**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 046-400-030 AND 046-412-005 AND OTHER PROPERTIES**

**WITHIN THE CITY'S SPHERE OF INFLUENCE**

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 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 tax and revenue sharing 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 Provision of Municipal Services for the Napa Pipe Development Project, which agreement is intended to serve as the municipal services agreement contemplated by the MOU and described in Recital C.

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

**TERMS**

1. The existing tax sharing agreement between the City and County (as documented by City Resolution No. 80-91 and County Resolution No. 80-31) shall apply to the sharing of property tax revenue from each portion of the Property that has effectively been annexed to the City pursuant to California Government Code Section 57202. This Agreement shall constitute a tax sharing agreement for the Property, consistent with Revenue & Taxation Code Section 99, to be submitted with each City application for annexation of the Property to the Napa County Local Agency Formation Commission (“LAFCO”).

2. On and after the day that the LAFCO approves, pursuant to California Government Code Section 56428(e), the SOI Amendment described in Recital B above, all other taxes generated from the Property (other than property taxes) including but not limited to sales tax and transient occupancy tax (hereafter, the “Non-Property Tax Revenues”), shall be evenly split (50% - 50%) between the City and the County for each portion of the Property that remains in the unincorporated area of the County. After any portion of the Property is annexed to the City, all Non-Property Tax Revenues (100%) generated from the annexed portion of the Property shall be transferred to the City.

3. Non-Property Tax Revenues Administration.

* 1. Payment of Non-Property Tax Revenues.
     1. The County shall pay to the City the City’s fifty percent (50%) share of the Non-Property Tax Revenues generated from the Property under Section 2 above on the fifteenth (15th) day of each calendar quarter (*i.e*., January 15, April 15, July 15 and October 15), commencing in the first full calendar quarter following the LAFCO’s approval of the SOI Amendment described in Recital B above, and continuing until such time as (a) the entire Property has been annexed to the City and (b) all Non-Property Tax Revenues generated from any portion of the Property while such portion remained in the unincorporated County have been distributed to the County and the City pursuant to this Agreement. Each County payment to City made pursuant to this Section 3.a.i (hereafter, a “Quarterly Payment”) shall include the City’s full 50% share under Section 2 above for the preceding calendar quarter.
     2. Each Quarterly Payment shall be accompanied by a statement detailing the County’s determination of the City’s 50% share of each component of the Non-Property Tax Revenues (hereafter, a “Quarterly Statement”). Each Quarterly Statement shall contain sufficient detail regarding the County’s collection and determination of the City’s 50% share of Non-Property Tax Revenues generated from the portions of the Property that remained in the unincorporated County during the preceding calendar quarter to allow the City to confirm, to the City’s reasonable satisfaction, that the Quarterly Payment constitutes full payment by County to City of the City’s 50% share of the Non-Property Tax Revenues for the preceding calendar quarter. If the City determines that it requires additional information from County, not contained in the Quarterly Statement, to confirm that a Quarterly Payment complies with the requirements of this Agreement, County shall comply with City’s reasonable requests for such additional information not later than ten (10) calendar days from the date of such request.
  2. Audit Rights.
     1. If City determines that any Quarterly Payment does not comply with the requirements of this Agreement, City may, by written notice to County, request an independent audit of County’s records of its assessments, determinations, collections and administration of all Non-Property Tax Revenues described in Section 2 of this Agreement. The independent audit shall be conducted by a Certified Public Accountant (“CPA”) with experience auditing public agencies’ tax and revenue records and reasonably acceptable to both County and City, who shall be compensated on a fee for service rather than on a contingency fee basis. If, within thirty (30) days after County’s receipt of City’s notice requesting an audit, County and City are unable to agree on the CPA to conduct such audit, then City may designate a nationally recognized accounting firm not then employed by Developer or City to conduct such audit.
     2. The audit shall be limited to verification that the Quarterly Payments made by County to City accurately reflect the terms of this Agreement. The CPA’s or accounting firm’s determination regarding the Quarterly Payments shall be final and conclusive and binding on the County and City. City shall pay all costs and expenses of the audit, provided, however, if the audit determines that any Quarterly Payment does not comply with the terms of this Agreement, then County shall reimburse the City for the cost of the audit.

4. This Agreement shall constitute a property tax sharing agreement, pursuant to Revenue & Taxation Code Section 99 for all other properties that remain in the unincorporated area of the County and inside the City’s SOI, as it exists upon the date of this Agreement. The existing tax sharing agreement between the City and County (as documented by City Resolution No. 80-91 and County Resolution No. 80-31) shall apply to the sharing of property tax revenue for those properties upon annexation into the City.

5. 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 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 County by reason of any action of the City or of any employees of the City during the term of this Agreement.

6. 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 **Liabilities** and **Claims** (as such terms are defined in Section 5 above) 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 Parties shall cooperate in the defense of any third party legal action challenging either Party’s execution of or compliance with this Agreement.

7. 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.

8. Miscellaneous.

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

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

h. 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.

i. Notices. All notices required or contemplated by this Agreement shall be in writing and shall be delivered by and 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

j. 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.

k. 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)