

**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**

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. Napa Redevelopment Partners ("**NRP**") is the owner of the Property.

B. As contemplated by the MOU, NRP has submitted an application to the City requesting that the City apply to the Napa County Local Agency Formation Commission ("**LAFCO**") to, among other things, update the City's Sphere of Influence ("**SOI**") boundary to bring the Property within the City's SOI. A SOI is defined by the California Government Code Section 56076 as a plan for the probable physical boundaries and service area of a local agency.

C. Government Code Section 56425 requires a city, prior to submitting an application to update its SOI, to meet with representatives of the affected county "to discuss the proposed new boundaries of the sphere and explore methods to reach agreement on development standards and planning and zoning requirements within the sphere to ensure that development within the sphere occurs in a manner that reflects the concerns of the affected city and is accomplished in a manner that promotes the logical and orderly development of areas within the sphere."

D. Representatives of the City and the County have met on numerous occasions to discuss the matters described in Government Code Section 56425 and various development proposals submitted to the County by NRP. Through these meetings, the City and the County identified certain goals, understandings and principles that they agree will help ensure the orderly and logical development of the Property, which goals, understandings and principles are set forth in detail in Exhibit C to this Agreement. The City and County intend for the City to submit this Agreement to the Napa County LAFCO, as provided by Government Code Section 56425(b), as part of the City's application to update the City's SOI boundary, and further intend and agree that this Agreement shall constitute the agreement "adopted by the affected local agencies" as contemplated by Section 56425(c).

E. The County has adopted the following land use approvals (together, and as may be subsequently amended, the “**Project Approvals**”) for a mixed use project known as Napa Pipe (the “**Project**”) located on the Property, which Project Approvals include and are the subject of this Agreement:

E.1. Resolution No. 2013-60, approved by the Board of Supervisors (“**Board**”) on June 4, 2013, adopting (1) CEQA findings, a statement of overriding considerations and a Mitigation Monitoring and Reporting Program (“**MMRP**”); (2) a Water Supply Assessment pursuant to Water Code Section 10911; and (3) conforming amendments to the Napa County General Plan;

E.2. Ordinance No. 1382, approved by the Board on June 4, 2013, adding Chapter 18.66 to the Napa County Code to create the Napa Pipe Zoning District, and specifying conditions of approval for future development in the Napa Pipe Zoning District;

E.3. Resolution No. 2014-139, approved by the Board of Supervisors on November 25, 2014, approving a Tentative Map for the Project (the “**Tentative Map**”);

E.5. 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 (the “**Development Plan**”);

E.6. 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 (as adopted and as may be subsequently amended, the “**Development Agreement**”); and

E.7. 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 (the “**Design Guidelines**”).

The Project Approvals are on file with the Napa County Department of Planning, Building and Environmental Services, and each one is, by this reference, hereby incorporated into this Agreement in its entirety.

F. By City Council Resolution dated July 21, 2015, the Napa City Council authorized the City Manager to execute an Annexation Consent, Protest Waiver, and Water Service Agreement (the “**Annexation Agreement**,” which is also referred to as the “**Water Agreement**” in the Council Resolution) between the City and NRP. Among other things, the Annexation Agreement sets forth the terms under which the City will provide water service to the Property. As set forth in the Annexation Agreement, before the City will provide water service to the Property, NRP and the County must amend certain provisions of the Development Agreement. To facilitate this requirement, NRP has agreed to submit an application to the County for a Development Agreement amendment (the “**DA Amendment Application**”). In the Annexation Agreement, NRP and the City acknowledge and agree that the County retains the full range of its discretion to approve, approve with conditions, or deny the DA Amendment Application. Consistent with the Annexation Agreement, the County acknowledges and agrees herein that the City shall have no obligation to provide water service to the Property, if NRP and

the County do not execute an amendment to the Development Agreement consistent with the requirements of the Annexation Agreement (the “**DA Amendment**”). Nonetheless, if the County and NRP execute such an amendment, and the City and County execute the City-County Agreements (defined below) in forms that are reasonably acceptable to the City, then under the terms of the Annexation Agreement, NRP will, on behalf of itself and all successors-in-interest to the Property and subject to the satisfaction of certain conditions specified therein, consent to the annexation of the Property in two steps, as described herein, and waive its right to protest, challenge or object to the validity of any annexation of the Property.

G. By City Council Resolution dated July 21, 2015, the City Council also authorized the City Manager to execute this Agreement and the following additional agreements (collectively, the “**City-County Agreements**”), in substantially the forms of the agreements attached to such resolution:

- 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**”);
- 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**”);
- Memorandum of Agreement Between the City of Napa and Napa County Regarding Regional Housing Needs Allocations for Future Housing Element Planning Periods (the “**RHNA Agreement**”); and
- Form of Professional Services Agreement.

H. The City and County agree that their goals, understandings and principles for the orderly and logical development of the Property, and their agreements on these matters are reflected in, among other things: (i) the Project Approvals (subject to NRP’s and County’s execution of an amendment to the DA consistent with the terms of the Annexation Agreement); (ii) the Annexation Agreement; (iii) the City-County Agreements; and (iv) Exhibit C hereto.

I. The legislative bodies of the City and County have each adopted this Agreement following duly noticed public hearings, and both the City’s and County’s general plans reflect this Agreement, as required by Government Code Section 56425(c). The City and the County each and together request and desire that, to the extent that it is consistent with Napa County LAFCO policies, the Napa County LAFCO give great weight to this Agreement in making the final determination regarding the City’s application for the SOI update as required by Government Code Section 56425(b).

J. By resolution dated July 21, 2015, the City Council authorized the City Manager to approve, subject to the satisfaction of certain conditions set forth in such resolution, the submittal of an application to the Napa County LAFCO, submitted on behalf of the City of

Napa by NRP, to (i) expand the City's SOI to include the Property, (ii) extend municipal services to the Property during the time that the Property is within the City's SOI but remains outside the City limits (subject to the terms of the Municipal Services Agreement and the Annexation Agreement), and (iii) annex the Property to the City in two steps as set forth herein.

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

TERMS

1. The proposed updated Sphere of Influence boundary depicted in Exhibit B provides for the orderly and logical growth of the City of Napa, and is appropriate given the proximity of the Property to the City and the nature of the Project proposed to be developed thereon.

2. The development principles, standards, and planning and zoning requirements set forth in the Project Approvals and Exhibit C hereto are intended to ensure the orderly and logical development of the Property, and the City and County agree to comply with the requirements of Exhibit C, which is hereby incorporated in its entirety into this Agreement.

3. The City and County hereby agree that, subject to the County and NRP executing an amendment to the Development Agreement as provided in the Annexation Agreement, the entire Property should be annexed to the City of Napa, and in reliance upon the City's and County's execution of the City-County Agreements, the City's and NRP's execution of the Annexation Agreement, and the County's and NRP's executing an amendment to the Development Agreement as provided in the Annexation Agreement, the County acknowledges and declares its support for the annexation of the Property in two steps and on the following schedule:

- a. In the first step, those portions of the Property currently designated for industrial uses under the County's Zoning Ordinance (comprised of the areas designated Napa Pipe - Industrial/Business Park Waterfront:Airport Compatibility (NP-IBP-W:AC), Napa Pipe - Industrial/Business Park:Airport Compatibility (NP-IBP:AC), and Industrial:Airport Compatibility (I:AC)) shall be annexed to the City of Napa as soon as practicable and legally permissible after City action to pre-zone the Property consistent with existing County zoning, subject to LAFCO approval; and
- b. In the second step, the remainder of the Property, which is currently designated Napa Pipe - Mixed Use Residential Waterfront:Airport Compatibility (NP-MUR-W:AC) under the County's Zoning Ordinance, shall be annexed to the City of Napa on December 31, 2022 (i.e., the effective date of the annexation of the remainder of the Property shall be not later than December 31, 2022, such that the entire Property is annexed to the City on December 31, 2022), subject to LAFCO approval.

4. Miscellaneous.

4.1 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.

4.2 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.

4.3 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.

4.4 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.

4.5 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.

4.6 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.

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

4.8 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.

4.9 Indemnity. 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.

4.10 Immunity. The City and County each enter into this Agreement in accordance with the provisions of the Joint Exercise of Powers Act (Government Code sections 6500, et seq.), including but not limited to the immunity protections of Government Code section 6513, and the provisions of Government Code sections 895 through 895.8.

4.11 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.

4.12 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
955 School Street
P.O. Box 660
Napa, CA 94559-0660

Copy: City Attorney
955 School Street
P.O. Box 660
Napa, CA 94559-0660

4.13 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.

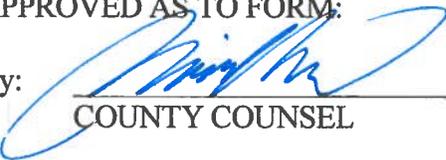
IN WITNESS WHEREOF, this Agreement has been entered into by, and shall be binding upon, the County and the City as of the date it has been executed by both Parties as shown by the signatures below.

COUNTY:
COUNTY OF NAPA

By: 
DIANE DILLON, CHAIR of the BOARD OF SUPERVISORS

On: August 29, 2015

APPROVED AS TO FORM:

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

CITY:
CITY OF NAPA

By: 
CITY MANAGER

On: 8.16.15, 2015

APPROVED AS TO FORM:

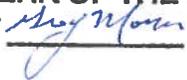
By: 
CITY ATTORNEY

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 City of Napa's
Sphere of Influence and
Napa Pipe property

EXHIBIT A

PROPERTY DESCRIPTION

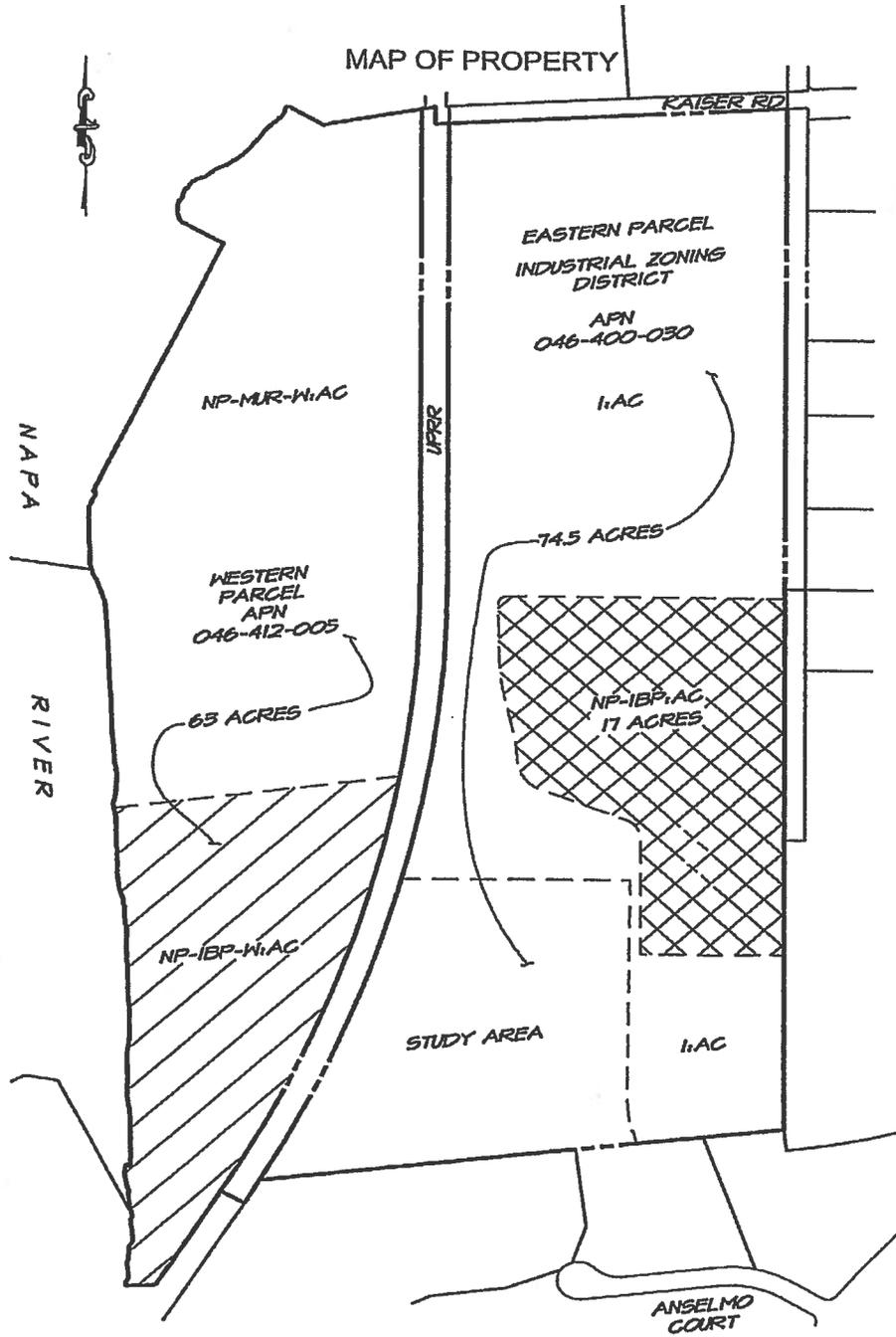


EXHIBIT B

PROPOSED UPDATED SPHERE OF INFLUENCE BOUNDARY MAP

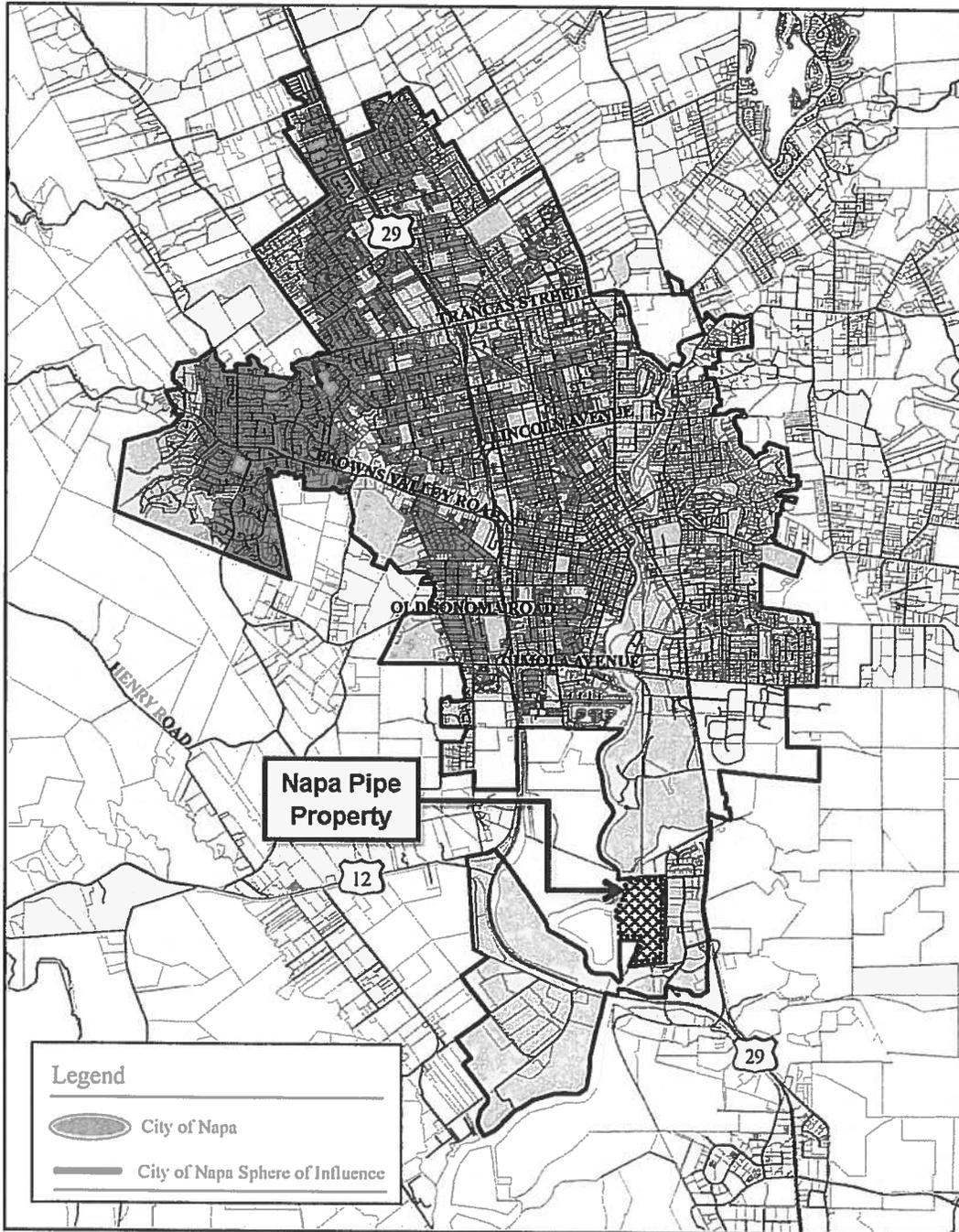


EXHIBIT C

GOALS, UNDERSTANDINGS AND PRINCIPLES TO HELP ENSURE THE ORDERLY AND LOGICAL DEVELOPMENT OF THE PROPERTY

Subject to and following LAFCO approval of the expansion of the City's SOI and the City's extension of municipal services to the Property, the following shared goals, understandings, principles, development standards, and planning and zoning requirements shall be used by the City of Napa and Napa County to guide development of the Property within the area that is the subject of the proposed Sphere of Influence update as shown in Exhibit B to this Agreement.

- 1. Intent.** It is the intent of the City and County to work cooperatively towards the goal of developing the Property in an orderly and logical manner consistent with the Cortese-Knox-Hertzberg Local Government Reorganization Act (California Government Code Section 56000 et seq.), the City and County General Plans, the California Environmental Quality Act ("CEQA"), the Project Approvals and any other applicable laws and regulations.
- 2. Interagency Cooperation.** The City and County have worked cooperatively and shall continue to work cooperatively to plan for future land uses, public services and facilities needed to improve and maintain the Property, as described in the Project Approvals. Without limiting the foregoing, City and County shall work together to cooperate on the orderly development of the Project, which may include entering into such additional agreements that the parties mutually agree are necessary to ensure the orderly development of the Project in accordance with the Project Approvals and this Agreement.
- 3. Development Agreement.** The County and NRP have entered into a Development Agreement with respect to the Property and the Project, as provided by Government Code Sections 65864 through 65869.5. The City is a third party beneficiary to the Development Agreement in accordance with Section 36.2 thereof and upon the effective date of the annexation of any portion of the Property to the City, will become the successor agency and a party to that Development Agreement as it applies to such annexed Property pursuant to Government Code §65865.3. Subject to LAFCO's approval of the City's application to expand its SOI and extend municipal services to the Property, the City and County will undertake to implement the LAFCO approval with the intent and understanding that any conditions imposed by LAFCO on its approval of the City's LAFCO Application will be consistent with the provisions of the Project Approvals, including the Development Agreement and the documents incorporated therein.
- 4. City Prezoning.** As a condition to the County's consent to the two-step annexation of the Property as described herein, (i) the City shall prezone the Property pursuant to Government Code Section 65859 to establish City land use and zoning designations for the Property that are consistent with the Project Approvals, including the County's present zoning designations for the Property as set forth in the Napa County Zoning Code; (ii) the City and the County shall have executed the City-County Agreements described in Recital G; and (iii) the City and NRP shall have executed the Annexation Agreement described in Recital F.

5. **Municipal Services.** Concurrent with or subsequent to the City's and County's execution of this Agreement, the City and County are expected to execute the City-County Agreements described in Recital G to this Agreement. In addition, the City and NRP are expected to execute the Annexation Agreement described in Recital F. Following the execution of and pursuant to these various agreements, and subject to the County's and NRP's execution of the DA Amendment as described in Recital F and provided for in the Annexation Agreement, upon the effective date of LAFCO's approval, as provided by Government Code Section 56428(e), of the City's requests to expand its SOI and extend municipal services to the Property, (the "**LAFCO Effective Date**"), the City would commence providing certain municipal services to the Property concurrently with the sharing of certain tax revenues between the City and County. At all times prior to the LAFCO Effective Date, the County will continue to provide municipal services to the Property consistent with its existing service obligations. The City and County anticipate and intend that, in conjunction with its action on the City's LAFCO application, LAFCO will designate Napa Sanitation District as the wastewater services provider to the Property and the City as the water service provider to the Property. The County and City will cooperate in ensuring a smooth transition of municipal services occurs over the course of the anticipated phased annexation process.

6. **Limit on Future Amendments to Discretionary Approvals.**

6.1 **No Amendments Inconsistent with City Rezoning.** County has approved a General Plan amendment, Zoning Ordinance amendment, Development Plan, Design Guidelines and other Project Approvals including the Development Agreement and Tentative Map that, among other matters, establish land use designations and standards for the Property. Consistent with Government Code Section 56425(c), County shall not amend or modify its General Plan land use designations for the Property, its Zoning Ordinance designations and standards applicable to the Property, any permitted uses for any portion of the Property, or the Development Plan, the Design Guidelines applicable to the Property, the Development Agreement or the Tentative Map in any manner that conflicts with or is inconsistent with the City's rezoning of the Property, without the City's consent, not to be unreasonably withheld.

6.2 **Amendments of Development Agreement and Resolution of Disputes.**

(a) Without limiting Section 6.1, the parties acknowledge that Section 24.2 of the Development Agreement requires County and City to each provide the other no less than thirty (30) days' prior written notice of any proposed amendments to the Development Agreement, which notice shall include the substance of the proposed amendment in reasonable detail and, in the case of a County amendment, whether the County considers the proposed amendment to be a Substantive Amendment or a Minor Amendment as those terms are defined in the Development Agreement. If City disputes the County's determination as to whether the amendment is a Substantive Amendment or a Minor Amendment, or if the County objects to the City's proposed amendment as materially and detrimentally affecting any portion of the Property not yet annexed to the City and therefore requiring the County's prior written consent (either or the foregoing circumstances, an "**Arbitration Matter**"), such disputes shall be resolved in accordance with this Section 6.2.

(b) **Good Faith Meet and Confer Requirement.** With respect to any dispute regarding an Arbitration Matter, the Parties shall make a good faith effort to resolve the dispute prior to submitting the dispute to arbitration. Within five (5) Business Days after a request to confer regarding an identified matter, representatives of the Parties who, if permissible, are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting (or such longer time as each Party may agree each in its sole discretion), the matter shall immediately be submitted to the dispute resolution process set forth in Section 6.1(c).

(c) **Dispute Resolution Procedures.**

(i) **Arbiters.** The arbitrator (“**Arbiter**”) of Arbitration Matters will be selected by mutual agreement of the parties from a list of pre-approved Arbiters attached hereto as Exhibit C-1 (the “**Pre-Approved Arbiters List**”). If none of the Arbiters listed is able or willing to serve, the parties shall mutually agree on the selection of an Arbiter to serve for the purposes of this dispute. The Arbiter appointed must meet the Arbiters’ Qualifications. The “**Arbiter’s Qualifications**” shall be defined as at least ten (10) years’ experience in a real property professional capacity, such as a real estate attorney or real property contracts administrator in Northern California with experience in municipal matters, including development agreements or other public/private partnerships. From time to time, the Parties shall review the Pre-Approved Arbiters List and determine the continued availability and willingness to serve of each Arbiter, and may at that time or from time to time, seek to add or subtract arbiters from the Pre-Approved Arbiter List, by notice in writing to the other Party. If based upon such review, the Parties become aware that an Arbiter has become unavailable to serve in any prospective Arbitration or has expressed an unwillingness to continue to serve, the Parties shall replace that Arbiter with a new Arbiter mutually agreed-upon by the Parties.

(ii) **Dispute Resolution Procedure.** The Party(ies) disputing any Arbitration Matter shall, within ten (10) Business Days after submittal of the dispute to arbitration, submit a brief with all supporting evidence to the Arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the Arbiter in resolving the dispute. In either case, any other party to the Development Agreement may submit an additional brief within five (5) Business Days after distribution of the initial brief. The Arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within fifteen (15) Business Days after the initiation of the arbitration, unless the Arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the Arbiter shall be submitted to the Arbiter (with copies to all Parties) within five (5) Business Days after the Arbiter’s request, and thereafter the Arbiter shall hold a telephonic hearing and issue a decision promptly but in any event within five (5) Business Days after submission of such additional briefs, and no later than thirty (30) Business Days after the initiation of the arbitration. Each Party will give due consideration to the Arbiter’s decision prior to pursuing further legal action, which decision to pursue further legal action shall be made in each Party’s sole and absolute discretion by providing notice thereof to the other within ten (10) Business Days of the Arbiter’s decision.

7. Processing of Development Applications; Plan Review and Inspection Processes.

7.1 Meaning of “Development Approval.” For purposes of this Section 7, the term “Development Approval” shall mean and include any and all types of approvals and permits that may be issued by the County or City relating to the planning for and the development of all or any portion of the Property including, without limitation, general plan amendments, specific plans, preliminary development plans, final development plans, all forms of subdivision maps, design review approvals, development agreements, land use permits, conditional use permits, building and grading permits, and certificates of occupancy and other forms of occupancy permits.

7.2 Processing of Applications for Development Approvals. The County shall process applications for Development Approvals for all portions of the Property within County jurisdiction consistent with the Project Approvals, and the City shall process applications for Development Approvals for all portions of the Property that are within the City’s jurisdiction consistent with the Development Agreement, Development Plan, Design Guidelines, Tentative Map, and the City’s pre-zoning actions (including the amendments to the City’s General Plan and Zoning Code adopted through its pre-zoning actions as described in this Agreement). The Parties intend that, prior to December 31, 2022, all Development Approvals, including residential building permits issued for that portion of the Property designated Napa Pipe-Mixed Use Residential-Waterfront:Airport Compatibility (NP-MUR-W:AC) will be issued by the County. Without limiting the foregoing, if a Development Approval for any portion of the Property designated Napa Pipe-Industrial/Business Park Waterfront:Airport Compatibility (NP-IBP-W:AC), Napa Pipe-Industrial/Business Park:Airport Compatibility (NP-IBP:AC), and Industrial:Airport Compatibility (I:AC) (the “**Industrial Property**”) is submitted to the County but such portion of the Property is annexed to the City during the period between the first submittal of the application and the County’s action (approval or denial) on the application, then all responsibility for completing the processing of the application shall transfer to the City, unless otherwise agreed-upon by the Parties. Prior to such annexation, County may contract with City for the City to provide plan review services for the Industrial Property on such terms as is agreed-upon by the Parties; provided, however, that County shall retain authority for issuance of all required Development Approvals so long as the Property remains within County jurisdiction.

7.3 Requirements for County Processing of Applications. In interpreting and implementing this Section, the City and County acknowledge the primacy of review authority of the Local Agency in whose jurisdiction the applicant's property is located. In coordinating opportunities for review by the other Party without actual permit jurisdiction, the Parties understand and agree that any such reviews or inspections shall be conducted consistent with the Project Approvals and any applicable prior Development Approvals, and in a manner to support implementation of the scope and time periods for review under applicable Project Approvals and existing laws, subject to any extensions of time for review that are agreeable to the County, the City and the applicant. Accordingly, and without limiting the foregoing:

(a) Development Plan and Design Guidelines Review. The Development Plan and Design Guidelines require all application submittals subject to

the Development Plan and Design Guidelines to be reviewed and approved for compliance with the Development Plan and Design Guidelines prior to submittal for building permits or final agency approval if building permits are not required. Submittals under the Development Plan and Design Guidelines are reviewed in accordance with the Plan Review and Approval Process attached to the Development Agreement as Exhibit F (the “**Plan Review Procedure**”). The Plan Review Procedure requires the applicant to submit the applicable project applications to the County’s Director of Planning, Building and Environmental Services for Property located within the County (the “**County Director**”) and to the City’s Community Development Director for Property located within the City (the “**City Director**”). For purposes of this Section 7.3(a), each application submitted under the Development Plan and Design Guidelines for review in accordance with the Plan Review and Approval Procedure is hereinafter referred to as a “**Design Guidelines Review Application**”. Within one (1) business day following County Director’s determination that the applicable Design Guidelines Review Application is complete (or is deemed complete in accordance with Section 2.2 of the Plan Review Procedure), the County shall forward six (6) copies of the Design Guidelines Review Application to the City’s Community Development Director (the “**City Director**”). If the Parties agree to use a third-party contractor to perform the Design Guidelines Review functions and provide recommendations to County, the Parties may modify these procedures accordingly to accommodate such review. If the City Director does not respond with any comments on the applicable Design Guidelines Review Application within twelve (12) days of receipt, the Design Guidelines Review Application shall be deemed acceptable to the City; provided, however, that the time period for the City’s review and comment on such Design Guidelines Review Application may be extended by mutual agreement of the County Director and City Director to the extent permitted under the Plan Review Procedures. The County shall consider in good faith all comments provided by the City, prior to taking any action on the Design Guidelines Review Application.

(b) Grading Permits, Building Permits and Inspections. The County Engineering Manager will, within one (1) business day of County’s receipt thereof, submit to the City’s Community Development Director for City review and comment, six (6) sets of any grading plans (“**Grading Plans**”) and six (6) sets of any residential and commercial building permit plans (“**Building Permit Plans**”) submitted for any Property within County jurisdiction, including all preliminary, revised and final plans. If the City’s Community Development Director does not respond with City comments on the applicable Grading Plans or Building Permit Plans within twenty-eight (28) days, the Grading Plans or Building Permit Plans, as applicable, shall be deemed acceptable to the City; provided, however, that the time period for the City’s review and comment on such Grading Plans or Building Permit Plans may be extended by mutual agreement of the County Engineering Manager and the City Community Development Director to the extent consistent with the Project Approvals and applicable laws. City’s review and comment shall be consistent with the Project Approvals and all applicable Subsequent Approvals in effect at the time of review. The County shall consider in good faith all comments provided by the City prior to taking any action on such Grading Plans or Building Permit Plans. After the County approves the applicable Grading Plans or Building Permit Plans, the County will forward one set in an electronic format of the approved (stamped) Grading Plans or Building Permit Plans, as applicable, including As-Built Plans for inspected and approved completed buildings, to the City Community Development Director for the City’s files. For each

grading permit issued by the County, the County's applicable inspector shall invite the City's Community Development Director (or its designee) to each inspection point in the grading process and shall notify the City's Community Development Director when such grading is complete. For each building construction permit issued by the County, the County Building Inspector shall invite the City's Community Development Director (or its designee) to each inspection point in the building construction process and shall notify the City's Community Development Director when such building construction is complete. If the Parties agree to use a third-party contractor to perform the review of the Grading Plans, Building Permit Plans and/or any inspections to provide recommendations to County, the Parties shall modify these procedures, as appropriate, to accommodate such review and ensure that the City's opportunities for review and participation as set forth in this Section 7.3(b) are preserved. The County shall engage any third-party contractor in accordance with a Professional Services Agreement as described in Recital G. To the extent that a portion of the Property annexes to City while the applicable scope under the Professional Services Agreements is ongoing, City may elect to accept an assignment of the Professional Services Agreement or may elect to terminate the Professional Services Agreement, in its sole discretion.

(c) Subdivision Map Submittals and Improvement Plans.

(1) Preliminary Compliance Review. The Subdivision Procedures attached to the Development Agreement as Exhibit I (the "Napa Pipe Subdivision Procedures") require the applicant to submit a request for a Preliminary Compliance Review for any Phased Final Map submittal (as those terms are defined in the Napa Pipe Subdivision Procedures) to the County's Director of Planning, Building and Environmental Services for Property located within the County ("**County Director**"), and to the City's Community Development Director for Property located within the City ("**City Director**"). Within one (1) business day following County Director's determination that the applicable Preliminary Compliance Review submittal is complete, the County shall forward six (6) copies of the Preliminary Compliance Review submittal to the City Director. If the City Director does not respond with any comments on the applicable Preliminary Compliance Review submittal within twenty-eight (28) days of the City's receipt of the submittal, such Preliminary Compliance Review submittal shall be deemed acceptable to the City; provided, however, that the time period for the City's review and comment on such submittal may be extended by mutual agreement of the County Director and the City Director. The County shall consider in good faith all comments provided by the City, prior to taking any action on the Preliminary Compliance Review. County shall provide the City Director with a copy of the County's action on the applicable Preliminary Compliance Review.

(2) Subdivision Map Submittals and Improvement Plans. The County Director shall forward to the City's Community Development Director for review and comment (i) six (6) sets of any tentative map, final map and parcel map application submitted to the County; and (iii) six (6) sets of any and all subdivision improvement agreements and preliminary, revised and final improvement plans for Project Infrastructure (as defined in the Development Agreement) required thereunder. If the City's Community Development Director does not respond with any comments on the applicable maps or improvement plans within thirty (30) days of the date the City's receipt of such maps and/or plans to him/her, such maps and/or plans shall be deemed acceptable to the City; provided, however, that the time period for the

City's review and comment on such plans may be extended by mutual agreement of the County Engineering Manager and the City's Community Development Director to the extent consistent with the Project Approvals and applicable laws. The County shall consider in good faith all comments provided by the City, prior to taking any action on such plans. After the improvement plans or subdivision maps have been approved by the County, the County will forward four (4) approved sets to the City's Community Development Director.

(d) Road and Landscaping Improvements and Inspection Process. The following is the process for inspection and approval of all road improvements and associated landscaping improvements by the County.

- (1) Upon request by the City, the County Department of Public Works inspector (the "County Inspector") shall invite the City Engineer to any inspection point in the construction phase.
- (2) The County Inspector shall invite the City Engineer to the final inspection for completeness per plan and specification.
- (3) The County Inspector shall prepare the final inspection punch list for the improvements and send a copy of the punch list to the City Engineer.
- (4) The County Inspector shall invite the City Engineer to the inspection to verify completion of the final inspection punch list.
- (5) The County Inspector shall notify the City Engineer in writing when all the items on the final inspection punch list are complete.
- (6) Based on a recommendation by the County Public Works Department and acceptance by the County of the improvements as complete in accordance with the Development Agreement Exhibit I (Subdivision Procedures), the one-year warranty period shall commence as of the date of acceptance. The County shall send a copy of the County's acceptance actions to the City Engineer.
- (7) The County Inspector shall invite the City Engineer to the warranty inspection.
- (8) The County Inspector shall prepare the warranty inspection punch list and send a copy to the City Engineer.
- (9) The County Inspector shall invite the City Engineer to the inspection to verify completion of the warranty inspection punch list.
- (10) The County Inspector shall notify the City Engineer when the warranty inspection punch list items are complete.
- (11) Based on a recommendation by the County Public Works Department and a finding by the County in accordance with the Subdivision Procedures that the improvements have met the requirements of the warranty period, the County may release any security provided for the applicable improvement for the warranty period in accordance with procedures of Exhibit I to the Development Agreement (Subdivision Procedures). The County Inspector shall send a copy of the County's determination for these actions to the City Engineer.

(12)The County shall transmit the full subdivision file, including the improvement plan, in an electronic format to the City. The County shall retain an electronic copy of the subdivision file.

7.4 Applicable Laws. As contemplated by the Development Agreement Section 8.5, County and City shall apply the California Building Standards (including, without limitation, the California Green Building Standards), Building, Mechanical, Plumbing, Electrical and Fire Codes, and the standard construction specifications of the Party that issues the applicable building or improvement permit (whether or not the applicable work of construction is thereafter annexed to the City prior to issuance of a Certificate of Occupancy or notice of completion for Project Infrastructure) and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project. Without limiting the foregoing, the then-current California Green Building Standards Code, or some or all of the Amendments to the California Green Building Standards Code, as set forth in Section 15.04 of the City's Municipal Code, whichever standard is more stringent, shall apply to the Project.

7.5 Permit Fees. City agrees that County shall be entitled to charge, receive and retain all fees charged pursuant to County's retention of permitting authority under Section 7.2 hereof, including all customary planning application fees, building permit fees, grading fees and inspection fees (collectively, "**Permit Fees**"), except to the extent otherwise provided pursuant to the terms of any contractual agreement between City and County for permit review services. Notwithstanding the foregoing, to the extent that County collects any such Permit Fees and the applicable Property is subsequently annexed to the City prior to the final inspection and issuance of Certificate of Occupancy and subsequent permit administration work is transferred to City in accordance with Section 7.2 hereof, County shall, concurrent with the transfer of such permit administration work, remit to City a pro-rata share of the Permit Fees collected by County to the extent attributable to the permit administration work transferred to City, and provide City with a reasonably detailed accounting of the bases for all Permit Fees retained by County.

7.6 Development Fees and Exactions. In processing Development Applications, County shall require the applicant to pay (or comply with, if applicable) the Applicable City Exactions (as defined in Section 8.2 of the Development Agreement) directly to the City to the extent required by the Development Agreement; provided, however, that if any such Applicable City Exactions are paid to County, County shall transfer such amounts to City within thirty (30) days of County's receipt thereof. Consistent with Development Agreement Section 8.2, City, in connection with its issuance of all non-residential building permits for Property that has been annexed to the City, shall impose the County's Non-Residential Affordable Housing Impact Fee (Napa County Code Section 18.107 or such replacement provision in effect from time to time), which shall be payable directly to County; provided, however, that if any Non-Residential Affordable Housing Impact Fees are paid directly to City, City shall transfer such amounts to County within thirty (30) days of City's receipt thereof.

7.7 Records. The County and City shall use their commercially reasonable efforts to transfer property documents promptly so as to minimize delays in development of projects. Records shall be transferred electronically to the greatest extent possible.

7.8 Calendar Days. Except where indicated otherwise, for purposes hereof, the term “days” shall mean calendar days, except that if the last day for performance falls on a weekend or government holiday, then the time for performance shall be extended until the next business day.