's Revised Proposal" (hereafter, the "Project").

B. The City and the County have the shared goals for the Project, including: to adequately mitigate the potential impacts of the Project; to address certain affordable housing obligations imposed upon the County and the City by the State; to work together cooperatively to place a measure on the ballot for voter approval of an expansion of the Rural Urban Limit Line ("RUL") to include the Property, with a corresponding tax sharing agreement and annexation of the Property into the City limits; to provide substantial benefits to the community through a development agreement between County and Developer, including expedited remediation of hazardous materials, expanded public access to the Napa River, and affordable housing.

C. The City acknowledges that it is in the County's interest to complete the timely consideration of actions required for implementation of this MOU, and permit subsequent development of the Project in order to comply with commitments in its Housing Element.

D. If the Property is eventually annexed to the City, as anticipated by the Parties, then the Project would be located in the City, and all of the County's interests in the development agreement would be conveyed, by operation of law, to the City, making the City and Developer the sole parties to the development agreement. The City has previously expressed and documented various concerns regarding the potential adverse impacts of the Project. The Developer has proposed modifications to the Project which address some of the City's concerns. The City has made a good faith effort in this MOU to identify the concerns that remain to be addressed as conditions that must be satisfied before the City will agree to provide water service to the Property. The purpose of this MOU is to document a process through which those conditions may be satisfied.

Understanding and Agreement

Section 1. Definitions.

"Agencies" shall mean Napa County and the City of Napa.

"Board of Supervisors" or "Board" shall mean the Board of Supervisors of Napa County.

"City" shall mean the City of Napa and shall include, unless otherwise provided, any of the City's agencies, departments, officials, employees or consultants.

"City Council" shall mean the City Council of Napa.

"County" shall mean the County of Napa, and shall include, unless otherwise provided, any of the County's agencies, departments, officials, employees or consultants.

"Developer" shall mean Napa Redevelopment Partners in its capacity as the owner of the Property (as described in Recital A and defined in this Section 1), and in its capacity as the applicant for such governmental permits, approvals, and other entitlements as are necessary and desirable for implementation of the Project (as described in Recital A and defined in this Section 1), and shall further include, unless otherwise provided, its successors, heirs, assigns and transferees to its interests in the Property and the Project.

"Development Agreement" shall mean that development agreement that the Parties anticipate will be executed by County and Developer relating to the Property pursuant to California Government Code sections 65864, *et seq.* that meets the requirements of Section 4 of this MOU.

"Development Plan" shall mean any "development plan" approved by the County pursuant to Section 18.66.030 of the Napa County Code.

"Design Guidelines" shall mean any "design guidelines" approved by the County pursuant to Section 18.66.030 of the Napa County Code.

"LAFCO" shall mean the Local Agency Formation Commission of Napa County.

"Project" shall mean Developer's development proposal for the Property as described generally in the County's Resolution No. 2013-03 dated January 14, 2013 certifying the Napa Pipe Final EIR, and materials referenced therein, including the Supplemental Environmental Analysis dated September 19, 2012, and referred to therein as the "Developer's Revised Proposal".

"Property" shall mean that certain property designated by Assessor's Parcel Numbers 046-400-030 and 046-412-005 and generally described in Recital A and Exhibit A hereto as approximately 154 acres of property in unincorporated Napa County and commonly known as the "Napa Pipe" property.

"RUL" shall mean the Rural Urban Limit line, as defined by City Charter Section 180.

"SOI" shall mean the City's sphere of influence, as defined by California Government Code Sections 56425, *et seq.*

Section 2. Purpose and Scope of the MOU.

2.1 Conditions Precedent to City's Agreement to Assume Water Service Obligations. While the Parties share the desire to achieve the goals and purposes of this MOU as set forth in the Recitals, above, the Parties hereby acknowledge and agree that, under the terms of this MOU, any action taken by the City relating to potential commitments to the obligations described in Section 2.2(b)(3) (approving the delivery of City water to the Property) shall not occur until after: (i) the City determines that its concerns regarding the potential impacts of the Project have been adequately addressed in the Development Agreement, Development Plan, and Design Guidelines (as set forth in Section 4 below), and (ii) the City considers the analyses required by the California Environmental Quality Act ("CEQA") and testimony presented as part of a City Council public hearing. With respect to the potential provision of City water service to the Property and the Project, City's execution of this MOU is merely an agreement to conduct a period of negotiations in accordance with the terms of this MOU, reserving for subsequent City and City Council action all discretion to approve, approve with conditions, or disapprove the provision of City water service to the Property and the Project, based on the fulfillment, to City's satisfaction, of the conditions precedent described herein and any other relevant factors.

2.2 Agency Actions and Approvals Required to Implement the MOU Process. Development of the Project on the Property is anticipated to require the following proposed actions and approvals by the County, the City, the Local Agency Formation Commission of Napa County ("LAFCO"), and the voters of the City. The City and County agree to work together in good faith, and actively employ reasonable efforts, to bring the following proposals before the County Board of Supervisors, the City Council, and LAFCO, as applicable, in an effort to achieve the goals set forth in this MOU. Each Party hereby agrees that its determinations and actions under this MOU, including but not limited to the proposed actions and approvals described below, shall be reasonably related to the public welfare and intended to further a legitimate governmental purpose. However, nothing in this MOU will be construed as a delegation or restriction of either Agency's authority to freely and independently consider, approve, or deny any action that is within its jurisdictional authority.

(a) County Actions and Approvals:

- (1) Approval and execution of a Development Agreement, as defined in Section 1 of this MOU.
- (2) Approval of a Development Plan, as defined in Section 1 of this MOU.
- (3) Approval of Design Guidelines, as defined in Section 1 of this MOU.
- (4) Approval of tentative maps and improvements plans, as provided by and pursuant to Title 17 of the Napa County Code.

(b) City Actions and Approvals:

- (1) Approval of rezoning of the Property, as provided by and pursuant to California Government Code section 65859, which shall be consistent with the County's zoning of the Property.
- (2) Approval of Developer applications to City requesting that the City include the Property in the City's Sphere of Influence ("SOI") and provide outside water service.

(3) Apply to LAFCO to expand the City's Sphere of Influence ("SOI") and extend City water service to the Property, and for LAFCO approval for the City to submit subsequent applications for approval of a phased annexation of parcels within the Property to City, which annexation would be conditioned on voter approval of the ballot measure described in Section 2.2(b)(4) below;

(4) Place a measure on a City ballot in November 2014 to modify the City's RUL line to include the Property;

(5) Approval, by a 4/5 vote of the City Council, as required by Section 180 of the City of Napa City Charter, of Developer's request to provide water service to the Property; and

(6) Apply to LAFCO for phased annexation of the Property to the City, conditioned on voter approval of the ballot measure described in Section 2.2(b)(4) above. Phased annexation will include annexation of non-residential portions of the site immediately following voter approval of the RUL amendment, and annexation of residential portions of the site immediately following the issuance of permits for housing by the County.

(c) LAFCO Actions and Approvals:

(1) Approval of City's application to expand City's SOI to include the Property, consistent with the provisions of Government Code;

(2) Approval of City's application to extend City water service to the Property; and

(3) Approval of City's application for the phased annexation of the Property to the City, consistent with the provisions of Government Code Sections.

(d) Actions and Approvals by the Voters of the City of Napa:

(1) Voter approval of the ballot measure described in Section 2.2(b)(4) above.

2.3 Additional Agreements Required to Implement the MOU Process. Development of the Project on the Property is anticipated to require the following additional agreements, which the Parties hereby agree to work together in good faith cooperation to negotiate and execute prior to, or concurrently with, County's approval and execution of the Development Agreement with Developer:

(a) An agreement regarding development standards, and planning and zoning requirements for the Property, as a part of the City's SOI expansion application to LAFCO, as contemplated by Government Code Section 56425, to ensure that development within the SOI occurs in a manner that reflects the City's concerns and is accomplished in a manner that promotes the logical and orderly development of areas within the SOI. This agreement is intended to be consistent with and incorporate by reference any relevant development agreement(s). This agreement is also intended to address potential future amendments to discretionary approvals, such as general plan, zoning, use permits, design guidelines, development plans, development agreements, and tentative maps. In addition, this agreement~~these amendments~~ may address the process for ministerial approvals, such as final maps, improvement plans and building permits.

(b) An agreement in which the County will contract with a third party consultant mutually

agreeable to both City and County for processing of ministerial approvals, such as plan reviews and inspections, following County's execution of a development agreement with Developer. The County's contract shall be assumable by the City following annexation.

(c) An agreement establishing a process for joint or shared provision of municipal/county services, to the extent any such shared services are envisioned, such as maintenance of public improvements. County will provide public safety services (police and fire/paramedics) prior to annexation, and the City will provide those services after annexation. Both Parties agree to update automatic aid agreements to address public safety services to the site.

(d) An agreement establishing the following tax and revenue sharing topics:

(1) The existing tax sharing agreement (as documented by City Resolution No. 80-91, and County Resolution No. 80-31) shall apply to the sharing of property tax revenue from the Property after it is annexed to the City.

(2) Concurrent with the City's determination that its concerns regarding the potential impacts of the Project have been adequately addressed in the Development Agreement, Development Plan, and Design Guidelines (as set forth in Section 4 below), and the City has agreed to provide water (as set forth in Section 3 below), the City and County shall execute a property tax sharing agreement, pursuant to Revenue & Taxation Code Section 99, consistent with the existing tax sharing agreement described in Section 2.3(d)(1) of this MOU, for all remaining properties inside the City's SOI, to take effect and apply to each parcel within the City's SOI when such parcel is annexed to the City.

(3) Concurrent with the City's determination that its concerns regarding the potential impacts of the Project have been adequately addressed in the Development Agreement, Development Plan, and Design Guidelines (as set forth in Section 4 below), and the City has agreed to provide water (as set forth in Section 3 below), the City and the County shall execute an agreement providing that all other taxes generated from the Property, including but not limited to sales tax and transient occupancy tax, will be evenly split (50% - 50%) to the City and the County while the Property is in the unincorporated County, and that after the Property is annexed to the City, all such other taxes generated from the Property, including but not limited to sales tax and transient occupancy tax, will transfer to the City (100%).

(e) Concurrent with the City's determination that its concerns regarding the potential impacts of the Project have been adequately addressed in the Development Agreement, Development Plan, and Design Guidelines (as set forth in Section 4 below), and the City has agreed to provide water (as set forth in Section 3 below), an agreement establishing the following Regional Housing Needs Allocation ("RHNA") topics:

(1) The County shall identify the Property in its 2014-2022 Housing Element and shall issue residential building permits during the 2014-2022 housing cycle, thus receiving RHNA credit for units permitted on the Property while residential portions of the Property remain in the County's jurisdiction.

(2) Starting with the 2022-2030 planning period, the City and County will work together in good faith to obtain all necessary approvals (through the "subregional" process in Government Code ("GC") Section 65584.03, through the transfer process in GC Section

65584.07, or through other related provisions of State law) for the City to accept eighty percent (80%) of the County's RHNA, for each planning period for the life of the County's Measure P (as approved by the voters in November 2008, and as may be extended by subsequent voter approval); provided, however, that the City's acceptance of County RHNA for each planning period is conditioned on the County's compliance with the following requirements: (1) the County shall limit land uses to governmental uses or uses consistent with applicable zoning in effect on the Effective Date of this MOU (unless changes to the zoning and Specific Plan are mutually agreed to by the Parties) for properties located in the industrial areas generally located south of the City of Napa and north of the City of American Canyon, as depicted in the South County Industrial Areas map attached hereto as Exhibit B, including (a) the Napa County Airport Industrial Area (b) all unincorporated land to the south of the City limits, including but not limited to the Syar Properties, and (c) unincorporated land north of the City of American Canyon generally on the east side of Highway 29 between South Kelly Road and Napa Junction; and (2) the County will prioritize payments for projects in Napa from the County Housing Trust Funds to facilitate the development of affordable housing in the City allocated to cover the transferred 80% RHNA.

(3) Promptly upon the issuance by ABAG of a letter approving the City's acceptance of the County's RHNA for each planning period, as set forth in this MOU, the parties will follow State law and ABAG determinations in updating their respective housing elements.

Section 3. Conditions Precedent to City's Provision of Water Service to Property.

3.1 County hereby acknowledges and agrees that the City shall not have any obligation or commitment to accept any portion of the County's RHNA obligations or to consider or approve the delivery of City water to the Property, unless and until all of the following conditions have been fully satisfied, as determined by the City.

(a) Receipt by City of a complete application from Developer requesting that City prezone the Property pursuant to California Government Code section 65859 apply to LAFCO for approval of an expansion of the City's SOI and an extension of City water service to the Property; and approve providing City water service to the Property.

(b) Receipt by City of a complete application from Developer requesting City to apply to LAFCO for a phased annexation of the Property to City, conditioned upon voter approval of an expansion of the City's RUL line to include the Property.

(c) All of the "Additional Agreements Required to Implement the MOU Process," as defined by Section 2.3 of this Agreement, have been executed.

(d) County and Developer shall have completed negotiations on, for ultimate execution, a Development Agreement that imposes on Developer the requirements set forth in this Section 4, either directly through the Development Agreement, or through incorporation into the Development Agreement of the Development Plan and Design Guidelines.

Section 4. Requirements of County-Developer Development Agreement.

Before the City takes action on Developer's request for City water service for the Property

as described in Section 3.1 above, County and Developer shall have completed negotiations on, for ultimate execution, a Development Agreement that imposes on Developer the requirements set forth in this Section 4, either directly through the Development Agreement, or through incorporation into the Development Agreement of the Development Plan and Design Guidelines.

4.1 Development Agreement Provisions Relating to Provision of City Water Service. City has estimated the scope of the potential impacts of City's provision of water service to the Property and the Project and has provided them to the County and Developer in a water capacity term sheet dated May 13, 2013.

(a) Prior to connecting any portion of the Property to the City's water system, Developer shall make a one-time payment to City for allocation of sufficient raw water supplies to serve the Project (the "Water Source Payment").

(b) Developer shall reimburse City for specific treatment, transmission and storage infrastructure determined by City to be required to provide water service to the Property and the Project. Developer may have the option to pay the full amount in a single payment, or through the payment of a connection fee, the amount of which shall be determined by City as part of the water connection fee study described in Section 4.1(e) below, and the payment of which would occur as each connection is made to the City's water system (in either case, the "Infrastructure Reimbursement Payment(s)").

(c) Developer shall construct, to City standards in effect at the time of construction, all offsite improvements necessary to serve the Property and the Project, preliminarily identified as a twelve inch (12") water supply pipeline connecting the existing Jamieson Transmission Line to the south side of the Property along Anselmo Court. All such construction shall be inspected and approved by City before water service may begin.

(d) Developer shall construct, to City standards in effect at the time of construction, all on-site infrastructure and facilities necessary for City to provide water service to the Property. All such construction shall be subject to inspection and approval by City before water service may begin.

(e) Developer shall fund fifty percent (50%) of a water connection fee study to be prepared by City to determine the amount of a water connection fee that shall apply to the Project. The fee study will account for the Water Source Payment and the Infrastructure Reimbursement Payment(s) identified above, such that those specific items will not be used to calculate the fee.

(f) The Project shall not use groundwater, and groundwater shall not be exported from the Property for any purpose.

(g) County shall not allow wholesale water to be distributed to or on the Property, and shall require retail water service to all users on the Property.

4.2 Development Agreement Provisions Relating to the Intersection Improvement Plan

(a) Developer shall fund the full costs of an intersection impact mitigation plan (the "Intersection Improvement Plan" or the "Plan"), prepared jointly by County and City, (Fehr and Peers Memorandum "Napa Pipe Transportation Analysis Sensitivity Test" dated June 28, 2013, incorporated herein by reference) which (i) identifies intersections that may be impacted by Project-generated traffic, (ii) determines measures to adequately mitigate the intersection impacts identified in the Plan, and (iii)

establishes a schedule to ensure that the mitigation measures described in the Plan are installed and completed in a timely manner that will prevent the occurrence of the potential impacts at the identified intersections.

(b) Developer shall implement the mitigation measures described in the Intersection Improvement Plan in compliance with the schedule in the Plan.

(c) Developer shall pay the “fair share” costs of mitigation needed to address cumulative traffic impacts at intersections within the County, City, American Canyon, and Caltrans jurisdictions. “Fair share” payments may be structured as impact fees, paid at the time a permit is issued. The Developer’s compliance with these traffic mitigation requirements will satisfy the Developer’s obligations under the City’s street improvement fee program, and the Developer will not be required to separately pay the City’s street improvement fees

4.3 Development Agreement Provisions Relating to Affordable Housing.

(a) The Development Agreement shall contain provisions ensuring that not less than twenty percent (20%) of the total number of residential units developed on the Property are subject to deed restrictions to ensure their affordability. The Affordability Plan shall ensure that, consistent with California Housing and Community Development standards:

(1) Not less than seventy (70) units will be deed restricted for qualified very low income households;

(2) Not less than seventy (70) units will be deed restricted for qualified low income households; and

(3) Not less than fifty (50) units shall be deed restricted for qualified moderate income households.

The Affordability Plan shall also provide for the phasing of the completion of the affordable units, shall specify the types of units that will be subject to the deed restrictions, and shall impose an outreach and marketing program on Developer designed to ensure that a significant portion of the affordable units, and a significant portion of the market-rate units in the Project, are owned and occupied by members of the workforce of the County and City of Napa.

4.4 Development Agreement Provisions Relating to Park & Recreation Facilities.

(a) The Development Agreement, or the Development Plan, shall require the Developer to construct a trail connection from the Property to Kennedy Park. Construction of this trail connection shall be subject to standards and specifications as set forth in the Development Plan defined in Section 1 and agreed to by the City and County. If Developer is unable to obtain any property rights needed for the trail, Developer shall pay all costs of acquiring the necessary property rights.

(b) The Development Agreement shall require the Developer to extend the trail described in Section 4.4(a) through the Property to connect to the future region-wide San Francisco Bay Trail. This trail shall comply with standards and specifications as set forth in the Development Plan defined in Section 1 and agreed to by the City and the County. Subject to confirmation by City that the Developer’s compliance with this trail requirement will satisfy Developer’s obligation under the City’s

Park Dedication and Park Development fee program, Developer will not be required to separately pay the City's Park Dedication and Park Development fee.

4.5 Development Agreement Provisions Relating to Maintenance of Public Facilities and Infrastructure.

(a) The Development Agreement shall provide that Developer is solely responsible for all costs associated with the maintenance of all roads, open space, parks and all other infrastructure, with the exception of water and sewer facilities. Developer may establish a homeowners association ("HOA") to assume and satisfy this obligation. The financing of maintenance costs will be documented as a part of a Finance Plan to be incorporated into the Development Agreement.

(b) County and Developer shall agree that the City shall not be responsible for or burdened with any operation and maintenance costs associated with roads, open space and parks developed on the Property. In the event that City is required to incur any such costs, whether to correct unsafe conditions, for other public health or safety purposes, or for any other reason, Developer shall reimburse City for all such costs and shall defend and indemnify City for and against all claims made against City arising from or relating to the development, operation, use and maintenance of all roads, open space and parks developed on the Property.

4.6 Development Agreement Provisions Relating to Proposed Continuing Care Retirement Facility.

(a) If a Continuing Care Retirement ("CCR") facility is developed on the Property, as part of the Development Agreement, the CCR facility will be required to pay a per person charge within the facility for the increase in call volume relating to the CCR facility. The charge shall be included in the Development Agreement. The charge shall be consistent with the City's charge per person for similar facilities within the City.

4.7 Development Agreement Provisions Relating to Project Phasing Plan.

(a) The Development Agreement shall include a Phasing Plan which will impose binding obligations on Developer to install improvements in phases designed to adequately mitigate project impacts before or as they are expected to occur, and to ensure that later phases of Project development are not unduly burdened with costs of implementing required mitigation measures. County and Developer shall provide the City with a Phasing Plan and County shall adequately address the City's concerns as stated in this Section 4.7 before executing the Development Agreement.

(b) The first phase of development under the Phasing Plan shall include (i) development, to completion and operation, of the proposed Costco store including all necessary supporting infrastructure for the Costco store, and (ii) nearby wetlands restoration located in the southwest portion of the site where paving will be removed, non-native plants will be removed and a 50-foot buffer will be created and planted with native species.

(c) The second phase of development under the Phasing Plan shall include full remediation of the remainder of the Property and rough grading of the residential development areas, which remediation and rough grading shall be completed prior to the submittal of any applications for building permits for residential or other non-residential development (except the Costco store). Subsequent phases of development under the Phasing Plan may include all residential and commercial uses (except

the Costco store, which shall be included in the first phase as set forth above), supporting infrastructure, public-serving amenities, and accessory uses.

(d) The Phasing Plan shall require Developer, at Developer's sole cost and expense, to remediate any soils within the site proposed for development that are determined by the Regional Water Quality Control Board ("RWQCB") to require remediation.

4.8 Development Agreement Provisions Relating to City Cost Recovery and Indemnification.

(a) The Development Agreement shall require the Developer to pay all costs incurred by City to review, process, consider and act on Developer's applications and requests to City described in this MOU, including but not limited to review of the Development Plan, Development Agreement and Design Guidelines, preparation and review as applicable of the Developer's requests to City to (i) amend and expand the City's RUL, (ii) expand the City's SOI, (iii) extend water service to the Property, and (iv) annex the Property to the City, including all costs incurred by City for elections associated with the foregoing processes.

(b) Except as otherwise provided in the MOU, the Development Agreement shall require the Developer to pay all City development impact fees upon issuance of permits for the Project, whether such permits are issued by the City or County; provided, however, that Developer shall not be required to pay any affordable housing impact fees, street improvement fees and park development and acquisition fees if Developer has complied with the requirements set forth in Section 4.3 of this MOU.

(c) The Development Agreement shall require the Developer to defend, hold harmless and indemnify the City, its elected and appointed officers, agents, employees and representatives from and against any and all claims or challenges made or relating to the processing or approval of all applications relating to the Project, including without limitation applications made by Developer to City, and applications made by City to LAFCO. Developer will timely pay all costs incurred by City in defending any such claims or challenges, and Developer shall be solely responsible to pay, in a timely manner and on City's behalf, any and all awards of money damages, attorney fees and court costs against City.

(d) The Development Agreement shall require the Developer to defend, hold harmless and indemnify the City, its elected and appointed officers, agents, employees and representatives from and against any and all claims, costs and liabilities for any personal injury, death or physical property damage (including inverse condemnation) which arise, directly or indirectly, as a result of the Project or operations performed under this MOU by the Developer, Developer's contractors, subcontractors, agents or employees, whether such operations were performed by Developer or any of Developer's contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as an agent for developer or any of Developer's contractors or subcontractors. (e) Except as expressly provided to the contrary herein, neither Party shall have any liability to the other for damages or otherwise for any default, nor shall either Party have any other claims with respect to performance under this Agreement. Each Party specifically waives and releases any such rights or claims, including any claim to monetary damages of any form or type that it may otherwise have at law or in equity.

4.9 Development Agreement Provisions Establishing City as Express Third Party Beneficiary.

(a) County and Developer shall agree that the City is expressly made a third party

beneficiary of the Development Agreement with the right to seek all available legal remedies, including but not limited to specific enforcement, for any failure by County or Developer to comply with any terms or conditions thereof.

Section 5. Application Review Processes.

5.1 County hereby agrees to allow City the opportunity to review and comment on all applications relating to development of the Property, including but not limited to initial applications (prior to making a “completeness” determination) as well as “complete” applications for development plans, design guidelines, and development agreements, as set forth below.

5.2 County shall provide City staff with an adequate opportunity to review and approve all development and construction plans relating to planning, designing and construction of infrastructure that is necessary or desirable to provide City water service to the Property. County shall not approve or release any designs, plans, or other documents to Developer or any other person or entity that would allow construction of such infrastructure to begin unless and until the City has reviewed and approved such designs, plans, or other documents.

5.3 County will include provisions in the Development Plan and Design Guidelines that provide regulatory criteria similar to a form based code. County agrees to consider and address the City’s comments before the Development Plan and Development Guidelines are submitted to the Board of Supervisors. County shall not approve any proposed Development Plan or Design Guidelines (as applicable) that may apply to the Property unless and until the City has had an opportunity for such review and provided its comments to County.

Section 6. Jail Relocation.

Both parties agree to work towards achieving mutual goals that are not explicit in this MOU, including relocation of the jail outside of downtown.

Section 7. Dispute Resolution.

With regard to any dispute arising out of any obligation, right or duty under this MOU, any Party shall, at the request of another Party, meet with such Party and/or any representative designated by such Party. The Parties to any such meetings and/or such Parties' representatives shall attempt in good faith to resolve any such dispute. However, nothing in this provision shall in any way be interpreted as requiring that such Parties and/or such Parties' representatives reach agreement with regard to those matters being addressed, nor shall the outcome of those meetings be binding in any way on any Party unless expressly agreed to by those Parties directly involved in such dispute.

Section 8. Miscellaneous.

8.1 No Agency, Joint Venture or Partnership. It is specifically understood and agreed to that (a) the Project is a private development; (b) the County and the City have no interest or responsibility for, or duty to, third parties concerning any improvements until such time, and only until such time, that the County or the City, as the case may be, accepts the same pursuant to the provisions of this MOU or in connection with the various actions, approvals and agreements related to the Project; and (c) the County and the City hereby renounce the existence of any form

of agency relationship, joint venture or partnership between the County and the City, and between the County, the City, and Developer, and hereby agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Parties or between the Parties and Developer.

8.2 No Third Party Beneficiaries. There are no third party beneficiaries under this MOU and only the Parties expressly referenced herein shall have the right to enforce this MOU.

8.3 No Waiver of Tort Claims Act. In performing any activities required or authorized by, or in any way related to, this MOU, neither the County nor the City shall be deemed to have waived any privileges and immunities provided by the Tort Claims Act (Government Code §800 *et seq.*).

8.4 Incorporation of Recitals and Introductory Paragraph. The Recitals contained in this MOU and the introductory paragraph preceding the Recitals are hereby incorporated into this MOU as if fully set forth herein.

8.5 Severability. If any term or provision of this MOU, or the application of any term or provision of this MOU to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this MOU, or the application of this MOU to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties. Notwithstanding the foregoing, if any material provision of this MOU, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either Party may, in that Party's sole and absolute discretion, terminate its rights and obligations under this MOU by providing written notice of such termination to the other Party.

8.6 Other Necessary Acts. Each Party shall execute and deliver to the other all such additional instruments and documents as may be reasonably necessary to carry out and secure to the other Party the full and complete enjoyment of their rights and privileges under this MOU.

8.7 Construction. This MOU has been reviewed and revised by legal counsel for each of the Parties and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this MOU.

8.8 Remedies. Subject to the limitations set forth in Section 4.8(e) above, any Party may institute an equitable action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, enforce by specific performance the obligations and rights of the Parties hereto or to obtain any remedies consistent with the foregoing and the purpose of this MOU. In no event shall any Party be entitled to monetary damages for breach of this MOU by any other Party to this MOU.

8.9 Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement shall be governed and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Napa.

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

8.11 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.

8.12 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this Agreement on behalf of the respective legal entities of County and City.

8.13 Exercise of Discretion. The parties recognize and agree that nothing in this Agreement is intended to nor shall be interpreted to limit the ability of the individual members of the City Council and the Board of Supervisors to exercise their discretion in whatever manner appropriate.

8.14 Termination.

(a) Either Party may terminate this MOU for good cause, as provided in this Section 8.14. Good cause shall exist where a Party has failed to fulfill any obligation imposed on such Party under the terms of this MOU (a "Default"). A Party seeking to terminate this MOU for good cause shall provide the non-terminating Party, pursuant to Section 9 below, with written notice of the terminating Party's intent to terminate the MOU ("Notice of Termination"). The Notice of Termination shall plainly identify the specific provisions of this MOU that the terminating Party asserts are the subject of the non-terminating Party's Default. This MOU shall be terminated at 5:00 p.m. on the eleventh (11th) business day following the date of the Notice of Termination, unless the terminating Party has, by such time, received, pursuant to Section 8 below, written notice from the non-terminating Party of the non-terminating Party's intent to cure each and every Default set forth in the Notice of Termination ("Notice of Intent to Cure"). Upon the timely receipt by the terminating Party of the non-terminating Party's Notice of Intent to Cure, the termination of this MOU shall be suspended for a period of thirty (30) calendar days (the "Meet & Confer Period"), during which the Parties shall meet at least once in a good faith effort to address their respective concerns regarding the asserted Default(s). The Meet & Confer Period may be extended by mutual agreement of the Parties. If, at the end of the Meet & Confer Period, the non-terminating Party has not cured each and every Default described in the Notice of Termination to the satisfaction of the terminating Party, the terminating Party may elect to immediately terminate this MOU.

(b) If County fails to execute a Development Agreement with the Developer by December 31, 2016, this MOU shall be null and void, unless mutually extended by the parties.

(c) As provided in Section 4.8(e) above, in the event that a Party elects to terminate this MOU pursuant to the provisions of this Section 8.14, neither Party shall have any liability to the other for damages or otherwise for any default, nor shall either Party have any other claims with respect to performance under this MOU, and each Party specifically waives and releases any such rights or claims, including any claim to monetary damages of any form or type that it may otherwise have at law or in equity.

(d) Nothing in this Section 8.14 is intended to impair the Parties' respective rights under Section 8.8 above, prior to an effective termination pursuant to this Section 8.14.

~~8.15 CEQA Compliance. This MOU commits both parties to work in good faith to negotiate~~

~~future agreements and engage in certain processes, while preserving each agency's jurisdictional authority and discretion. Future agency decisions regarding the development applications listed in Section 2.2 and execution of future agreements listed in Section 2.3 may have physical environmental effects warranting review pursuant to CEQA, however, it can be seen with certainty that there is no possibility that execution of this MOU itself may have a significant effect on the environment, and thus this MOU is not subject to CEQA pursuant to the "general rule" in State CEQA Guidelines Section 15061(b)(3).~~

Section 9. Notices.

All notices required or contemplated by this MOU shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party. The Authorized Representative of each party shall be identified on the "Attn" line, below:

County of Napa:

Attn: Napa County Executive Officer
1195 Third Street, Suite 310
Napa, CA 94559

Copy: County Counsel
1195 Third Street, Suite 301
Napa, CA 94559

City of Napa:

Attn: City Manager
P.O. Box 660
Napa, CA 94559-0660

Copy: City Attorney
P.O. Box 660
Napa, CA 94559-0660

Section 10. Entire MOU, Counterparts and Exhibits.

This MOU is executed in two (2) duplicate counterparts, each of which is deemed to be an original. This MOU consists of fifteen (15) pages, two (2) notary acknowledgment pages and two (2) exhibits. All waivers of the provisions of this MOU shall be in writing and signed by the appropriate authorities of the County and the City. The following exhibits are attached to this MOU and incorporated herein for all purposes:

Exhibits:

Exhibit A – Property Description

Exhibit B – South County Industrial Areas map

Section 11. Recordation of MOU.

No later than ten (10) days after all Parties have entered into this MOU, the County Clerk shall record a Memorandum of Recordation, approved by the Parties and reflecting the Parties execution of this MOU, in the Official Records of the County of Napa.

IN WITNESS WHEREOF, this MOU has been entered into by and between the County and the City as of the day and year first above written.

COUNTY:

COUNTY OF NAPA

By: _____
BRAD WAGENKNECHT, Chairman of the Board of Supervisors

APPROVED AS TO FORM:

By: _____
COUNTY COUNSEL

CITY:

CITY OF NAPA

By: _____
CITY MANAGER

APPROVED AS TO FORM:

By: _____
CITY ATTORNEY