

**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 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 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 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 services, including water and other required municipal services in accordance with this 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. The City and County have also entered into that certain 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 (the "Tax Sharing Agreement") 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 according to this Agreement. 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").

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 through the LAFCO Effective Date.

At all times prior to and through and including the LAFCO Effective Date as defined in Recital D above, 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.

2. Services to be provided following the LAFCO Effective Date.

Commencing on the first day following the LAFCO Effective Date as defined in Recital D above, the terms of this Section 2 shall apply to County and City services to the Property.

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 agreements described in Recitals C and D of this Agreement, and subject to the Board of Supervisor's discretion to allocate County resources throughout the County.

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 agreements described in Recitals C and D of this Agreement, and subject to the City Council's discretion to allocate City resources throughout the City.

3. 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 to the extent arising from any action of the County or of any employees of the County in their performance of any of the terms, covenants or conditions of this Agreement during the term hereof. 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 any and all Liabilities and Claims (as those terms are defined above) asserted against or incurred by the County to the extent arising from any action of the City or of any employees of the City in their performance of any of the terms, covenants or conditions of this Agreement during the term hereof. 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.

4. 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.

5. 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.

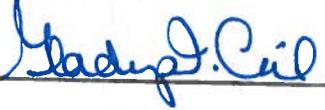
[SIGNATURE PAGE FOLLOWS]

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.

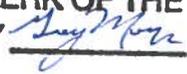
COUNTY:
COUNTY OF NAPA

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

By: 
DIANE DILLON, CHAIR of the BOARD OF SUPERVISORS

By: 

On: August 25, 2015

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

APPROVED AS TO FORM:

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

CITY:
CITY OF NAPA

By: 
CITY MANAGER

On: 8-16-15

APPROVED AS TO FORM:

By: 
CITY ATTORNEY

ATTEST:

By: 
Deputy CITY CLERK
Lisa Blackmon, Deputy City Clerk

MOU re Municipal Services
for the Napa Pipe property

EXHIBIT A
(Property Description)

