**MEMORANDUM OF AGREEMENT**

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

**REGARDING THE PROVISION OF MUNICIPAL SERVICES**

**FOR THE NAPA PIPE DEVELOPMENT PROJECT**

 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 depicted in greater particularity on Exhibit A hereto. The County has approved a development proposal for the Property (the “Project”), which proposal is more particularly described in those certain documents entitled "Napa Pipe Development Plan" dated \_\_\_\_\_\_\_ \_\_\_, 2014 (the “Development Plan”), and “Napa Pipe Design Guidelines” dated \_\_\_\_\_\_\_ \_\_\_, 2014 (the “Design Guidelines”), which are on file with the Napa County Department of Planning, Building and Environmental Services.

 B. As contemplated by the MOU, the City and County have entered into that certain 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 (the “SOI Agreement”), and the City has submitted an application to the Napa County Local Agency Formation Commission (“LAFCO”) to amend the City's Sphere of Influence ("SOI") boundary to bring the Property within the City’s SOI (the “SOI Amendment”), as provided by California Government Code Section 56428. The proposed new boundaries for the City’s SOI are depicted on Exhibit B hereto.

 C. The MOU further provides that the City and County may enter into: (i) a municipal services agreement providing for the City to assume the responsibility for providing certain services to the Property, which services are currently provided by the County; and (ii) a tax and revenue sharing agreement establishing formulas for sharing taxes and other revenues generated on the Property to fairly and adequately support each agency’s provision of services to the Property. The City and County intend that certain service obligations and certain revenue sharing provisions in these agreements be coordinated to take effect concurrently upon the effective date of the SOI Amendment.

 D. This Agreement is intended to serve as the municipal services agreement contemplated by the MOU and described in Recital C. Concurrently with this Agreement, the City and County have entered into that certain 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 Consisting of Assessor’s Parcels 046-40-030 and 046-412-005 and Other Properties Within the City’s Sphere of Influence, which agreement is intended to serve as the tax and revenue sharing agreement contemplated by the MOU and described in Recital C.

 E. The City and County previously have entered into certain other agreements to share and/or contract with each other for public services. Such agreements include, but are not limited to the following:

* Automatic Aid Agreement for Supplemental Fire Protection Services (City of Napa Agreement 8078; Napa County Agreement 4618) (as amended);
* Fire Services South Napa County Mutual Aid Agreement
(City of Napa Agreement \_\_\_\_\_; Napa County Agreement \_\_\_\_\_)
(dated August \_\_, 1998)
* Cooperative Joint Powers Dispatching Services Agreement
(City of Napa Agreement \_\_\_\_\_; Napa County Agreement \_\_\_\_\_)
(dated August 6, 2013)
* Animal Control Services Agreement
(**need correct title, date of agreement)**
* Animal Shelter Agreement

(**need correct title, date of agreement)**

**(confirm accuracy of all titles, dates**)

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

**TERMS**

1. **Services to be provided prior to effective date of SOI Amendment.**

Prior to LAFCO’s approval of the SOI Amendment described in Recital B above, pursuant to California Government Code Section 56428(e), the terms of this Section 1 shall apply to County and City services to the Property.

1.1 County Services. County shall continue to provide to the Property the public services that County provides to the Property as of the date of this Agreement.

1.2 City Services. Except as specifically required by other agreements between City and County, City shall have no obligation to provide services to the Property.

1. **Services to be provided following the effective date of SOI Amendment.**

The terms of this Section 2 shall apply to County and City services to the Property commencing on the first day following LAFCO’s approval of the SOI Amendment described in Recital B above, pursuant to California Government Code Section 56428(e).

2.1 County Services. County shall provide the same services to the Property that the County provides to other properties in the incorporated City, subject to and consistent with all other applicable City-County agreements including but not limited to the SOI Agreement and the agreements described in Recital E of this Agreement.

2.2 City Services. With the exception of water service, which is the subject of a separate agreement between City and the Property owner, City shall provide City services to the Property in the same manner as City provides services to similarly situated properties in the incorporated City, subject to and consistent with all other applicable City-County agreements including but not limited to the SOI Agreement and the agreements described in Recital E of this Agreement, and subject to the City Council’s discretion to allocate City resources throughout the City.

1. **Indemnification.**

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 the transfer of the service obligations described in this Agreement; provided, however, that this indemnification provision shall not apply to the City’s performance of the service obligations transferred by the County to the City under this Agreement.

1. **Immunity.**

The City and County enter into this Agreement in accordance with the provisions of the Joint Exercise of Powers Act (Government Code sections 6500, et seq.), in particular the immunity protections of Government Code section 6513, and the provisions of Government Code sections 895 through 895.8.

1. **Miscellaneous.**

5.1 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.

5.2 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.

5.3 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.

5.4 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.

5.5 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.

5.6 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.

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

5.8 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.

5.9 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

5.10 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.

5.11 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.

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**(Property Description)

**EXHIBIT B**(Proposed Sphere of Influence Boundary
for City Following SOI Amendment)