

**MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF NAPA AND NAPA COUNTY
REGARDING THE ALLOCATION OF PROPERTY TAX, SALES TAX AND
TRANSIENT OCCUPANCY TAX REVENUES GENERATED BY THE NAPA PIPE
SITE CONSISTING OF ASSESSOR'S PARCELS 046-400-030 AND 046-412-005 AND
THE ALLOCATION OF PROPERTY TAX GENERATED BY THE 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 August 25, 2015, 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 "Execution Date"). 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.

B. The Board of Supervisors has adopted various land use approvals for the development of the Property (the "Project"), which approvals include Resolution No. 2014-139, approved by the Board of Supervisors on November 25, 2014, approving a Tentative Map for the Project; Ordinance No. 1393, approved by the Board on December 16, 2014, approving a Development Plan for the Napa Pipe Zoning District portion of the Property; Ordinance No. 1394, approved by the Board on December 16, 2014, approving a Development Agreement with Napa Redevelopment Partners, LLC (the "Developer") for the Napa Pipe Zoning District portion of the Property; and Ordinance No. 1397, approved by the Board on February 10, 2015, approving the Design Guidelines for the Napa Pipe Zoning District portion of the Property.

C. 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") as provided by California Government Code Section 56425. As described in the SOI Agreement, the City Council has, by resolution dated July 21, 2015, authorized the City Manager to approve, subject to the satisfaction of certain conditions set forth in such resolution, the submittal of an application (the "LAFCO Application") to the Napa County Local Agency Formation Commission ("LAFCO") to (i) update the City's Sphere of Influence ("SOI") boundary to bring the Property within the City's SOI, (ii) extend City municipal services in accordance with 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 (the "Municipal Services Agreement") and that certain Annexation Consent, Protest Waiver and Water Service Agreement By and Between the City of Napa and Napa Redevelopment Partners (the "Water Agreement"), and (iii) annex

the Property to the City in two steps in accordance with the SOI Agreement. The proposed new boundaries for the City's SOI are depicted on Exhibit B hereto.

D. This Agreement is intended to establish formulas for sharing tax revenues generated on the Property to fairly and adequately support each agency's provision of services to the Property, and to implement a formula for the allocation of property tax revenues generated on other properties within the City's existing SOI. Subject to the approval and execution of the Water Agreement by the City and the Developer (which documents the City's commitment to provide water service to the Property), the City and County intend that the service obligations set forth in this Agreement and the tax revenue sharing provisions in the Tax Sharing Agreement be coordinated to take effect concurrently upon the effective date of LAFCO's approval, as provided by Government Code Section 56428(e), of the City's requests to update its SOI and extend municipal services to the Property as described in Recital C above (the "**LAFCO Effective Date**"). Subject to the approval and execution of the Water Agreement by the City and the Developer, the City and County also intend that the property tax revenue sharing provisions in this Agreement relating to property tax revenues generated on certain properties other than the Property take effect immediately upon the Execution Date of this Agreement, so that applicable property tax revenues will be shared in accordance with this Agreement when such properties are annexed to the City.

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

TERMS

1. This Agreement is intended to establish the City's and County's respective shares of certain tax revenues generated on the Property during the time period between (i) the LAFCO Effective Date as defined in Recital D above, and (ii) the date that each portion of the Property is annexed to the City. It is not intended to modify or affect the City's and County's respective shares of tax revenues generated on the Property before the LAFCO Effective Date, and, except for the distribution of property tax revenues as provided in Section 3b of this Agreement, it is not intended to modify or affect the City's and County's respective shares of tax revenues generated on any portion of the Property after the effective date of the annexation of such portion of the Property.

2. Subject to the approval and execution of the Water Agreement by the City and the Developer (which documents the City's commitment to provide water service to the Property), commencing on the LAFCO Effective Date, the following tax revenues generated on the Property shall be collected and allocated between the City and the County as follows:

- a. Sales Tax Revenues (Bradley-Burns Taxes). Sales and use taxes are currently imposed in the County pursuant to the Bradley-Burns Local Sales and Use Tax Law (California Revenue & Taxation Code Section 7200 et seq.) ("**Sales Tax**") at the rate of eight percent (8.0%), of which, the County retains one percent (1.0%) (the "**County Share**"), plus an additional amount earmarked for transportation purposes. Commencing on the LAFCO Effective Date, County will split the County Share

equally with City, by paying the City one-half of one percent (0.5%) of the Sales Tax generated from the Property within thirty (30) days following the County's receipt of sufficient information to make such payment. Such information shall be calculated quarterly by the County or, at the County's election, by an outside contractor, based on the agreed upon location, or "geo," of the Napa Pipe Property. If the rate or apportionment of Sales Tax or the County Share changes in the future in a manner that would materially alter the rights and obligations of the parties hereunder, the parties shall meet and confer to negotiate amendments to this Agreement as the parties deem necessary and desirable, subject to final approval by the City Council and County Board of Supervisors. Sales Tax revenue received by County for transportation purposes and deposited into the County's Transportation Fund is not subject to this Agreement and shall not be shared by the Parties.

- b. Transient Occupancy Tax ("TOT") Revenues. The County's Uniform Transient Occupancy Tax Ordinance (Napa County Revenue and Finance Code, Chapter 3.32) (the "**County TOT Ordinance**") shall apply to the Property while it remains in the unincorporated County. Upon the effective date of the annexation of any portion of the Property to the City pursuant to California Government Code Section 57202, the City's Transient Occupancy Tax Ordinance (City of Napa Municipal Code, Chapter 3.20) shall apply to such annexed Property. Commencing on the LAFCO Effective Date, all tax revenues generated from the unincorporated portions of the Property under the County TOT Ordinance ("**County TOT Revenues**") shall be shared equally by the County and the City. County shall direct each and every property owner, business, person, or other entity obligated to pay County TOT Revenues under the County TOT Ordinance (each a "**County TOT Taxpayer**") to pay fifty percent (50%) of its County TOT obligation directly to the City. By this Agreement, County delegates to City the authority to collect fifty percent (50%) of the County TOT Revenues due from each and every County TOT Taxpayer, and based on the foregoing, and City shall be responsible for collection of its share of County TOT Revenues; provided, however, that the County shall cooperate with City as reasonably necessary for the enforcement and collection of such County TOT Revenues.

3. Commencing on the effective date of the annexation of any portion of the Property to the City pursuant to California Government Code Section 57202:

- a. The provisions regarding sharing Sales Tax and TOT Revenues set forth in Section 2 above shall no longer apply to such annexed Property; and
- b. The property tax sharing provisions of the existing Property Tax Sharing Agreement between the City and County (adopted by the City by City Resolution No. 80-91, and adopted by the County by County Resolution No. 80-31) (the "**Existing Property Tax Sharing Agreement**") shall apply to the sharing of property tax revenues generated by such annexed Property, such that property tax revenues generated from the annexed Property shall be allocated to the City and County pursuant to the formula set forth in Section 1 of the Existing Property Tax Sharing Agreement, which

provides as follows:

The City shall be provided an amount that approximately equals fifty-five percent (55%) of the County's share of the tax increment based upon the following formula: forty-four percent (44%) of the County's share of the annual property tax increment, plus one hundred percent (100%) of the property tax increment from the fire-structural and one hundred percent (100%) of the fire-structural property tax base amount.

The City and County intend that 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 submitted to LAFCO for annexation of any portion of the Property.

4. Commencing on the later to occur of the Execution Date of this Agreement and the City's and the Developer's execution of the Water Agreement described in Recital C, the property tax sharing provisions of the Existing Property Tax Sharing Agreement shall apply to the sharing of property tax revenues generated from all parcels that are located within the City's SOI as of the Execution Date (each such parcel is an "SOI Parcel") upon the effective date of annexation of each SOI Parcel, such that the property tax revenues generated from the applicable, annexed SOI Parcel shall be allocated to the City and County pursuant to the formula set forth in Section 1 of the Existing Property Tax Sharing Agreement (set forth in Section 3.b above).
5. The City shall have the right to inspect and audit the County's records of and as they pertain to this Agreement at any time, to the extent legally permissible. City shall pay all costs and expenses if an audit is deemed necessary by the City.
6. 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 to the extent arising from the performance of this Agreement by the City or its employees during the term of this Agreement.
7. 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 to the extent arising from the performance of this Agreement by the County or its employees during the term hereof.

8. The Parties shall cooperate in the defense of any third party legal action challenging either Party's execution of or compliance with this Agreement.

9. 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.

10. 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.

[SIGNATURE PAGE FOLLOWS]

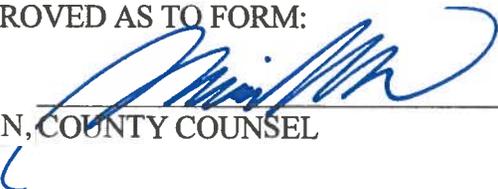
IN WITNESS WHEREOF, this Agreement has been entered into by, and shall be binding upon, the County and the City as of the date it has been executed by both Parties as shown by the signatures below.

COUNTY:
COUNTY OF NAPA

By: 
DIANE DILLON, CHAIR OF THE BOARD OF SUPERVISORS

On: August 25, 2015

APPROVED AS TO FORM:

By:  8/20/15
MINH TRAN, COUNTY COUNSEL

CITY:
CITY OF NAPA

By: 
CITY MANAGER

On: 8-11-15

APPROVED AS TO FORM:

By: 
CITY ATTORNEY

ATTEST:

By: 
CITY CLERK Lisa Blackmon, Deputy City Clerk

ATTEST: GLADYS I. COIL
Clerk of the Board of Supervisors

By: 

APPROVED 8/25/15
BOARD OF SUPERVISORS
COUNTY OF NAPA
GLADYS I. COIL
CLERK OF THE BOARD
BY  Deputy

MOU re Napa Pipe property's
Tax Revenue

EXHIBIT A
(Property Description)

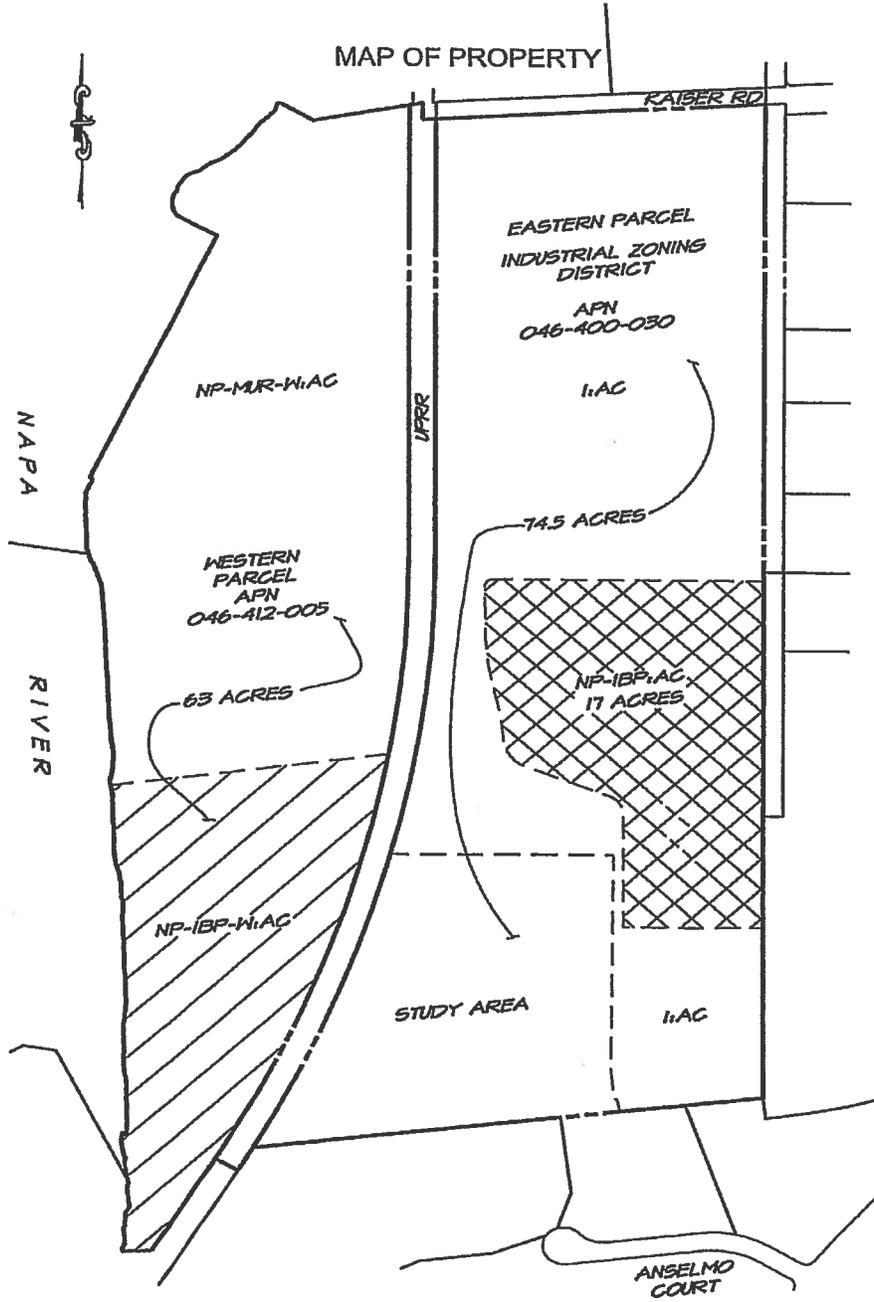


EXHIBIT B

PROPOSED UPDATED SPHERE OF INFLUENCE BOUNDARY MAP

