**MEMORANDUM OF AGREEMENT**

**BETWEEN THE CITY OF NAPA AND NAPA COUNTY**

**REGARDING THE CITY OF NAPA'S SPHERE OF INFLUENCE AND THE NAPA PIPE PROPERTY**

This Memorandum of Agreement (“Agreement”) between the City of Napa ("City") and Napa County ("County") is dated \_\_\_\_\_\_\_ \_\_\_, 2014, to reflect the first date upon which it is executed by both the City and the County, as shown by the signatures of their authorized representatives below, and, subject to the terms set forth herein, shall be binding upon the City and County from the date of its complete execution. The City and County each may be referred to herein as a “Party” and together may be referred to herein as the “Parties.”

**RECITALS**

A. The City and County have entered into a Memorandum of Understanding ("MOU") regarding the future development of two parcels of land in unincorporated Napa County comprising approximately 154 acres and commonly referred to as the Napa Pipe site (APNs 046-400-030 and 046-412-005 and hereafter, the “Property”). The Property is described and depicted in greater particularity on Exhibit A-1 and Exhibit A-2 hereto. Napa Redevelopment Partners (“NRP”) is the owner of the Property.

B. As contemplated by the MOU, NRP has submitted an application to the City requesting that the City apply to the Napa County Local Agency Formation Commission (“LAFCO”) to update the City's Sphere of Influence ("SOI") boundary to bring the Property within the City’s SOI. A SOI is defined by the California Government Code §56076 as a plan for the probable physical boundaries and service area of a local agency. The proposed new boundaries for the City’s SOI are depicted on Exhibit B hereto.

C. Government Code Section 56425 requires a city, prior to submitting an application to update its SOI, to meet with representatives of the affected county “to discuss the proposed new boundaries of the sphere and explore methods to reach agreement on development standards and planning and zoning requirements within the sphere to ensure that development within the sphere occurs in a manner that reflects the concerns of the affected city and is accomplished in a manner that promotes the logical and orderly development of areas within the sphere.”

D. Representatives of the City and the County have met on numerous occasions to discuss the matters described in Government Code Section 56425 and various development proposals submitted to the County by NRP. Through these meetings, the City and the County identified certain goals, understandings and principles that they agree will help ensure the orderly and logical development of the Property, which goals, understandings and principles are set forth in detail in Exhibit C to this Agreement.

E. On December \_\_\_, 2014, the County approved a development proposal for the Property, as more particularly described in those certain documents entitled "Napa Pipe Development Plan" dated \_\_\_\_\_\_\_\_ \_\_\_, 2014 (“Development Plan”) and “Napa Pipe Design Guidelines” dated \_\_\_\_\_\_\_\_ \_\_\_, 2014 (“Design Guidelines”), each of which is on file with the Napa County Department of Planning, Building and Environmental Services, and each of which is, by this reference, hereby incorporated into this Agreement in its entirety. The City and County agree that the Development Plan and Design Guidelines reflect and would implement the City’s and County’s goals, understandings and principles for the orderly and logical development of the Property, and their agreements on these matters are reflected in, among other things: (i) the MOU; (ii) the Development Plan; (iii) the Design Guidelines; and (iv) Exhibit C hereto. For purposes of this Agreement, the development proposal embodied in the Development Plan and the Design Guidelines may be referred to herein as the “Project.”

E. Based on the requirements of Government Code §56425(b), the City and County request and desire that LAFCO give great weight to this Agreement in making the final determination regarding the City's application for the SOI update.

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

**TERMS**

1. The proposed updated Sphere of Influence boundary contained in Exhibit B provides for the orderly and logical growth of the City of Napa, and is appropriate given the proximity of the Property to the City and the nature of the Project proposed to be developed thereon.

2. The development principles, standards, and planning and zoning requirements contained in the MOU, the Development Plan, the Design Guidelines, and Exhibit C hereto, are intended to ensure the orderly and logical development of the Property and do not supersede or limit the planning or environmental review process or the discretionary decision making process of either the City or the County.

3. The City and County hereby agree that the entire Property should be annexed to the City of Napa, and the County hereby acknowledges and declares its support for the annexation of the Property, on the following schedule:

1. Those portions of the Property currently designated for industrial uses under the County’s Zoning Ordinance shall be annexed to the City of Napa as soon as practical following the LAFCO’s approval of the proposed Sphere of Influence update, which portions include the areas designated Napa Pipe - Industrial/Business Park Waterfront:Airport Compatibility (NP-IBP-W:AC), Napa Pipe – Industrial/Business Park:Airport Compatibility (NP-IBP:AC), and Industrial:Airport Compatibility (I:AC), as shown on Exhibit A-2; and
2. The remainder of the Property, which is currently designated Napa Pipe - Mixed Use Residential Waterfront:Airport Compatibility (NP-MUR-W:AC) under the County’s Zoning Ordinance, may be annexed to the City of Napa in phases as development of individual parcels is complete, provided that the entire Property (including the entire NP-MUR-W:AC zoning district) shall be annexed to the City not later than December 31, 2022.

The City and County further agree to and shall comply with the requirements of Exhibit C hereto, which is hereby incorporated in its entirety into this Agreement.

4. Miscellaneous.

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

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

4.3 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 Agreement.

4.4 Construction. This Agreement 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 Agreement.

4.5 Remedies. 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 Agreement. In no event shall any Party be entitled to monetary damages for breach of this Agreement by any other Party to this Agreement.

4.6 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.

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

4.8 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.

4.9 Indemnity. The County shall indemnify, defend, and hold the City and its respective elected and appointed councils, boards, commissions, officers, agents, employees, volunteers, and representatives, harmless from all loss, fines, penalties, forfeitures, costs, damages and other liabilities of any type (whether in contract, tort or strict liability), including but not limited to personal injury, death or property damage (including inverse condemnation) (collectively, “**Liabilities**”), and from any and all claims, demands and actions in law or equity (including attorneys’ fees and litigation expenses) directly or indirectly arising out of or alleged to have arisen out of or in any way related to this Agreement (collectively, “**Claims**”), asserted against or incurred by the City by reason of any action of the County or of any employees of the County during the term of this Agreement. The City shall indemnify, defend, and hold the County and its respective elected and appointed councils, boards, commissions, officers, agents, employees, volunteers, and representatives, harmless from Liabilities and Claims asserted against or incurred by the County by reason of any action of the City or of any employees of the City during the term of this Agreement. The Parties shall cooperate in the defense of any third party legal action challenging this Agreement or either Party’s compliance with this Agreement, and each Party hereby agrees to indemnify the other Party for one-half of all fees and costs incurred by the other Party in defending any third party actions challenging the execution and implementation of this Agreement, such that the Parties shall share equally in all costs associated with defending any such third party actions.

4.10 Immunity. The City and County each enter into this Agreement in accordance with the provisions of the Joint Exercise of Powers Act (Government Code sections 6500, et seq.), including but not limited to the immunity protections of Government Code section 6513, and the provisions of Government Code sections 895 through 895.8.

4.11 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.

4.12 Notices. All notices required or contemplated by this Agreement 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

4.13 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.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, this Agreement has been entered into by and between the County and the City as of, and shall be effective upon, the date it has been executed by both parties as shown by the signatures below.

**COUNTY:**

COUNTY OF NAPA  
  
  
By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 CHAIRMAN of the BOARD OF SUPERVISORS

On: \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_, 2014

APPROVED AS TO FORM:  
  
By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 COUNTY COUNSEL

**CITY:**

CITY OF NAPA  
  
  
  
By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 CITY MANAGER  
  
On: \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_, 2014

APPROVED AS TO FORM:  
  
By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 CITY ATTORNEY

**EXHIBIT A-1**

PROPERTY LEGAL DESCRIPTIONS

**EXHIBIT A-2**

MAP OF PROPERTY AND ZONING DESIGNATIONS

**EXHIBIT B**

PROPOSED UPDATED SPHERE OF INFLUENCE BOUNDARY MAP

**EXHIBIT C**

GOALS, UNDERSTANDINGS AND PRINCIPLES TO HELP ENSURE THE ORDERLY AND LOGICAL DEVELOPMENT OF THE PROPERTY

The following shared goals, understandings, principles, development standards, and planning and zoning requirements shall be used by the City of Napa and Napa County to guide development of the Property within the area that is the subject of the proposed Sphere of Influence update as shown in Exhibit B to this Agreement.

1. **Intent.** It is the intent of the City and County to work cooperatively towards the goal of developing the Property within the area that is the subject of this proposed Sphere of Influence (“SOI”) update (as shown in Exhibit B to this Agreement) in an orderly and logical manner consistent with the Cortese-Knox-Hertzberg Local Government Reorganization Act (California Government Code Section 56000 et seq.), the City and County General Plans, the California Environmental Quality Act (“CEQA”) and any other applicable laws and regulations. To that end, the County and City hereby agree that, as between the City and the County, the City is the appropriate agency to accept, process, consider and act upon development applications for those portions of the Property that are designated for industrial uses under the County’s Zoning Ordinance, comprised of the areas designated Napa Pipe - Industrial/Business Park Waterfront:Airport Compatibility (NP-IBP-W:AC), Napa Pipe – Industrial/Business Park:Airport Compatibility (NP-IBP:AC), and Industrial:Airport Compatibility (I:AC), as shown on Exhibit A-2. Therefore, the County shall not accept, process, consider or act upon any development applications submitted to the County for any or all of the Property in the foregoing areas.

2. **Interagency Cooperation.** The City and County have worked cooperatively and shall continue to work cooperatively to plan for future land uses, public services and facilities needed to improve and maintain the Property, as described in the MOU, the Development Plan, the Design Guidelines, and this Agreement.

3. **Development Agreement.** The County and Napa Redevelopment Partners (“NRP”) have entered into a Development Agreement with respect to the Property and the Project, as provided by Government Code Sections 65864 through 65869.5. The City is a third party beneficiary to that Development Agreement and, upon the annexation of any portion of the Property to the City, will become the successor agency and a party to that Development Agreement as it applies to such annexed Property pursuant to Government Code §65865.3. The City and County undertake this proposed SOI update with the intent and understanding that conditions imposed by LAFCO for the SOI update will be consistent with the provisions of that Development Agreement, and the documents incorporated therein.

4. **City Prezoning.** The City has prezoned the Property pursuant to Government Code Section 65859 to establish City land use and zoning designations for the Property that are consistent with the County's present zoning designations for the Property as set forth in the Napa County Zoning Code.

5. **Municipal Services.** Concurrent with or subsequent to the City’s and County’s execution of this Agreement, the City and County are expected to execute three additional agreements: (i) a Memorandum of Agreement Between the City of Napa and Napa County Regarding the Allocation of Property Tax and Other Tax Revenues Generated by the Napa Pipe Site (the “Tax Sharing Agreement”) in substantially the form of Attachment 1 hereto; (ii) a Memorandum of Agreement Between the City of Napa and Napa County Regarding the Provision of Municipal Services for the Napa Pipe Site (the “Municipal Services Agreement”) in substantially the form of Attachment 2 hereto; and (iii) an agreement pursuant to which the County will transfer a portion of its Regional Housing Needs Allocation (“RHNA”), as determined by the Association of Bay Area Governments, to the City in substantially the form of Attachment 3 hereto. In addition, the City and NRP are expected to execute a pre-annexation and water service agreement providing for, among other things, the City to provide water service to the Property, in substantially the form of Attachment 4 hereto. Following the execution of and pursuant to these various agreements, upon the effective date of the requested SOI update, the City would commence providing certain municipal services to the Property concurrently with the sharing of certain tax revenues between the City and County. At all times prior to LAFCO approval of the SOI update, the County will continue to provide municipal services to the Property consistent with its existing service obligations. It is anticipated that the Napa Sanitation District will provide wastewater services to the Property, and that the City will, subject to satisfaction of the requirements set forth in the MOU and the pre-annexation and water service agreement, provide water service to the Property. The County and City will cooperate in ensuring a smooth transition of municipal services occurs over the course of the anticipated phased annexation process.

6. **Limit on Future Amendments to Discretionary Approvals.** County has approved a General Plan amendment and Zoning Ordinance amendment establishing land use designations and standards for the Property. Consistent with Government Code Section 56425(c), County shall not amend or modify its General Plan land use designations for the Property, its Zoning Ordinance designations and standards applicable to the Property, any permitted uses for any portion of the Property, or the Development Plan and the Design Guidelines applicable to the Property, in any manner that conflicts with or is inconsistent with the City’s prezoning of the Property, without the City’s consent.

7. **Processing of Development Applications; Plan Review and Inspection Processes.**

**7.1 Meaning of “Development Approval.”** For purposes of this Section 7, the term “Development Approval” shall mean and include any and all types of approvals and permits that may be issued by the County or City relating to the planning for and the development of all or any portion of the Property including, without limitation, general plan amendments, specific plans, preliminary development plans, final development plans, all forms of subdivision maps, design review approvals, development agreements, land use permits, conditional use permits, building and grading permits, and certificates of occupancy and other forms of occupancy permits.

**7.2 Processing of Applications for Development Approvals.** As provided in Section 1 above, the City shall process all applications for Development Approvals for all portions of the Property designated to allow industrial uses, and the County shall process applications for Development Approvals for those portions of the Property designated to allow residential uses; provided, however, that if the land described in an application is annexed to the City at any time during the period between the first submittal of the application and the County’s action (approval or denial) on the application, the County may, with the City’s consent, transfer to the City the responsibility for completing the processing of the application.

**7.3 Requirements for County Processing of Applications.** Not later than twenty-four (24) hours following its receipt of each application for a Development Approval for all or any portion of the Property (for purposes of this Section 7, an “Application”), the County shall notify the City of the Application and shall comply with the following procedures:

1. **Grading Permits, Plans and Inspections.** Three (3) sets of the grading plans, including all preliminary, revised and final plans, will be forwarded by the County Engineering Manager to the City Engineer for its review and comment. The County will respond to any and all issues raised by the City during its review of the plans. If the City Engineer does not respond within forty-five (45) days of the date the County forwards such plans to him/her, such plans shall be deemed acceptable to the City; provided, however, that the time period for the City’s review and comment on such plans may be extended by mutual agreement of the County Engineering Manager and the City Engineer. The County shall consider in good faith all comments provided by the City, prior to taking any action on such plans. After the plans have been approved by the County, the County will forward one approved set to the City Engineer for its files. For each grading permit issued by the County, the County Grading Inspector shall invite the City Engineer to any inspection point in the grading process and shall notify the City Engineer when such grading is complete.
2. **Improvement Plans and Subdivision Maps.** Three (3) sets of improvement plans and subdivision maps, including all preliminary, revised and final improvement plans and tentative, final and parcel maps, will be forwarded by the County Engineering Manager to the City Engineer for review and comment. The County will respond to any and all comments raised by the City during the review process. If the City Engineer does not respond within forty-five (45) days of the date the County sends such plans and maps to him/her, such plans and maps shall be deemed acceptable to the City; provided, however, that the time period for the City’s review and comment on such plans and maps may be extended by mutual agreement of the County Engineering Manager and the City Engineer. The County shall consider in good faith all comments provided by the City, prior to taking any action on such plans. After the improvement plans or subdivision maps have been approved by the County, the County will forward four approved sets to the City Engineer.
3. **Final Building Construction Plans.** The County shall provide the City with a copy of each residential and commercial building construction plan submitted to the County. Approved plans shall be submitted in an electronic format. The County will send a set of the approved (stamped) building and grading plans, including As-Built Plans, to the City for its use.
4. **Road and Landscaping Improvements and Inspection Process.** The following is the process for inspection and approval of all road improvements and associated landscaping improvements by the County.   
   1. Upon request by the City, the County Inspector shall invite the City Engineer to any inspection point in the construction phase.
   2. The County Inspector shall invite the City Engineer to the final inspection for completeness per plan and specification.
   3. The County Inspector shall prepare the final inspection punch list for the improvements and send a copy of the punch list to the City Engineer.
   4. The County Inspector shall invite the City Engineer to the inspection to verify completion of the final inspection punch list.
   5. The County Inspector shall notify the City Engineer in writing when all the items on the final inspection punch list are complete.
   6. Based on a recommendation by the County Public Works Department and acceptance by the Board of the improvements as complete, the one-year warranty period shall commence on them. The County shall send a copy of the Board order for such actions to the City Engineer.
   7. The County Inspector shall invite the City Engineer to the warranty inspection.
   8. The County Inspector shall prepare the warranty inspection punch list and send a copy to the City Engineer.
   9. The County Inspector shall invite the City Engineer to the inspection to verify completion of the warranty inspection punch list.
   10. The County Inspector shall notify the City Engineer when the warranty inspection punch list items are complete.
   11. Based on a recommendation by the County Public Works Department and a finding by the Board of Supervisors that the improvements have met the requirements of the warranty period, the cash deposit shall be refunded. The County Inspector shall send a copy of the Board order for these actions to the City Engineer.
   12. The County shall transmit the full subdivision file and a microfilm copy, including the improvement plan on computer disk, to the City. The County shall retain a microfilm copy of the subdivision file.

**Attachment 1 to Exhibit C**

Memorandum of Agreement Between the City of Napa and Napa County Regarding the Allocation of Property Tax and Other Tax Revenues Generated by the Napa Pipe Site

**Attachment 2 to Exhibit C**

Memorandum of Agreement Between the City of Napa and Napa County Regarding the Provision of Municipal Services for the Napa Pipe Site

**Attachment 3 to Exhibit C**

Memorandum of Agreement Between the City of Napa and Napa County Regarding Regional Housing Needs Allocations for Future Housing Element Planning Periods

**Attachment 4 to Exhibit C**

Annexation Consent, Protest Waiver, and Water Service Agreement By and Between the City of Napa and Napa Redevelopment Partners