

**Conceptual terms to be incorporated into an MOU between the  
City and County relating to the Napa Pipe Project**

**City Proposal (5/21/2013)  
Respond to County Response (5-21-2013)  
Mark-up from 2x2 (5-28-2013)  
County edits & comments (5-31-2013)  
Agreements from 2x2 (6/3/2013)**

Scope of Term Sheet. This Non-Binding Term Sheet is intended to reflect the conceptual terms tentatively agreed upon between the negotiating representatives from both parties as key provisions to be incorporated into a Memorandum of Understanding (“MOU”) between the City of Napa (“City”) and the County of Napa (“County”). The Term Sheet and the MOU are related to the review of development applications from Napa Redevelopment Partners (“Developer”) for the proposed “Project” to develop the approximately 154-acre Napa Pipe Site (as analyzed in the Final EIR certified by the County on January 14, 2013). These conceptual terms are not binding on either party until after final contractual terms have been negotiated and executed by both parties.

Scope of the MOU. The MOU is intended to memorialize the guiding principles and processes for the joint review by the County and the City of a series of development applications for the Project. The City and the County have the shared goals for the Project, including: to adequately mitigate the potential impacts of the Project; to address the housing obligations imposed upon the County and the City by the State; to work together cooperatively to place a measure on the ballot for voter approval an expansion of the Rural Urban Limit Line (“RUL”) to include the project site, with a corresponding tax sharing agreement and annexation of the Project site into the City limits; to provide substantial benefits to the community through a development agreement, including expedited remediation of hazardous materials, expanded public access to the Napa River, and affordable housing; and to provide water service to the Project site.

The City has previously documented its concerns (in the public record for the Final EIR) regarding the potential adverse impacts of the Project. Since the City’s concerns have been publicly documented, the Developer has proposed various modifications to the Project which address some of the City’s concerns. The City has made a good faith effort in the MOU to identify the concerns that remain to be addressed as a condition of the City agreeing to provide water service to the Project site. While it is the City’s goal to provide water service to the Project Site if the City’s concerns are adequately addressed in accordance with the processes described in the MOU; the City’s commitment to approve the actions identified in Sections A(3) (providing City water to the Project site) and B(5)(c) (accepting a portion of the County’s affordable housing obligations), will not be made until after: (1) the City determines that its concerns have been addressed in the Development Plan, Development Agreement, and Design Guidelines (as set forth in Section C(2), below), and (2) the City considers the analysis required by the California Environmental Quality Act (“CEQA”), as well as testimony presented as a part of a City Council public hearing.

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The City and County agree to work together in good faith, and actively employ reasonable efforts, to achieve the goals set forth in the MOU. Each party's determinations and actions under the MOU will be reasonably related to a legitimate governmental purpose. However, nothing in the MOU will be construed as a delegation or restriction of either agency's authority to freely and independently consider, approve, or deny any action that is within its jurisdictional authority.

A. The anticipated development applications for the Project include:

1. Those to be considered by the County Board of Supervisors: the General Plan Amendment, Zoning Amendment, Water Supply Assessment, Development Plan, Design Guidelines, and Development Agreement.
2. Those to be considered by LAFCO: expansion of City's Sphere of Influence ("SOI") to include Napa Pipe Site; expansion of City water service to Napa Pipe Site; and phased annexation of Napa Pipe Site to the City, conditioned upon voter approval of expansion of City's Rural Urban Limit Line ("RUL," as defined by City Charter Section 180).
3. Those to be considered by the City Council: rezoning of Napa Pipe Site (consistent with the County's zoning) and 4/5 vote to approve providing City water to the Napa Pipe Site, both to support the City's application to LAFCO for SOI expansion and extension of City water service to the Napa Pipe Site; and the decision to place a measure on the ballot to amend the City's RUL to include the Napa Pipe Site.
4. Those to be considered by City voters: amend the City's RUL to include the Napa Pipe Site.

B. After execution of the MOU, the City and the County will work together in good faith cooperation to negotiate and execute a subsequent agreement (or agreements) between the City and County to implement the MOU, including the following issues:

1. An agreement regarding development standards and planning and zoning requirements on the Napa Pipe Site, as a part of the SOI expansion application to LAFCO, as contemplated by Government Code Section 56425. This agreement will be consistent with and incorporate by reference any relevant development agreement(s). This will also address potential amendments to discretionary approvals, such as general plan, zoning, design guidelines, development plan, development agreement, and tentative map,
2. County will contract with a third party consultant mutually agreeable to both City and County for processing of ministerial approvals, such as plan reviews and inspections, following execution of the development agreement. The County's contract shall be assumable by the City following annexation.

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3. Process for joint or shared provision of municipal/county services, to the extent any such shared services are envisioned, such as maintenance of public improvements. County will provide public safety services (police and fire/paramedics) prior to annexation, and the City will provide those services after annexation. Both parties agree to update automatic aid agreements to address public safety services to the site.
4. Tax Revenue Sharing.
  - a. The existing tax sharing agreement (as documented by City Resolution No. 80-91 and County Resolution No. 80-31) will apply to the sharing of property tax revenue from the Napa Pipe property after the property is annexed to the City.
  - b. Prior to or concurrent with execution of the Development Agreement for Napa Pipe, City and County agree to negotiate and execute a property tax sharing agreement, consistent with the existing tax sharing agreement, for all remaining properties inside the City's SOI, effective when the properties are annexed to the City.
  - c. All other taxes generated from the Napa Pipe Site (e.g., sales tax, TOT) will be evenly split (50% - 50%) to the City and the County while the property is in the unincorporated County. After the property is annexed to the City, all other taxes generated from the Napa Pipe Site (e.g., sales tax, TOT) will transfer to the City (100%).
5. RHNA Credits:
  - a. The County's 2007-2014 Housing Element includes a program to rezone a portion of the Napa Pipe site for residential uses at densities of 20 du/acre.
  - b. The County will identify the Napa Pipe site in its 2014-2022 Housing Element and will issue residential building permits, thus receiving RHNA credit for units permitted on the Napa Pipe Site.
  - c. Starting with the 2022-2030 planning period, the City and County will work together in good faith to obtain approval (through the "subregional" process in Government Code ("GC") section 65584.03, through the transfer process in GC section 65584.07, or through other related provisions of State law) for the City to accept 80% of the County's regional housing needs allocation ("RHNA"), for the life of the County's Measure P (as approved by the voters in November 2008, and as may be extended by subsequent voter approval); provided, however, that the City's acceptance of County RHNA for each planning period is conditioned on:

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(1) the County will limit land uses, in the Airport Industrial Area Specific Plan (“AIA SP”) and in unincorporated industrially designated areas to the south of the City limits, to County and corporate/industrial uses consistent with the AIA SP currently in effect, unless changes to the AIA SP are mutually agreed to by the parties; and (2) the County will prioritize payments to the City of County Housing Trust Funds to facilitate the development of affordable housing in the City allocated to cover the transferred RHNA.

C. By execution of the MOU:

1. City will support the proposed General Plan Amendment and Zoning Amendment, as they were presented to the County Board of Supervisors on January 14, 2013, subject to refinement and implementation consistent with the MOU. Specifically, the zoning entitlements shall be modified to address “Planning/Design” issues (see C(2)(b) (v) below). The City will use the May 14, 2013 water supply assessment
2. County will allow reasonable and adequate opportunities for the City to review and comment on the proposed Development Plan, Design Guidelines, and Development Agreement; and the County agrees to consider and address the City’s comments before the documents are submitted to the Board of Supervisors or other review authority for approval. The MOU shall include timelines for City, County and Developer to timely carryout each party’s respective responsibilities. The Development Plan, Design Guidelines, and Development Agreement will address the following City concerns:
  - a. Developer will file an application with the City to expand the City’s SOI to include the Project Site and extend the City’s water service to the site. The application will also, separately, request a phased annexation of the site to the City, conditioned upon voter approval of expansion of the City’s RUL. The City will prepare the application to LAFCO (per Section A(3), above).
  - b. The City will consider (subject to a 4/5 vote of the City Council) to provide City water service to the Napa Pipe Site only if the City’s concerns regarding the proposed project have been addressed in the Development Plan, Design Guidelines, and Development Agreement:
    - i. Municipal Water: Based on a project demand of 300 acre-feet annually and an average day demand of 0.27 million gallons per day, the City requires the following terms in the Development Agreement between the County and the Developer.
      - Water Source – Developer will make a one-time payment to the City for allocation of sufficient raw water to the project.

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- Dry Year Reserve Fund – The City will not require a dry year reserve to be funded by the Project.
  - Infrastructure Payment – Developer will reimburse the City for specific treatment, transmission and Developer will be provided an option to make a one-time payment, or City will establish an equitable apportionment as development occurs.
  - Retail Water Service – City will provide water on a retail basis, at the rates established by City Council. Outside City water rates apply while the property being served is located in the unincorporated County.
  - Infrastructure – Developer will construct offsite improvements necessary to serve the Project, preliminarily identified as a 12-inch water supply pipeline connecting the existing Jamieson Transmission Line to the south side of the Project site along Anselmo Court and all onsite improvements. Developer will construct all water infrastructures to City standards in effect at the time of construction; all construction will be inspected and approved by the City.
  - Plan Review – County will provide City staff review and approval of all development and construction plans relating to planning, designing and construction of the water supply system. Documents shall not be released for construction until the City approves and signs documents.
  - Connection Fees/Development Fees – Developer shall fund 50% of a water connection fee study which will calculate a fee specific to the Project, and which will provide a credit to the Developer for the one-time payments for “water source” and “infrastructure payment” (identified above).
  - Groundwater – The Project will not use groundwater. Groundwater shall not be exported from the Project Site.
- ii. Traffic
- The Developer shall pay the costs of a study that is underway under the direction of the City and the County, to identify intersections impacted by project-generated traffic and mitigations to address impacts. The Developer shall be required to commit to a schedule to install opening day improvements and the phasing in of other improvements on a schedule linked to an adopted phasing plan. The Developer shall also be required to pay the “fair share” costs of

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mitigation needed to address cumulative impacts at intersections within the County, City, American Canyon, and Caltrans jurisdictions. “Fair share” payments may be structured as impact fees, paid at the time a permit is issued. The Developer’s compliance with these traffic mitigation requirements will satisfy the Developer’s obligations under the City’s street improvement fee program, and the Developer will not be required to separately pay the City’s street improvement fees.

iii. Affordable Housing

Based on the maximum number of units approved on the Site at 945, not less than 20 percent of the units on the site will be deed restricted as affordable housing. Specifically, not less than 70 units will be deed restricted for qualified very low income households, not less than 70 units will be deed restricted for qualified low income households, and not less than 50 units will be deed restricted for qualified moderate income households, as defined by HCD. The Development Agreement will identify a phasing plan for implementation of this requirement. The Development Agreement will additionally specify unit types and an outreach and marketing program designed to ensure that a significant portion of the affordable and market-rate units constructed at the site are owned and occupied by members of the Napa workforce.

iv. Cost Recovery/Indemnification

- Developer will pay the City full cost recovery for review of all applications including preparation and filing of LAFCO applications for the SOI, expansion of City water service, and annexation, and the RUL expansion vote.
- Except as otherwise provided in the MOU, the Developer will pay City development impact fees upon issuance of permits whether by the City or County, except for affordable housing impact fee since the project will be required to provide 20% affordable units.
- Developer will provide trail connection from the Project Site to Kennedy Park. If the Developer is unable to obtain any property rights needed for the trail, the Developer will pay the cost of acquiring the necessary properties.
- Developer shall pay the City’s Park Dedication and Park Development Impact Fees. However, the Developer shall receive a credit against those park impact fees by extending a trail connection to Kennedy

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Park which extends through the Project Site to meet the region-wide San Francisco Bay Trail. This trail shall comply with the City's standards and specifications. The Developer's compliance with this trail requirement will satisfy the Developer's obligation under the City's Park Dedication and Park Development fee program; and the Developer will not be required to separately pay the City's Park Dedication and Park Development fee.

- Developer will indemnify the City against any claims or challenges made related to the City's processing or approval of all applications, and the Developer will pay all City costs in defense of any such claims or challenges.

v. Planning/Design

- County and the City agree to approach the School District and request they select the Harrison Site or another feasible site for construction of a new school, rather than using 10 acres of the Napa Pipe site. The County will amend the proposed zoning ordinance to delete the reference to a new school site.
- County agrees to ensure that design guidelines will provide for a mix of residential building heights from 35 feet (cottages and townhomes) to 55 feet (larger townhomes and apartments).
- As part of the Development Agreement, the continuum care facility will be required to pay the ongoing costs of emergency medical services.
- County will replace the condition from the Zoning Amendment allowing wholesale water to be distributed to an independent water company with a new condition requiring retail water service to the property owners.
- County will include provisions in the Development Plan and Design Guidelines that provides regulatory criteria similar to a form based code.

vi. Maintenance of Roads, Open Space, Parks

- Developer is responsible for cost of maintenance of all roads, open space, and parks which may be provided through establishment of an HOA. The financing of maintenance costs will be documented as a part of the Finance Plan incorporated in the Development Agreement.

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- Since the Developer proposes all improvements to be privately owned and maintained, the City shall not be responsible for costs associated with operation, maintenance, repair or replacement of these systems.
- vii. Project Phasing
- The Development Agreement will include a phasing plan which will document the Developer's obligation to install improvements in phases designed to adequately mitigate project impacts as they are generated, as well as to ensure that later phases of the development are not unduly burdened with costs of implementing required mitigation measures.
  - The phasing plan will specifically include the removal of any soils requiring remediation within the Costco property, and also rough grading for the Costco site. There will be an initial phase addressing the Costco site (with supporting infrastructure) and nearby wetlands restoration; the Costco itself may be built and opened during this phase. The second phase will include remediation of the remainder of the site and rough grading of the residential development areas; these tasks shall be completed prior to applying for building permits for residential or other non-residential development. Subsequent phases shall include all residential and commercial uses, and their corresponding infrastructure, affordable housing, and various accessory uses and public-serving amenities.

Amendments to the MOU: The MOU can be amended by mutual consent of the city council and the board of supervisors. Both parties also agree to work towards achieving mutual goals that are not explicit in this agreement, including relocation of the jail outside of downtown