

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

This Memorandum of Understanding and Agreement ("**MOU**") between the City of Napa, a California charter city ("**City**"), the County of Napa, a political subdivision of the State of California ("**County**"), and Napa Redevelopment Partners, LLC, a Delaware limited liability company ("**Landowner**"), is dated, for reference purposes, December 17, 2019, to reflect the first date upon which it is executed by the City, the County, and the Landowner, as shown by the signatures of their authorized representatives below. City, County and Landowner are from time to time hereinafter referred to individually as a "Party" and collectively as "the **Parties**."

Recitals

A. County and Landowner entered into that certain Development Agreement by and between Napa County and Napa Redevelopment Partners, LLC, dated January 13, 2015, recorded on January 26, 2015, as Document Number 2015-0002281, as subsequently amended by that certain First Amendment to Development Agreement by and between Napa County and Napa Redevelopment Partners, LLC, dated September 22, 2015, recorded September 23, 2015, as Document Number 2015-0024296. The Development Agreement as modified by the First Amendment is hereinafter referred to as the "**Development Agreement**." The Development Agreement concerns the future development of four parcels of land in unincorporated Napa County comprising approximately 154 acres and commonly referred to as the Napa Pipe site (APNs 046-412-006, 046-412-007, 046-400-054 and 046-400-055, hereafter, "the **Property**").

B. The City became a party to the Development Agreement after approval by the Napa County Local Agency Formation Commission ("**LAFCO**") of the annexation of a portion of the Property subject to the Development Agreement, which annexed property consisted of approximately 91 acres east of the Union Pacific Railroad ("**UPRR**") tracks and referred to in the Development Agreement and herein as the Eastern Parcel.

C. The County's Housing Element of the General Plan ("**County Housing Element**") relies on housing proposed as part of the Project to meet certain housing obligations imposed on the County by state law, including the obligation to provide sufficient sites to satisfy its regional housing need allocation ("**RHNA**"). Pursuant to Article 10.6 ("**Housing Element Law**") (Government Code Sections 65580 - 65589.8), the County Housing Element states that:

"20 acres at Napa Pipe were zoned to permit 304 units at a minimum of 20 dwelling units per acre, with 202 units by right. The balance would be allowed subject to approval of a development plan at densities up to 20 dwelling units per acre, resulting in a total unit count as high as 945 units if density bonus applies. It is anticipated that a development agreement for the project will include 140 very low- and low-income units and 50 units affordable for moderate-income households." (Napa County Housing Element, Table H-G, footnote (b).)

D. It was intended that the housing constructed by the Landowner would be located on the Western Parcel (that portion of the Property west of the UPRR tracks, as defined in the Development Agreement), which had remained in the unincorporated area. However, in January 2018, Landowner notified City and County of its desire to redesign the Project, amend the approved land use plan to move a portion of the residential development from the Western Parcel to the Eastern Parcel, which was already annexed to the City, and accelerate construction of housing on the Property, including the required Affordable Homes (as defined in the Napa Pipe Affordable Housing Plan attached to the Development Agreement). Landowner's proposed redesign of the Project requires several amendments to its existing entitlements, including amendments to the Development Agreement.

E. The City and Landowner initiated the annexation of the remainder of the Project site to the City, including the proposed residential portions of the Project, thereby allowing Landowner to process all required amendments to its entitlements in the City. On November 18, 2019 the Local Agency Formation Commission of Napa County ("**LAFCO**") approved the annexation of the entire Property to the City, including the Western Parcel, conditioned in part on the following:

Confirmation from the City and the County that a mutually acceptable Memorandum of Understand has been entered into by the City, the County, and Developer requiring an amendment to the Development Agreement, including revisions to the Affordable Housing Plan to the satisfaction of the City and the County.

Execution of this Agreement by the Parties will satisfy that condition to the annexation of the Property to the City.

F. This MOU is intended by the Parties to ensure that the Development Agreement and the Affordable Housing Plan attached as Exhibit B to the Development Agreement continue to incorporate the commitments made by the County in the County Housing Element regarding the provision of housing in the development of the Property, including but not limited to the commitments made regarding the Affordable Homes.

Understanding and Agreement

1. The Preamble, Recitals, Exhibits, and all defined terms set forth therein are hereby incorporated into this Agreement as if set forth herein in full. Unless separately defined otherwise herein defined terms have the meanings described in the Development Agreement, including Exhibit B (Affordable Housing Plan) to the Development Agreement.

2. Provisions to be Included in the Development Agreement. The Parties have agreed that the terms proposed to be incorporated into the following sections of the proposed amendments to the Development Agreement, the body of which is attached hereto and incorporated herein as **Exhibit A**, and to the Affordable Housing Plan, Exhibit B to the amended Development Agreement, attached hereto and incorporated herein as **Exhibit B**, incorporate the commitments made by the County in the County Housing Element and shall be adopted as follows:

a. Provisions related to provision of Affordable Homes: Section 13 of the Development Agreement and Sections 2, 3, 4 and 5.1 of the Affordable Housing Plan.

b. Provisions related to development of housing: Section 15.1.1 of the Development Agreement.

c. Third party beneficiary provisions: Sections 36.2 and 36.3 of the Development Agreement.

3. Default and Remedies.

a. With regard to any dispute arising out of any obligation, right or duty under this MOU, no Party shall institute any legal action hereunder without first providing the defaulting Party or Parties with written notice thereof (the “**Default Notice**”), stating in reasonable detail the nature of the complaint. The applicable Party shall respond to the Default Notice by either (1) taking diligent and expeditious action to resolve the complaint within thirty (30) days, or if the nature of the alleged complaint is such that it cannot practicably be cured within such thirty (30) day period, then no Party will take further legal action so long as (a) the cure was commenced within thirty (30) days following receipt of the notice; and (b) the cure was diligently prosecuted to completion within 180 days; or (2) responding in writing to the Default Notice with the reasons that the responding Party disagrees with the complaint cited in the Default Notice. If the responding Party disputes the Default Notice, then the complaining Party and responding Party shall diligently meet and confer to resolve the issues within thirty (30) days after the responding Party's written response.

b. If after such time, the complaining Party and responding Party are unable to resolve their differences, 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, except that, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment.

4. Miscellaneous.

a. No Agency, Joint Venture or Partnership. It is specifically understood and agreed to that (1) the Project is a private development; and (2) 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.

b. 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.

c. 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 Government Claims Act (Government Code §800 et seq.).

d. 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.

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

f. 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.

g. 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.

h. Modifications. This Agreement may not be modified orally or in any manner other than an agreement in writing signed by the Parties. All waivers of the provisions of this MOU shall be in writing and signed by the appropriate authorities of the County, City and Landowner.

i. 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.

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.

k. Counterparts. This MOU may be executed in counterparts, each of which is deemed to be an original.

l. 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: (1) actual receipt at the address designated below, or (2) five working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. Any Party may modify its respective contact information identified in this section by providing notice to the other Parties.

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

Landowner:

Attn: Keith Rogal
Napa Redevelopment Partners
1025 Kaiser Road
Napa, CA 94558

Attn: Steve Heath
Farallon Capital Management, LLC
One Maritime Plaza, Suite 2100
San Francisco, CA 94111

IN WITNESS WHEREOF, this MOU has been entered into by and between:

COUNTY:

NAPA COUNTY,
a political subdivision of the State of California

Date: _____

Ryan Gregory, Chair
Napa County Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: S. Darbinian Deputy County Counsel</p> <p>Date: 12/13/19</p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: _____ Processed by: _____ Deputy Clerk of the Board</p>	<p>ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors</p> <p>By: _____</p>
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CITY:
CITY OF NAPA, a California charter city

By: _____
Steve Potter, City Manager

ATTEST:

Tiffany Carranza, City Clerk

COUNTERSIGNED:

Desiree Brun, City Auditor

APPROVED AS TO FORM:

Michael W. Barrett, City Attorney

LANDOWNER:
NAPA REDEVELOPMENT PARTNERS

By: _____
Keith Rogal
Its General Manager

EXHIBIT A
PROPOSED DEVELOPMENT AGREEMENT

EXHIBIT B
AFFORDABLE HOUSING PLAN